

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BUDGET
Senator Alexander, Chair
Senator Negron, Vice Chair

MEETING DATE: Wednesday, February 23, 2011
TIME: 9:00 a.m.—12:00 noon
PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Alexander, Chair; Senator Negron, Vice Chair; Senators Altman, Benacquisto, Bogdanoff, Fasano, Flores, Gaetz, Hays, Joyner, Lynn, Margolis, Montford, Rich, Richter, Simmons, Siplin, Sobel, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SJR 2 Haridopolos (Identical HJR 1)	Health Care Services; Proposes an amendment to the State Constitution to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system. Permits a person or an employer to purchase lawful health care services directly from a health care provider. Permits a health care provider to accept direct payment from a person or an employer for lawful health care services, etc.	HR 12/08/2010 Favorable JU 01/11/2011 Favorable BC 02/23/2011
2	CS/SB 142 Commerce and Tourism / Richter (Compare CS/H 201)	Negligence; Defines the terms "negligence action" and "products liability action." Requires the trier of fact to consider the fault of all persons who contributed to an accident when apportioning damages in a products liability action alleging an additional or enhanced injury. Provides legislative intent to overrule a judicial opinion. Provides a legislative finding that fault should be apportioned among all responsible persons in a products liability action, etc.	JU 01/11/2011 Fav/1 Amendment CM 02/07/2011 Fav/CS BC 02/23/2011
3	CS/SJR 958 Budget Subcommittee on Finance and Tax / Budget Subcommittee on Finance and Tax	State Revenue Limitation; Proposes amendments to the State Constitution to replace the existing state revenue limitation with a new state revenue limitation based on inflation and population changes.	BFT 02/17/2011 Fav/CS BC 02/23/2011 RC
4	A proposed committee substitute for the following bill (CS/SB 736) is available:		

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Wednesday, February 23, 2011, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	CS/SB 736 Education Pre-K - 12 / Wise	Education Personnel; Cites this act as the "Race to the Top for Student Success Act." Revises provisions related to the evaluation of instructional personnel and school administrators. Requires that the Department of Education approve school district evaluation systems. Provides requirements for the evaluation systems. Requires the Commissioner of Education to select formulas for school districts to use in measuring growth in learning by students. Requires the State Board of Education to adopt formulas, etc. ED 02/09/2011 ED 02/10/2011 Fav/CS BEA 02/15/2011 Favorable BC 02/23/2011	
6	SB 1012 Budget Subcommittee on Criminal and Civil Justice Appropriations	State Attorneys Revenue Trust Fund/JAC; Re-creates the State Attorneys Revenue Trust Fund within the Justice Administrative Commission without modification. Abrogates provisions relating to the termination of the trust fund, to conform. BC 02/23/2011	
7	SB 1014 Budget Subcommittee on Criminal and Civil Justice Appropriations	Public Defenders Revenue Trust Fund/JAC; Re-creates the Public Defenders Revenue Trust Fund within the Justice Administrative Commission without modification. Abrogates provisions relating to the termination of the trust fund, to conform. BC 02/23/2011	
8	SB 1016 Budget Subcommittee on Criminal and Civil Justice Appropriations	Indigent Civil Defense Trust Fund/JAC; Re-creates the Indigent Civil Defense Trust Fund within the Justice Administrative Commission without modification. Abrogates provisions relating to the termination of the trust fund, to conform. BC 02/23/2011	
9	SB 1018 Budget Subcommittee on Criminal and Civil Justice Appropriations	State Courts Revenue Trust Fund; Re-creates the State Courts Revenue Trust Fund within the state courts system without modification. Abrogates provisions relating to the termination of the trust fund, to conform. BC 02/23/2011	

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Budget

Wednesday, February 23, 2011, 9:00 a.m.—12:00 noon

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10	SB 1020 Budget Subcommittee on Criminal and Civil Justice Appropriations	Federal Grants Trust Fund/DLA; Re-creates the Federal Grants Trust Fund within the Department of Legal Affairs without modification. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011
11	SB 1022 Budget Subcommittee on Criminal and Civil Justice Appropriations	Operating Trust Fund/DLA; Re-creates the Operating Trust Fund within the Department of Legal Affairs without modification. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011
12	SB 1024 Budget Subcommittee on Criminal and Civil Justice Appropriations	Federal Grants Trust Fund/DJJ; Re-creates the Federal Grants Trust Fund within the Department of Juvenile Justice without modification. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011
13	SB 1026 Budget Subcommittee on Education Pre-K - 12 Appropriations	Operating Trust Fund/Department of Education; Re-creates the Operating Trust Fund within the Department of Education without modification. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011
14	SB 1028 Budget Subcommittee on Education Pre-K - 12 Appropriations	Administrative Trust Fund/Department of Education; Re-creates the Administrative Trust Fund within the Department of Education without modification. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011
15	SB 1030 Budget Subcommittee on General Government Appropriations	Trust Funds/Department of Financial Services; Terminates specified trust funds within the Department of Financial Services. Provides for the disposition of balances in and revenues of such trust funds. Prescribes procedures for the termination of such trust funds.	BC 02/23/2011

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16	SB 1032 Budget Subcommittee on General Government Appropriations	Federal Grants Trust Fund/DEP; Re-creates the Federal Grants Trust Fund within the Department of Environmental Protection without modification. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011
17	SB 1034 Budget Subcommittee on General Government Appropriations	Federal Grants Trust Fund/Department of Revenue; Re-creates the Federal Grants Trust Fund within the Department of Revenue without modification. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011
18	SB 1036 Budget Subcommittee on General Government Appropriations	Operations Trust Fund/Department of Revenue; Re-creates and renames the Operations Trust Fund within the Department of Revenue. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011
19	SB 1038 Budget Subcommittee on General Government Appropriations	Federal Grants Trust Fund/DFS; Creates the Federal Grants Trust Fund within the Department of Financial Services. Provides for the purpose of the trust fund and sources of funds. Provides for future review and termination or re-creation of the trust fund.	BC 02/23/2011
20	SB 1040 Budget Subcommittee on General Government Appropriations	Florida Drug, Device, and Cosmetic Trust Fund/DBPR; Provides a statutory reference for the trust fund created by the act. Creates the Florida Drug, Device, and Cosmetic Trust Fund within the Department of Business and Professional Regulation. Provides for the purpose of the trust fund and sources of funds. Provides for future review and termination or re-creation of the trust fund.	BC 02/23/2011
21	SB 1042 Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations	Federal Grants Trust Fund/HSMV; Re-creates the Federal Grants Trust Fund within the Department of Highway Safety and Motor Vehicles without modification. Abrogates provisions relating to the termination of the trust fund, to conform.	BC 02/23/2011

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22	SB 1044 Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations	International Registration Clearing TF/HSMV; Terminates the International Registration Clearing Trust Fund within the Department of Highway Safety and Motor Vehicles. Provides for the disposition of balances in and revenues of the trust fund. Prescribes procedures for terminating the trust fund. Repeals provisions relating to an exemption from termination provided for the trust fund.	BC 02/23/2011
Presentation on Creating Jobs by Matching the Strengths of Florida's Universities with the Needs of an Innovation Economy by Dr. Bernard Machen, President, University of Florida Dr. John C. Hitt, President, University of Central Florida			
Presentation on Talent and Technology: The Polytechnic Idea Dr. Marshall Goodman, Regional Chancellor, USF Polytechnic			
Enterprise Information Technology Consolidations - Potential Budget Reductions			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 2

INTRODUCER: Senator Haridopolos and others

SUBJECT: Health Care Services

DATE: February 3, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Favorable
2.	Munroe	Maclure	JU	Favorable
3.	Hansen	Meyer	BC	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This joint resolution proposes the creation of Section 28 of Article I of the State Constitution, to preserve the freedom of Florida residents to provide for their own health care by:

- Ensuring that any person, employer, or health care provider is not compelled to participate in any health care system;
- Authorizing a person or employer to pay directly, without using a third party such as an insurer or employer, for health care services without incurring penalties or fines; and
- Authorizing a health care provider to accept direct payment for health care services without incurring penalties or fines.

The joint resolution also does not allow a law or rule to prohibit the purchase or sale of health insurance in private health care systems and specifies certain aspects of health care that are not affected by this constitutional amendment. In addition, the joint resolution also defines terms that are used within the proposed constitutional amendment. The joint resolution includes the statement that is to be placed on the ballot at the next general election or at an earlier special election.

This joint resolution does not amend, create, or repeal any sections of the Florida Statutes.

II. Present Situation:

Federal Health Care Reform¹

On March 21, 2010, Congress enacted national health care reform under the Patient Protection and Affordable Care Act, often referred to as the Affordable Care Act (ACA).² On March 30, 2010, Congress enacted the Health Care and Education Reconciliation Act³ to amend the ACA. The new federal law will bring sweeping changes to the U.S. health care system and, among other things, it will:⁴

- **Extend health insurance coverage** to about 32 million people who currently lack it, leading to coverage of about 94 percent of nonelderly Americans.⁵ The cost of coverage expansions will total \$940 billion from fiscal 2010 to fiscal 2019.⁶ However, considering other changes made under the new federal law, it is estimated that the overhaul will reduce the deficit by a net \$138 billion over the same period.⁷
- **Create state-based exchanges**, or marketplaces, where individuals without employer-provided insurance can buy health care coverage.⁸ Federal premium subsidies will be available to help cover the cost for individuals who earn between 133 percent and 400 percent of the federal poverty level (or \$24,352 to \$73,240 for a family of three in 2010).⁹
- **Expand Medicaid eligibility** to all individuals with incomes of up to 133 percent of the federal poverty level. The ACA specifies that in all states, the federal government will cover the entire cost of coverage to newly eligible people from 2014 through 2016. In 2017, federal matching funds for all states will cover 95 percent of the costs for the newly eligible people. The rate would be 94 percent in 2018, 93 percent in 2019, and 90 percent in 2020 and afterward.¹⁰
- **Provide a one-time, \$250 rebate for Medicare beneficiaries** who fall into a prescription drug coverage gap known as the “doughnut hole” in 2010 and seek to

¹ For a more detailed summary of the health insurance provisions in the federal health care reform initiatives, see the National Conference of State Legislatures website:

<http://www.ncsl.org/Default.aspx?TabID=160&tabs=831,139,1156#1156> (last visited Dec. 20, 2010).

² Pub. L. No. 111-148, 124 Stat. 119 (2010).

³ Pub. L. No. 111-152, 124 Stat. 1029 (2010).

⁴ The format for the following information was adopted from a Consumer Watchdog blog, *A summary of the health care change we got*, March 26, 2010, available at <http://www.consumerwatchdog.org/blog/summary-health-care-change-we-got> (last visited Dec. 20, 2010).

⁵ See Congressional Budget Office, *Summary of Preliminary Analysis of Health and Revenue Provisions of Reconciliation Legislation Combined with H.R. 3590 as Passed by the Senate, Table 2.*, available at <http://www.cbo.gov/ftpdocs/113xx/doc11355/hr4872.pdf>, March 18, 2010 (last visited Dec. 20, 2010).

⁶ *Id.*

⁷ *Id.* at 2.

⁸ U.S. Department of Health & Human Services HealthCare.gov, *Timeline: What's Changing When: Establishing Health Care Exchanges*, available at <http://www.healthcare.gov/law/timeline/index.html#event39-pane> (last visited Dec. 20, 2010).

⁹ See, Phil Galewitz, *Consumers Guide to Health Reform*, Kaiser Health News, April 13, 2010, available at <http://www.kaiserhealthnews.org/Stories/2010/March/22/consumers-guide-health-reform.aspx> (last visited Dec. 20, 2010). See also National Conference of State Legislatures, *American Health Benefit Exchanges*, November 18, 2010, available at <http://www.ncsl.org/IssuesResearch/Health/AMERICANHEALTHBENEFITEXCHANGES/tabid/21393/Default.aspx#basics> (last visited Dec. 20, 2010).

¹⁰ National Conference of State Legislatures, *Medicaid and CHIP Eligibility Table by State*, July 1, 2010, available at <http://www.ncsl.org/default.aspx?tabid=20044> (last visited Dec. 20, 2010).

- eliminate the gap entirely within 10 years.¹¹ Starting in 2011, the overhaul creates a discount of 50 percent on brand-name drugs for beneficiaries who fall into the gap.¹² The discount will increase to 75 percent by 2020, with the government paying the rest of the cost of the drugs.¹³
- **Impose new regulations on health insurance companies.** Beginning 6 months after enactment, health insurers may rescind group or individual coverage only with clear and convincing evidence of fraud or intentional misrepresentation by an enrollee.¹⁴ Insurance plans also are required to allow parents to continue coverage for dependent children who would otherwise not have health insurance until a child reaches his or her 26th birthday.¹⁵ Insurers are barred from setting lifetime limits on the dollar value of health care and may not set any annual limits on the dollar value of health care provided, also effective 6 months after enactment.¹⁶
 - **Require individuals to obtain health insurance** or failure to maintain coverage will result in a penalty that is the greater of a flat fee \$95 in 2014; \$325 in 2015; and \$695 in 2016 or the following percent of the excess household income above the threshold amount required to file a tax return – 1 percent of income in 2014; 2 percent of income in 2015; and 2.5 percent of income in 2016 and subsequent years.¹⁷
 - **Penalize employers with more than 50 workers** who have employees who obtain subsidies to purchase coverage through the exchanges. In 2014, the monthly penalty assessed to the employer for each full-time employee who receives a subsidy will be one-twelfth of \$3,000 for any applicable month.¹⁸
 - **Impose an excise tax on high-premium health care plans,** often referred to as “Cadillac plans,” beginning in 2018. The tax will apply to plans costing \$10,200 for individual coverage and \$27,500 for family coverage.¹⁹
 - **Increase the Medicare payroll tax** for individuals making more than \$200,000 and couples making more than \$250,000 and impose an additional 3.8 percent surtax on investment income.²⁰

¹¹ U.S. Department of Health & Human Services HealthCare.gov, *Filling the Medicare Part D “Donut Hole,”* July 7, 2010, available at <http://www.healthcare.gov/law/provisions/donuthole/donuthole.html> (last visited on Dec. 20, 2010).

¹² *Id.*

¹³ Christopher Weaver, How Medicare’s Drug ‘Doughnut Hole’ Will be Filled, Kaiser Health News, March 29, 2010, available at <http://www.mcclatchydc.com/2010/03/29/v-print/91285/how-medicares-drug-doughnut-hole.html> (last visited Jan. 3, 2010).

¹⁴ U.S. Department of Health & Human Services, *Affordable Care Act Implementation FAQs: Rescissions*, Sept. 20, 2010, available at http://www.hhs.gov/ociio/regulations/implementation_faq.html (last visited Dec. 30, 2010).

¹⁵ U.S. Department of Health & Human Services, *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Businesses and Families*, available at http://www.hhs.gov/ociio/regulations/adult_child_faq.html (last visited Dec. 20, 2010).

¹⁶ HealthReform.gov, *Fact Sheet: The Affordable Care Act’s New Patient’s Bill of Rights*, June 22, 2010, available at http://www.healthreform.gov/newsroom/new_patients_bill_of_rights.html (last visited Dec. 30, 2010).

¹⁷ Joy Johnson Wilson, *WHO GOES WHERE & WHY—THE NUTS AND BOLTS OF THE NEW HEALTH LAW*, National Conference of State Legislatures, July 25, 2010, available at http://www.ncsl.org/portals/1/documents/health/HealthSum_WilsonLS10.pdf (last visited Dec. 20, 2010).

¹⁸ Hinda Chaikind et al., *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*, Congressional Research Service, May 4, 2010, available at <http://www.ncsl.org/documents/health/PrivHlthIns2.pdf> (last visited Dec. 20, 2010).

¹⁹ Jenny Gold, “Cadillac” Insurance Plans Explained, Kaiser Health News, March 18, 2010, available at <http://www.kaiserhealthnews.org/Stories/2010/March/18/Cadillac-Tax-Explainer-Update.aspx> (last visited Dec. 20, 2010).

- **Create a 2.3 percent excise tax on the sale of medical devices by manufacturers and importers.** The following devices are exempted from the tax: eyeglasses, contact lenses, hearing aids, and any device specified by the Secretary of the Treasury that is of a type that is generally purchased by the public at retail for individual use.²¹
- **Impose new fees on health insurers.** Beginning in 2014, an annual flat fee of \$8 billion will be levied on the industry. It rises to \$11.3 billion in 2015 and 2016, \$13.9 billion in 2017, and \$14.3 billion in 2018. In 2019, these fees will be adjusted by the same rate as the growth in health insurance premiums.²²
- **Levy an annual fee on certain manufacturers and importers of branded prescription drugs,** totaling \$2.5 billion for 2011, \$2.8 billion per year for 2012 and 2013, \$3.0 billion for 2014 through 2016, \$4.0 billion for 2017, \$4.1 billion for 2018, and \$2.8 billion for 2019 and thereafter.²³

In 2008, approximately 60 percent of the U.S. population had employment-based health insurance.²⁴ Other individuals chose to obtain coverage on their own in the nongroup market. Others qualified for health coverage through Medicare, Medicaid, and other government programs. Still others had no defined health coverage.

State Legislative and Executive Branch Implementation of ACA

As of September 27, 2010, at least 25 states have enacted or adopted legislation or taken official action to form a committee, task force, or board concerning health reform implementation.²⁵ Additionally, at least 14 governors have issued executive orders to begin the process of health reform implementation.²⁶

The following figure represents such legislative and executive branch actions.²⁷

²⁰ Tax Foundation, *Examples of Taxpayers Facing Medicare Tax Increase under Health Care Bill*, March 22, 2010, available at <http://www.taxfoundation.org/publications/show/26041.html> (last visited Dec. 20, 2010).

²¹ National Conference of State Legislatures, *Timeline/Summary of Tax Provisions in the Health Reform Laws*, 4, available at <http://www.ncsl.org/documents/health/TimelineSumTax.pdf> (last visited Dec. 30, 2010).

²² Janemarie Mulvey, *Health-Related Revenue Provisions: Changes Made by H.R. 4872, the Health Care and Education Reconciliation Act of 2010*, Congressional Research Service, Mar. 24, 2010, available at <http://www.ncsl.org/documents/health/HlthRelRevProvs.pdf> (last visited Dec. 20, 2010).

²³ *Id.* at 5.

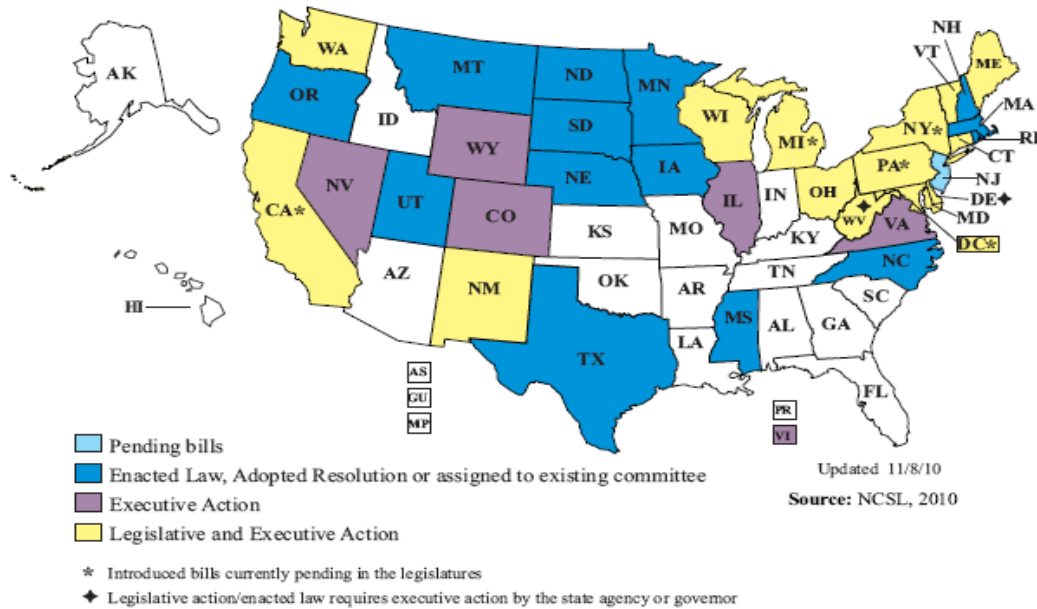
²⁴ U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2008*, 20 (Sept. 2009), available at <http://www.census.gov/prod/2009pubs/p60-236.pdf> (last visited Jan 3, 2011).

²⁵ National Conference of State Legislators, *State Actions to Implement Federal Health Reform*, Nov. 22, 2010, available at <http://www.ncsl.org/default.aspx?tabid=20231#Legislative> (last visited Jan. 3, 2011).

²⁶ *Id.*

²⁷ Figure found on the National Conference of State Legislatures website. See *supra* note 25.

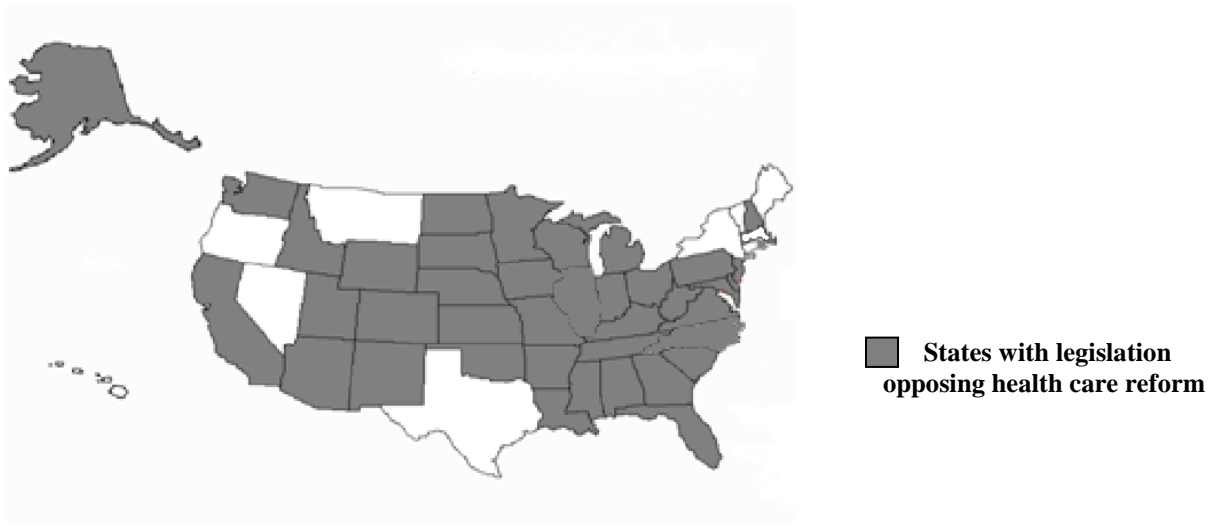
State Actions Implementing Health Reform



State Legislation Opposing Certain Health Reforms

In response to the federal health care reform, state legislators in at least 40 states have filed legislation to limit, alter, or oppose certain state or federal action, including single-payer provisions and mandates that would compel the purchase of health care insurance.²⁸ In 30 of the states, the legislation includes a proposed constitutional amendment by ballot.²⁹

The following figure represents those states introducing legislation opposing certain health care reforms.



²⁸ National Conference of State Legislatures, *State Legislation and Actions Challenging Certain Health Reforms*, 2010, Dec. 18, 2010, available at <http://www.ncsl.org/?tabid=18906> (last visited Jan. 3, 2011).

²⁹ *Id.*

The Florida Legislature, during the 2010 regular legislative session, passed House Joint Resolution 37. House Joint Resolution 37 was a proposed state constitutional amendment that sought to:

- Prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system;
- Permit a person or employer to purchase lawful health care services directly from health care provider; and
- Permit health care providers to accept direct payment from a person or employer for lawful health care services.³⁰

The proposed constitutional amendment was to appear as Amendment 9 on the November 2, 2010, state election ballot for voter approval or disapproval. However, in an order dated July 30, 2010, the Second Judicial Circuit Court struck Amendment 9 from the ballot.³¹ In doing so, the circuit court determined that the legal issues involving the ballot summary for Amendment 9 could not be distinguished from previous Florida Supreme Court decisions in which constitutional amendments were stricken from the ballot due to defective ballot summaries.³²

On appeal to the Florida Supreme Court the parties conceded that the ballot language was misleading, and the focus of the appeal was on the applicable remedy after such a determination had been made.³³ The Florida Department of State argued that “the Court should substitute the text of the proposed amendment contained in the Joint Resolution for the misleading ballot summary on the November ballot and permit the voters to determine whether the proposed amendment will become part of the Florida Constitution.”³⁴ The Florida Supreme Court has repeatedly stated that the “ballot summary should tell the voter the legal effect of the amendment, and no more.”³⁵ The Florida Supreme Court held that in this case, where the ballot summary for Amendment 9 as proposed by the Florida Legislature was deemed invalid, the proper remedy was to strike the proposal from the ballot.³⁶

State-based Federal Court Challenges

Three distinct state-based federal court challenges to the federal health reform legislation have been filed. In Florida, in *State of Florida, et al. v. U.S. Department of Health and Human Services*,³⁷ a federal district judge ruled on October 14 that two of six counts alleged in the complaint can go to trial.³⁸ The court rejected the argument by the United States that the

³⁰ CS/CS/HJR 37 (2010 Reg. Session), available at <http://www.flsenate.gov/data/session/2010/House/bills/billtext/pdf/h003703er.pdf> (last visited Jan. 3, 2011).

³¹ *Mangat v. Florida Department of State*, Case No. 2010 CA 2202 (July 30, 2010).

³² *Id.*

³³ *Florida Department of State v. Mangat*, 43 So. 3d 642, 647-48 (Fla. 2010).

³⁴ *Id.*

³⁵ *Id.* at 648 (quoting *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984)).

³⁶ *Mangat*, 43 So.3d at 651.

³⁷ Case No.3:10-cv-91-RV/EMT (N.D. Fla. Mar. 23, 2010). The case was initiated by Florida Attorney General Bill McCollum, and joined by 12 other state attorneys general).

³⁸ *Id.*

individual mandate is a tax and made it clear that he agreed with the plaintiff's argument that the power the individual mandate seeks to harness "is simply without precedent."³⁹

In the Virginia case, *Virginia ex rel. v. Sebelius*,⁴⁰ a federal district judge declined in early August to dismiss the suit and heard oral arguments in October 2010.⁴¹ Virginia challenged the federal health reform act on two grounds: that it exceeds the power granted to Congress under the Commerce and General Welfare Clause of the U.S. Constitution and, alternatively, that the federal health reform law conflicts with a Virginia statute, implicating the Tenth Amendment of the U. S. Constitution.⁴² The Federal District Court ruled that the insurance mandate required by the federal health reform act violated the U.S. Commerce Clause and would invite unbridled exercise of federal powers.⁴³

A suit was also filed in Michigan on behalf of four residents of southwest Michigan in *Thomas More Law Center v. Obama*.⁴⁴ However, the federal district judge dismissed the case, and reasoned that the health care market is unique and found that the choice to forgo obtaining health insurance is "making an economic decision to try to pay for health care services later, out of pocket, rather than now through the purchase of insurance"⁴⁵ is an example of an activity that falls within the federal government's Commerce Clause powers under the U.S. Constitution.⁴⁶

The bases for these suits rely on some of the following constitutional principles.⁴⁷

Commerce Clause

Congress has the power to regulate interstate commerce under the Commerce Clause of the U.S. Constitution,⁴⁸ including local matters and things that "substantially affect" interstate commerce. Proponents of reform assert that although health care delivery is local, the sale and purchase of medical supplies and health insurance occurs across state lines, thus regulation of health care is within Commerce Clause authority. Arguing in support of an individual mandate, proponents point to insurance market destabilization caused by the large uninsured population as reason

³⁹ *Id.* at 61.

⁴⁰ *Virginia ex rel. Cuccinelli v. Sebelius*, 702 F. Supp. 2d 598, 615 (E.D. Va. Aug. 2, 2010).

⁴¹ *Id.* See also, Kevin Sack, Challenging Health Care Law, Suit Advances, N.Y. Times, Oct. 14, 2010, available at <http://www.nytimes.com/2010/10/15/health/policy/15health.html> (last visited Jan. 10, 2011).

⁴² Virginia became one of the first states in the nation to enact legislation opposing certain aspects of the federal health care reform legislation. Virginia enacted a state statute entitled "Health insurance coverage not required," which became law on March 10, 2010, and was included as an additional challenge to the federal health reform law in the court complaint. See VA. CODE ANN. s. 38.2-3430.1:1 (2010).

⁴³ Memorandum Opinion, Civil Action No. 3:10-cv-188 (E.D. Va. Dec. 13, 2010).

⁴⁴ Case No. 2:10-cv-11156-GCS-RSW (E.D. Mich. Mar. 23, 2010).

⁴⁵ Order denying Plaintiff's Motion for Injunction and Dismissing Plaintiffs' First and Second Claims for Relief dated October 7, 2010 in Case No. 2:10-cv-11156-GCS-RSW (E.D. Mich. Mar. 23, 2010).

⁴⁶ *Id.* at 16-17. See also, Stipulated Order Dismissing Remaining Claims Without Prejudice, Case 2:10-cv-11156-GCS-RSW (E.D. Mich. Oct. 21, 2010).

⁴⁷ See, e.g., Matthew R. Farley, *Challenging Supremacy: Virginia's Response to the Patient Protection and Affordable Care Act*, 45 U. RICH. L. REV. 37, 64-70 (Nov. 2010), and James F. Blumstein, "State Challenges to Health Reform: A Look at the Constitutional Issues" (presentation presented at the National Conference of State Legislatures 2010 Legislative Summit on July 27, 2010), available at http://www.ncsl.org/portals/1/documents/health/PPACA_BlumsteinLS10.pdf (last visited Jan. 5, 2011).

⁴⁸ U.S. CONST. art. I, s. 8, cl. 3.

enough to authorize Congressional action under the Commerce Clause.⁴⁹ Opponents suggest that the decision not to purchase health care coverage is not a commercial activity and cite to *United States v. Lopez*, which held that Congress is prohibited from “...unfettered use of the Commerce Clause authority to police individual behavior that does not constitute interstate commerce.”⁵⁰

Tax and Spend for the General Welfare

The Tax and Spend Clause of the U.S. Constitution⁵¹ provides Congress with taxation authority and also authorizes Congress to spend funds with the limitation that spending must be in pursuit of the general welfare of the population. To be held constitutional, Congressional action pursuant to this Clause must be reasonable.⁵² With respect to the penalty or fine on individuals who do not have health insurance, proponents suggest that Congress’ power to tax and spend for the general welfare authorizes the crafting of tax policy that in effect encourages and discourages behavior.⁵³ Opponents cite U.S. Supreme Court case law that prohibits “a tax to regulate conduct that is otherwise indisputably beyond [Congress’] regulatory power.”⁵⁴

Tenth Amendment and Anti-Commandeering Doctrine

The Tenth Amendment of the U.S. Constitution reserves to the states all power that is not expressly reserved for the federal government in the U.S. Constitution. Opponents of federal reform assert that the individual mandate violates federalism principles because the U.S. Constitution does not authorize the federal government to regulate health care. They argue, “...state governments – unlike the federal government – have greater, plenary authority and police powers under their state constitutions to mandate the purchase of health insurance.”⁵⁵ Further, opponents argue that the state health insurance exchange mandate may violate the anti-commandeering doctrine, which prohibits the federal government from requiring state officials to carry out onerous federal regulations.⁵⁶ Proponents for reform suggest that Tenth Amendment jurisprudence only places wide and weak boundaries around Congressional regulatory authority to act under the Commerce Clause.⁵⁷

⁴⁹ See, e.g., Jack M. Balkin, *The Constitutionality of the Individual Mandate for Health Insurance*, N. Eng. J. Med. 362:6, at 482, Feb. 11, 2010, available at <http://www.nejm.org/doi/pdf/10.1056/NEJMp1000087> (last visited Dec. 1, 2010).

⁵⁰ Peter Urbanowicz and Dennis G. Smith, *Constitutional Implications of an “Individual Mandate” in Health Care Reform*, The Federalist Society for Law and Public Policy, 4 (July 10, 2009).

⁵¹ U.S. CONST. art. I, s. 8, cl. 1.

⁵² *Helvering v. Davis*, 301 U.S. 619 (1937).

⁵³ Mark A. Hall, *The Constitutionality of Mandates to Purchase Health Insurance*, Legal Solutions in Health Reform project, O’Neill Institute, 7, available at http://www.law.georgetown.edu/oneillinstitute/national-health-law/legal-solutions-in-health-reform/Papers/Individual_Mandates.pdf (last visited Jan. 5, 2010).

⁵⁴ David B. Rivkin and Lee A. Casey, *Illegal Health Reform*, Washington Post, August 22, 2009, A15, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/21/AR2009082103033.html> (last visited Jan. 5, 2010). Rivkin and Casey cite to *Bailey v. Drexel Furniture*, 259 U.S. 20 (1922), a Commerce Clause case which held that Congress does not have the authority to tax as a means of controlling conduct.

⁵⁵ *Id.*

⁵⁶ Matthew D. Adler, *State Sovereignty and the Anti-Commandeering Cases*, The Annals of the American Academy of Policy and Social Science, 574, at 158 (March 2001).

⁵⁷ Hall, *supra* note 53, at 8-9.

Florida Health Insurance

Florida law does not require state residents to have health insurance coverage. However, Florida law does require drivers to carry Personal Injury Protection (PIP), which includes certain health care coverage, as a condition of receiving a state driver's license.⁵⁸ Additionally, Florida law requires most employers to carry workers' compensation insurance, which includes certain health care provisions for injured workers.⁵⁹

The average number of uninsured Floridians from 2007 through 2009 was almost 21 percent of the state population, or approximately 3,795,000 persons out of a total 18,176,000.⁶⁰

Constitutional Amendments

Section 1, Article XI of the State Constitution authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office, or at a special election held for that purpose.⁶¹ Section 5(e), Article XI of the State Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.⁶²

III. Effect of Proposed Changes:

The joint resolution creates Section 28 in Article I of the Florida Constitution relating to health care services. Several terms are defined in the resolution, including the following:

- "Compel" includes the imposition of penalties or fines;
- "Direct payment" or "pay directly" means payment for lawful health care services without a public or private third party, not including any employer, paying for any portion of the service;
- "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment, in full or in part, for health care services, health care data, or health care information for its participants;
- "Lawful health care services" means any health-related service or treatment, to the extent that the service or treatment is permitted or not prohibited by law or regulation, which may be provided by persons or businesses otherwise permitted to offer such services; and
- "Penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or named fee with a similar effect established by law or rule by an agency established, created, or controlled by the government which is used to punish

⁵⁸ Section 627.736, F.S.

⁵⁹ Chapter 440, F.S.

⁶⁰ See U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage: 2009 - Tables & Figures: Number and Percentage of People Without health Insurance Coverage by State Using 2- and 3-Year Averages: 2006-2007 and 2008-2009*, available at <http://www.census.gov/hhes/www/hlthins/data/incpovhlth/2009/tables.html> (last visited Jan. 3, 2011).

⁶¹ FLA. CONST. art. XI, s. 5(a).

⁶² FLA. CONST. art. XI, s. 5(e).

or discourage the exercise of rights protected under this section. However, the term “rule by an agency” may not be construed to mean any negotiated provision in any insurance contract, network agreement, or other provider agreement contractually limiting copayments, coinsurance, deductibles, or other patient charges.

The proposed constitutional amendment is intended to preserve the freedom of Florida residents to provide for their own health care by:

- Prohibiting a law or rule from compelling, directly or indirectly, any person, employer, or health care provider to participate in any health care system;
- Authorizing a person or employer to pay directly for lawful health care services without incurring penalties or fines; and
- Authorizing a health care provider to accept direct payment for lawful health care services from a person or employer without incurring penalties or fines.

The proposed constitutional amendment does not allow any law or rule to prohibit the purchase or sale of health insurance in private health care systems, unless the law or rule is reasonable and necessary and does not substantially limit a person’s options.

The proposed constitutional amendment states that it does not:

- Affect which health care services a health care provider is required to perform or provide;
- Affect which health care services are permitted by law;
- Prohibit care provided pursuant to workers’ compensation laws;
- Affect laws or rules in effect as of March 1, 2010;
- Affect health care systems, provided the health care system does not have provisions that punish a person or employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or employer for lawful health care services. However, this section may not be construed to prohibit any negotiated provision in any insurance contract, network agreement, or other provider agreement contractually limiting copayments, coinsurance, deductibles, or other patient charges; and
- Affect any general law passed by a two-thirds vote of the membership of each house of the legislature after the effective date of this section, if the law states with specificity the public necessity that justifies an exception from this section.

The specific statement to be placed on the ballot is provided. This language summarizes the provisions in the constitutional amendment, except it omits the definitions of terms used in the amendment.

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.⁶³

Other Potential Implications:

The proposed constitutional amendment does not affect laws in existence before March 1, 2010. The proposed constitutional amendment provides that it does not affect any general law passed

⁶³ FLA. CONST. art. XI, s. 5(e).

by a two-thirds vote of the membership of each house of the legislature **after** the effective date of the proposed constitutional amendment. The proposed constitutional amendment would not be effective until after the next general election or special election. Therefore, a gap in time is created, during which newly enacted laws, if any, that fall within the parameters of the constitutional amendment might be ruled unconstitutional should the proposed constitutional amendment become effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of the joint resolution have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the joint resolution have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of the joint resolution have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

If this proposed constitutional amendment is adopted by the voters in Florida, it will directly affect any law or rule that is enacted or adopted after March 1, 2010, by the State of Florida or a local government concerning personal freedoms related to health care coverage.

Supremacy Clause

A federal law, depending upon its nature and scope, could preempt the effect of this proposed constitutional amendment. The Supremacy Clause of the U.S. Constitution establishes federal law as the “supreme law of the land, and invalidates state laws that interfere with or are contrary to federal law.”⁶⁴ However, the Tenth Amendment to the U.S. Constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Therefore, courts have consistently interpreted the Tenth Amendment to mean that “[t]he States unquestionably do retain a significant measure of sovereign authority. . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government.”⁶⁵

⁶⁴ *ABC Charters, Inc. v. Bronson*, 591 F.Supp.2d 1272 (S.D. Fla. 2008) (quoting *Lozano v. City of Hazleton*, 496 F.Supp.2d 477, 518 (M.D. Pa. 2007)); see also U.S. CONST., art. VI.

⁶⁵ *New York v. United States*, 505 U.S. 144, 156 (1992) (quoting 3 J. Story, *Commentaries on the Constitution of the United States* 752 (1833)).

In conducting a preemption analysis in areas traditionally regulated by the states, there is a presumption against preemption.⁶⁶ There are three types of preemption:

- Express preemption;
- Field preemption; and
- Conflict preemption.

“Conflict preemption” occurs when “it is impossible to comply with both federal and state law, or when state law stands as an obstacle to the objectives of federal law.”⁶⁷

“Field preemption” occurs when federal regulation in a legislative field is so pervasive that Congress left no room for the states to supplement it.⁶⁸ “Express preemption” occurs when federal law explicitly expresses Congress’ intent to preempt a state law.⁶⁹

The Florida constitutional amendment could be subject to a preemption challenge if the amendment is perceived to conflict with a federal law or rule adopted after March 1, 2010, governing health care. If a court concludes that that the amendment does directly conflict with a federal law or rule adopted after March 1, 2010, the Florida constitutional provision could be deemed unconstitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State Division of Elections (department) is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$106.14 according to the department. If the joint resolution passes and the proposed constitutional amendment is placed on the ballot, the department estimates that it will incur costs equal to \$93,827.76 to advertise the proposed amendment.⁷⁰

VI. Technical Deficiencies:

None.

⁶⁶ 10 FLA. JUR 2D s. 139 *Constitutional Law* (2010).

⁶⁷ *Supra* note 41, at 1301.

⁶⁸ *Id.* at 1304.

⁶⁹ *Id.* at 1298.

⁷⁰ Fiscal Note on SJR 2 prepared by the Florida Department of State (January 4, 2011).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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



891820

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Negron) recommended the following:

Senate Amendment (with ballot amendment)

Delete lines 19 - 20

and insert:

any person or employer to purchase, obtain, or otherwise provide
for health care coverage.

Delete line 23

and insert:

taxes for paying directly for lawful health care services. A

Delete line 25

and insert:

care services and may not be required to pay penalties or taxes



891820

14 Delete lines 28 - 31

15 and insert:

16 (b) The private market for health care coverage of any
17 lawful health care service may not be abolished by law or rule.

18 Delete line 55

19 and insert:

20 (1) "Compel" includes the imposition of penalties or taxes.

21 Delete line 67

22 and insert:

23 treatment is permitted or not prohibited by law or regulation at
24 the time the service or treatment is rendered,

25 Delete line 70

26 and insert:

27 (5) "Penalties or taxes" means any civil or criminal

28

29 ===== B A L L O T S T A T E M E N T A M E N D M E N T =====

30 And the ballot statement is amended as follows:

31 Delete lines 86 - 94

32 and insert:

33 person or employer to purchase, obtain, or otherwise provide for
34 health care coverage; permit a person or an employer to purchase
35 lawful health care services directly from a health care
36 provider; permit a health care provider to accept direct payment
37 from a person or an employer for lawful health care services;
38 exempt persons, employers, and health care providers from
39 penalties and taxes for paying directly or accepting direct
40 payment for lawful health care services; and prohibit laws or
41 rules from abolishing the private market for health care
42 coverage of any lawful health care service.



175776

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Negron) recommended the following:

Senate Amendment (with ballot amendment)

Delete lines 19 - 20
and insert:
any person or employer to purchase, obtain, or otherwise provide
for health care coverage.

===== B A L L O T S T A T E M E N T A M E N D M E N T =====

And the ballot statement is amended as follows:

Delete lines 86 - 87
and insert:
person or employer to purchase, obtain, or otherwise provide for
health care coverage; permit a person or an employer to purchase



891764

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Negron) recommended the following:

Senate Amendment (with ballot amendment)

Delete lines 23 - 25

and insert:

taxes for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and may not be required to pay penalties or taxes

===== B A L L O T S T A T E M E N T A M E N D M E N T =====

And the ballot statement is amended as follows:

Delete line 92

and insert:

penalties and taxes for paying directly or accepting direct



339000

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Negron) recommended the following:

Senate Amendment (with ballot amendment)

Delete lines 28 - 31

and insert:

(b) The private market for health care coverage of any
lawful health care service may not be abolished by law or rule.

===== B A L L O T S T A T E M E N T A M E N D M E N T =====

And the ballot statement is amended as follows:

Delete lines 93 - 94

and insert:

payment for lawful health care services; and prohibit laws or
rules from abolishing the private market for health care



339000

14 coverage of any lawful health care service.



346558

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Negron) recommended the following:

Senate Amendment

Delete line 55

and insert:

(1) "Compel" includes the imposition of penalties or taxes.



219204

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Negron) recommended the following:

Senate Amendment

Delete line 67

and insert:

treatment is permitted or not prohibited by law or regulation at
the time the service or treatment is rendered,



110930

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Negron) recommended the following:

Senate Amendment

Delete line 70

and insert:

(5) "Penalties or taxes" means any civil or criminal

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 142

INTRODUCER: Commerce and Tourism Committee and Senators Richter and Gaetz

SUBJECT: Negligence

DATE: February 10, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	Fav/1amendment
2.	Hrdlicka	Cooper	CM	Fav/CS
3.	Hendon	Meyer	BC	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 142 changes the apportionment of damages in products liability cases in which a plaintiff alleges an additional or enhanced injury (e.g., crashworthiness cases). More specifically, the fact finder in these cases must consider the fault of all persons who contributed to the accident when apportioning fault among the parties who contributed to the accident.

The bill reorganizes the comparative fault statute by moving the definition of “negligence action” to the definitions subsection in the current comparative fault statute and also includes a definition of “products liability action.”

The bill contains intent language and legislative findings that the provisions in the bill are intended to be applied retroactively and overrule *D’Amario v. Ford Motor Co.*

This bill substantially amends section 768.81, Florida Statutes. The bill is expected to have an insignificant fiscal impact on the state court system. The bill has an effective date upon becoming law.

II. Present Situation:

Crashworthiness Doctrine

Prior to 1968, courts in the United States did not allow those injured in automobile accidents to hold automobile manufacturers liable for injuries sustained where the negligence of the driver or a third party caused the accident, including scenarios in which an automobile defect contributed to the injuries sustained. However, this practice changed with the Eighth Circuit's decision in *Larsen v. General Motors Corp.*¹ In *Larsen*, the plaintiff was injured after a head-on collision that caused the steering mechanism to strike the plaintiff in the head. The federal court held that, because automobile accidents involving collisions are often inevitable and foreseeable, manufacturers have a duty to exercise reasonable care in designing vehicles for the safety of users.²

Most state courts adopted the *Larsen* rationale in some form, which led to the inception of "crashworthiness" or "second collision" cases. In crashworthiness cases, if a defective product causes enhanced injuries during an automobile accident, the product manufacturer may be liable for the enhanced portion of those injuries.³ For example, if an airbag fails to deploy during an initial collision and the driver subsequently collides with the windshield, the manufacturer may be liable for damages attributable to the second collision caused by the defective airbag.⁴

When faced with the practical application of the crashworthiness doctrine, many jurisdictions continue to grapple with whether a defendant automobile manufacturer may introduce evidence of, or assert as a defense, the comparative fault or contributory negligence of the driver or a third party in causing the initial collision.⁵ Some state courts have concluded that "introduction of principles of negligence into what would otherwise be a straightforward product liability case is not allowed."⁶ Conversely, a majority of courts have allowed defendants to introduce evidence of the driver's or third party's negligence in causing the initial collision.⁷

Majority View

A majority of states have adopted the view that a manufacturer's fault in causing additional or enhanced injuries may be reduced by the fault of a plaintiff or third party who caused or contributed to the primary collision.⁸ For example, in a Delaware crashworthiness case, the plaintiff's automobile was struck by another vehicle when the plaintiff allegedly failed to stop at

¹ *Larsen v. General Motors Corp.*, 391 F.2d 495 (8th Cir. 1968).

² *Id.* at 502.

³ Ellen M. Bublick, *The Tort-Proof Plaintiff: The Drunk in the Automobile, Crashworthiness Claims, and the Restatement (Third) of Torts*, 74 BROOK L. REV. 707, 707 (Spring 2009).

⁴ *Id.*

⁵ Mary E. Murphy, Annotation, *Comparative Negligence of Driver as Defense to Enhanced Injury, Crashworthiness, or Second Collision Claim*, 69 A.L.R. 5TH 625, 625 (1999).

⁶ *Id.*

⁷ *Id.*

⁸ Edward M. Ricci et al., *The Minority Gets It Right: The Florida Supreme Court Reinvigorates the Crashworthiness Doctrine in D'Amario v. Ford*, 78 FLA. B.J. 14, 14 (June 2004). Some of the states recognizing the majority view include: Alaska, Arkansas, California, Colorado, Delaware, Louisiana, Indiana, North Carolina, North Dakota, Oregon, Tennessee, Washington, Wyoming, and Iowa.

a stop sign.⁹ As a result, the automobile's airbag deployed, crushing the plaintiff's fingers. The defendant automobile manufacturer argued that the plaintiff's recovery should be reduced by his comparative fault in failing to stop at the stop sign and causing the initial collision. The court concluded that the cause of the initial collision is a proximate cause of the subsequent collision and the resulting enhanced injuries to the plaintiff's fingers. The court further opined that:

[i]t is obvious that the negligence of a plaintiff who causes the initial collision is one of the proximate causes of all of the injuries he sustained, whether limited to those the original collision would have produced or including those enhanced by a defective product in the second collision.¹⁰

Some courts following the majority position have reasoned that, in crashworthiness cases, the person causing the initial collision may be liable for the subsequent negligence of the automobile manufacturer because any enhanced injuries resulting from the second collision are foreseeable consequences of the first collision.¹¹ For example, in an Alaska crashworthiness case, the court allowed the automobile manufacturer to assert that its liability for a defective seatbelt system should be reduced because the initial head-on collision was caused by a third party. The court sided with the manufacturer, citing that “[a]n original tortfeasor is considered a proximate cause, as a matter of law, of injuries caused by subsequent negligenc[ce]” of the manufacturer of the defective product.¹²

Other courts holding the majority view have also stated that “general fairness and public policy considerations require that the fault of the original tortfeasor be considered in apportioning liability for enhanced injuries.”¹³ Courts have also recognized that the application of comparative fault in crashworthiness cases enhances the public's interest in deterring drivers from driving negligently.¹⁴

Minority View

A minority of courts have adopted the theory that, because an automobile manufacturer is solely responsible for any product defects, the manufacturer is also solely liable for the enhanced injuries caused by those defects. The minority position results from “a stricter construction of the crashworthiness doctrine that treats each collision as a separate event with independent legal causes and injuries.”¹⁵ Further reasoning behind the minority view is that a manufacturer maintains a duty to anticipate foreseeable negligence of users of the automobile, as well as the negligence of third parties.¹⁶

One federal court applied the minority view in a crashworthiness case and determined that:

⁹ *Meekins v. Ford Motor Co.*, 699 A.2d 339 (Del. Super. Ct. 1997).

¹⁰ *Id.* at 346.

¹¹ Ricci, *supra* note 8, at 18.

¹² *General Motors Corp. v. Farnsworth*, 965 P.2d 1209, 1217-18 (Alaska 1998).

¹³ Ricci, *supra* note 8, at 18 (citing *Whitehead v. Toyota Motor Corp.*, 897 S.W.2d 684, 695 (Tenn. 1995)).

¹⁴ *Moore v. Chrysler Corp.*, 596 So. 2d 225, 238 (La. Ct. App. 1992).

¹⁵ Ricci, *supra* note 8, at 18.

¹⁶ Victor E. Schwartz, *Fairly Allocating Fault Between a Plaintiff Whose Wrongful Conduct Caused a Car Accident and a Automobile Manufacturer Whose Product Allegedly “Enhanced” the Plaintiff’s Injuries*, 10 (2010) (on file with the Senate Committee on Judiciary).

Because a collision is presumed, and enhanced injury is foreseeable as a result of the design defect, the triggering factor of the accident is simply irrelevant. . . . Further, the alleged negligence causing the collision is legally remote from, and thus not the legal cause of, the enhanced injury caused by a defective part that was supposed to be designed to protect in case of a collision.¹⁷

A federal district court in Ohio excluded evidence of a driver's intoxication at the time of the accident in a products liability action against the automobile manufacturer.¹⁸ In addition to ruling that the probative value of the evidence of intoxication was outweighed by the danger that the jury could misuse the information, the court reasoned that it was foreseeable that front-end collisions occur and that an automobile manufacturer is under an obligation under Ohio law to use reasonable care in designing vehicles that do not expose a user to unreasonable risks.¹⁹

The rationale underlying the minority view may also flow from a public policy belief that permitting manufacturers to avoid or reduce their liability through application of comparative fault will reduce the manufacturer's incentive to design a safe automobile for consumer use.²⁰ One court opined that "[a] major policy behind holding manufacturers strictly liable for failing to produce crashworthy vehicles is to encourage them to do all they reasonably can do to design a vehicle which will protect a driver in an accident."²¹

Restatement (Third) of Torts

The Florida Supreme Court adopted strict liability in the defective products context, which follows the Restatement (Second) of Torts on Products Liability.²² However, the Restatement (Second) did not articulate the burden of proof in enhanced injury cases. In the Restatement (Third) of Torts, the American Law Institute attempted to establish a uniform burden of proof in these types of cases.²³ The Restatement (Third) provides:

When a product is defective at the time of commercial sale or other distribution and the defect is a substantial factor in increasing the plaintiff's harm beyond that which would have resulted from other causes, the product seller is subject to liability for the increased harm.²⁴

Under the Restatement (Third), a plaintiff must prove that the defect in the automobile was a "substantial factor" for the "increased harm." In the event the increased harm could not be separated from other causes contributing to the accident, such as an intoxicated driver, the automobile manufacturer would be liable for all damages flowing from both the defect and other

¹⁷ *Jimenez v. Chrysler Corp.*, 74 F. Supp. 2d 548, 566 (D.S.C. 1999), *reversed in part and vacated*, 269 F.3d 439 (4th Cir. 2001).

¹⁸ *Mercurio v. Nissan Motor Corp.*, 81 F. Supp. 2d 859 (N.D. Ohio 2000).

¹⁹ *Id.* at 861.

²⁰ Ricci, *supra* note 8, at 18-20.

²¹ *Id.* at 20 (quoting *Andrews v. Harley Davidson, Inc.*, 769 P.2d 1092, 1095 (Nev. 1990)).

²² Larry M. Roth, *The Burden of Proof Conundrum in Motor Vehicle Crashworthiness Cases*, 80 FLA. B.J. 10, 14 (Feb. 2006).

²³ *Id.*

²⁴ RESTATEMENT (THIRD) OF TORTS: Prod. Liab. s. 16 (1998).

causes.²⁵ The Restatement (Third) appears to support the majority position by suggesting the application of comparative fault in crashworthiness or other enhanced-injury cases. With regard to apportionment, the Restatement (Third) provides that:

[a] plaintiff's recovery of damages for harm caused by a product defect may be reduced if the conduct of the plaintiff combines with the product defect to cause the harm and the plaintiff's conduct fails to conform to generally applicable rules establishing appropriate standards of care.²⁶

Therefore, a plaintiff's or third party's misuse of the product, alteration of the product, or modification of the product is relevant to the determination of the issues of defect, causation, and comparative responsibility.²⁷

Comparative Fault in Florida

The Florida Supreme Court, in 1973, retreated from the application of contributory negligence and adopted pure comparative negligence.²⁸ The court reasoned that:

. . . the most equitable result that can ever be reached by a court is the equation of liability with fault. Comparative negligence does this more completely than contributory negligence, and we would be shirking our duty if we did not adopt the better doctrine.²⁹

The doctrine of comparative negligence is now codified in Florida law. The law provides that "any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery."³⁰ Current law explicitly states that the comparative fault principles apply in products liability actions.³¹

Following the culmination of additional reforms to the application of joint and several liability, in 2006 the Legislature generally repealed the application of joint and several liability for negligence actions.³² It amended s. 768.81, F.S., to provide, subject to limited exceptions, for apportionment of damages in negligence cases according to each party's percentage of fault, rather than under joint and several liability.³³

²⁵ Roth, *supra* note 22, at 14; *see also* RESTATEMENT (THIRD) OF TORTS: Prod. Liab. s. 16, cmt. a (1998).

²⁶ RESTATEMENT (THIRD) OF TORTS: Prod. Liab. s. 17 (1998).

²⁷ *Id.* at cmt. c.

²⁸ *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973).

²⁹ *Id.* at 438.

³⁰ Section 768.81(2), F.S.

³¹ Section 768.81(4)(a), F.S.

³² Chapter 2006-6, s. 1, L.O.F.

³³ Section 768.81(3), F.S.

Crashworthiness in Florida

Prior to 2001, Florida courts generally applied comparative fault principles in crashworthiness cases where the injury was caused by the initial collision or was an enhanced injury caused by a subsequent collision.³⁴ For example, in *Kidron, Inc. v. Carmona*, a mother and child brought a wrongful death action for the death of the father in a collision with a truck that had stalled, as well as an action against the manufacturer of the truck alleging strict liability for the manufacturer's design of the rear under-ride guard.³⁵ The court held that "principles of comparative negligence should be applied in the same manner in a strict liability suit, regardless of whether the injury at issue has resulted from the primary or secondary collision."³⁶ The court further recognized that:

. . . fairness and good reason require that the fault of the defendant and of the plaintiff should be compared with each other with respect to all damages and injuries for which the conduct of each party is a cause in fact and a proximate cause.³⁷

As a result, the court concluded that the decedent's negligence in failing to avoid the collision should be considered along with the manufacturer's liability in the design of the truck, as well as any other entity or person who contributed to the accident regardless of whether that entity was joined as a party.³⁸

In 2001, the Florida Supreme Court retreated from the application of comparative fault and the holding in *Kidron, Inc.*, and adopted the minority view in crashworthiness cases. The seminal decision in *D'Amario v. Ford Motor Company* precludes fact finders from apportioning fault to a party contributing to the cause of the initial collision when considering liability for enhanced injuries resulting from a second collision.³⁹ In *D'Amario*, the court reviewed consolidated crashworthiness cases. The following is a brief synopsis of the facts and final disposition in both cases under review in *D'Amario*:

- ***D'Amario***—In the first case, Clifford Harris, a minor, was injured when the automobile in which he was riding as a passenger collided with a tree and burst into flames. The driver of the car was allegedly intoxicated and traveling at a high rate of speed at the time of the collision. Harris was severely burned and lost three limbs. Harris' mother sued Ford alleging that a defective relay switch caused his injuries. After a ruling allowing Ford to submit evidence of the driver's intoxication and high rate of speed as a cause of the initial collision to the jury, the parties stipulated to these facts. The jury returned a verdict in favor of Ford.⁴⁰

³⁴ Schwartz, *supra* note 16, at 6.

³⁵ *Kidron, Inc. v. Carmona*, 665 So. 2d 289 (Fla. 3d DCA 1995).

³⁶ *Id.* at 292.

³⁷ *Id.*

³⁸ *Id.* at 293.

³⁹ *D'Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001).

⁴⁰ *Ford Motor Co. v. D'Amario*, 732 So. 2d 1143 (Fla. 2d DCA 1999).

- *Nash*—In the second case, Maria Nash was driving her two children to church when an approaching car crossed the center line and struck her vehicle. Nash’s head collided with the metal post separating her windshield from the driver’s door, and she died as a result of these injuries. The driver of the car that collided with Nash was intoxicated at the time of the accident. Nash’s estate filed a strict liability suit against General Motors alleging that the vehicle’s seatbelt failed. The trial court allowed General Motors to introduce the fact that the driver of the second vehicle was intoxicated because the jury “had a right to know all the facts.” The jury ultimately found no liability on the part of General Motors.⁴¹

In its examination of liability and admissibility of evidence in these cases, the Florida Supreme Court concluded that the “principles of comparative fault involving the causes of the first collision do not generally apply in crashworthiness cases.”⁴² In reaching its conclusion, the court compared crashworthiness cases to medical malpractice actions in which the cause of an initial injury that may require medical treatment is not ordinarily considered as a legal cause of enhanced injuries resulting from subsequent negligent treatment.⁴³ The court further noted that:

... unlike automobile accidents involving damages solely arising from the collision itself, a defendant’s liability in a crashworthiness case is predicated upon the existence of a distinct and second injury caused by a defective product, and assumes the plaintiff to be in the condition to which he is rendered after the first accident. No claim is asserted, however, to hold the defendant liable for that condition. Thus, crashworthiness cases involve separate and distinct injuries—those caused by the initial collision, and those subsequently caused by a second collision arising from a defective product.⁴⁴

The court held that the focus in crashworthiness cases is the enhanced injury; therefore, consideration of the conduct that allegedly caused the enhanced and secondary injuries is pivotal, not the conduct that gave rise to the initial accident.⁴⁵ As a result, the court concluded that admission of evidence related to the intoxication of the non-party drivers, which caused the initial collisions, unduly confused the jury and shifted the focus away from determining causation of the enhanced injuries.⁴⁶

The *D’Amario* Debate

Opponents of the rule enunciated in *D’Amario* argue that Florida should align with the majority view.⁴⁷ These advocates assert that the fault of the person who caused the initial accident should

⁴¹ *Nash v. General Motors Corp.*, 734 So. 2d 437 (Fla. 3d DCA 1999).

⁴² *D’Amario*, 806 So. 2d at 441.

⁴³ *Id.* at 435. In addition, the court recognized that in medical malpractice actions, an initial tortfeasor who causes an injury is not to be considered a joint tortfeasor. *Id.*

⁴⁴ *Id.* at 436-47.

⁴⁵ *Id.* at 437.

⁴⁶ The court also ruled that driving while intoxicated does not fall within the “intentional tort” exception to the comparative fault statute. See s. 768.81(4)(b), F.S.

⁴⁷ Florida Justice Reform Institute, *White Paper: Florida’s Crashworthiness Doctrine: Allowing Negligent Drivers to Escape Liability* (2010) (on file with the Senate Committee on Judiciary).

be compared with any fault of an automobile manufacturer in the design of the automobile because the defect would not have manifested itself but for the negligence of the person causing the initial injury. They further assert that the *D'Amario* decision fails to account for the comparative fault of irresponsible drivers and neglects to consider that automobile accidents typically occur so quickly that two distinct instances of harm are almost impossible to dissect. These advocates urge legislators to adopt legislation that ensures that the jury has the opportunity to consider all of the facts pertinent to the cause of the accident, including both the initial and subsequent collisions.

Proponents of the *D'Amario* decision argue that the ruling promotes fairness and objectivity in jury deliberations in product liability cases.⁴⁸ They further assert that the current rule recognizes the clear distinction between fault for causing an accident and a manufacturer's liability for a defective product that may cause enhanced injuries separate and distinct from the initial collision. These advocates assert that a retreat from the *D'Amario* decision would allow introduction of evidence that could only serve to confuse the jury and would potentially shift financial responsibility to the state for medical expenses related to plaintiffs in crashworthiness cases.

III. Effect of Proposed Changes:

The bill changes the apportionment of damages in products liability cases in which a plaintiff alleges an additional or enhanced injury (e.g., crashworthiness cases). More specifically, the fact finder in these cases must consider the fault of all persons who contributed to the accident when apportioning fault among the parties who contributed to the accident.

In effect, the bill requires the trier of fact in a products liability case alleging an enhanced injury, such as a crashworthiness case, to consider the facts related to the cause of the initial collision, as well as the subsequent collision. As a result, the negligent actions of the plaintiff or a third party in causing or contributing to the accident must be considered, regardless of whether their actions relate to the primary or secondary collision. Thereafter, the fact finder must apportion fault to all negligent parties contributing to the plaintiff's injuries.

The bill reorganizes the comparative fault statute by changing the term "negligence cases" to "negligence action," revising the definition slightly, and moving the definition of "negligence action" to the definitions subsection in the current comparative law statute. The bill also defines a "products liability action" as a civil action based upon a theory of strict liability, negligence, breach of warranty, nuisance, or similar theories for damages caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product. This definition specifies that the term includes those claims in which the alleged injuries were greater than the injury would have been, but for the defective product. The definition of "products liability action" also provides that the substance of the claim, not the conclusory terms used by a party, determines whether an action satisfies the definition.

⁴⁸ Florida Justice Ass'n, *White Paper: Products Liability – Crashworthiness Doctrine* (Dec. 9, 2009) (on file with the Senate Committee on Judiciary).

The bill contains legislative intent language and findings that the act is intended to be applied retroactively and overrule *D’Amario v. Ford Motor Co.*, which adopted what the Florida Supreme Court acknowledged to be a minority view in crashworthiness cases. The bill states that the minority view fails to apportion fault for damages consistent with Florida’s statutory comparative fault system, codified in s. 768.81, F.S., and leads to inequitable and unfair results, regardless of the damages sought in the litigation. Further, the bill includes a finding that, in products liability actions, fault should be apportioned among all responsible persons.

The bill further provides that its measures are remedial in nature and apply retroactively. It includes a finding that the retroactive application of the act does not unconstitutionally impair vested rights, but affects only remedies, permitting recovery against all tortfeasors while lessening the ultimate liability of each consistent with the state’s statutory comparative fault system.

The bill will take effect upon becoming law.

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:

This bill specifically applies its provisions retroactively and overrules *D’Amario v. Ford Motor Co.* Retroactive operation is disfavored by courts and generally “statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction.”⁴⁹ The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

- Is the statute procedural or substantive?
- Was there an unambiguous legislative intent for retroactive application?
- Was a person’s right vested or inchoate?
- Is the application of the statute to these facts unconstitutionally retroactive?⁵⁰

⁴⁹ Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

⁵⁰ *Weingrad v. Miles*, 29 So. 3d 406, 409 (Fla. 3d DCA 2010) (internal citations omitted).

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.⁵¹

Notwithstanding a determination of whether the provisions in the bill are procedural or substantive, the bill makes it clear that it is the Legislature's intent to apply the law retroactively. "Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision retroactively."⁵² A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.⁵³

A constitutional challenge to the CS, if adopted, asserted by those individuals with accrued causes of action could be premised upon an argument that it affects or impairs the rights and liabilities of claimants pursuing a products liability action. The courts' evaluation of the retroactive application of the provisions of the bill will likely turn on its determination of whether the provisions do affect a claimant's vested rights associated with the products liability claim. For those crashworthiness claimants with pending cases in which discovery is concluded and trial is imminent, a court could conclude that retroactive application of the provisions of this bill could violate the litigant's due process rights. However, each challenge would likely be evaluated on a case-by-case basis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual suffering enhanced injuries attributed to the use of a defective product may recover less damages, in some instances, if the individual's own negligence contributed to the injury. A third party whose negligence contributed to the injuries suffered by a plaintiff in a crashworthiness case may be liable for damages even though his or her negligence contributed to the primary collision solely. In some instances, manufacturers of defective products may experience a decrease in liability for enhanced injuries when the trier of fact can apportion fault to the plaintiff or a third party as a result of the plaintiff's or third party's negligence related to the initial or subsequent collision.

⁵¹ See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).

⁵² *Weingrad*, 29 So. 3d at 410.

⁵³ *Id.* at 411.

C. **Government Sector Impact:**

The Office of State Courts Administrator reported that there is insufficient data to estimate the increase in judicial time resulting from the changes in the bill. The bill would require judges and juries in certain cases, to apportion fault among different parties. To implement these changes the state court system will need to educate judges as to the law changes and make changes in the jury instruction forms and other forms. These changes are expected to have a insignificant fiscal impact on the judiciary.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

Committee Substitute by Commerce and Tourism on February 7, 2011:

Restores references deleted in the bill as filed to chs. 517, 542, and 895, F.S., in the subsection of the comparative fault statute which provides that the comparative fault provisions do not apply to actions in which joint and several liability is allowed under certain chapters.

B. **Amendments:**

None.



851780

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 88 - 93

and insert:

~~(b)~~ This section does not apply to:

(a) Any action brought by any person to recover actual economic damages resulting from pollution ~~or~~ to any action based upon an intentional tort. ~~or to~~

(b) Any action brought by, or on behalf of, a first responder for injuries or death occurring while occupying a vehicle provided to a first responder by his or her employer.

The term "first responder" as used in this paragraph means a law enforcement officer as defined in s. 943.10, a firefighter as



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14 defined in s. 633.30, or an emergency medical technician or
15 paramedic as defined in s. 401.23. A part-time or volunteer law
16 enforcement officer, firefighter, or emergency medical
17 technician or paramedic is deemed to be a first responder for
18 purposes of this subsection.

19 (c) Any cause of action as to which application of the
20 doctrine of joint and several liability is specifically provided
21 by chapter 403, chapter 498, chapter 517, chapter 542, or
22 chapter 895.

23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete line 8

27 and insert:

28 or enhanced injury; creating an exception for causes
29 of action relating to injuries received by a first
30 responder while in a vehicle provided by his or her
31 employer; providing definitions; providing legislative
32 intent to

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SJR 958

INTRODUCER: Budget Subcommittee on Finance and Tax

SUBJECT: State Government Revenue Limitation

DATE: February 17, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cote	Diez-Arguelles	BFT	Fav/CS
2.	Cote	Meyer	BC	Pre-meeting
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This joint resolution amends Section 1, Article VII and creates Section 19, Article VII and Section 32, Article XII of the Florida Constitution. The joint resolution:

- Replaces the existing state revenue limitation based on Florida personal income growth with a new state revenue limitation based on changes in population and inflation.
- Requires excess revenues to be deposited into the Budget Stabilization Fund, used to support public education, or returned to the taxpayers.
- Adds fines and revenues used to pay debt service on bonds issued after July 1, 2012 to the state revenues subject to the limitation.
- Authorizes the Legislature to increase the revenue limitation by a supermajority vote.
- Authorizes the Legislature to place a proposed increase before the voters, requiring approval by 60 percent of the voters.

The proposed amendment will be submitted to the electors at the general election in 2012 or at an earlier election specifically authorized by law, and, if approved, will take effect upon approval by the electors. The new state revenue limitation will first apply to state fiscal year 2014-15.

II. Present Situation:

In 1994, Florida's voters approved an amendment to the State Constitution¹ that limits state revenue collections to the prior year's allowed revenue plus an adjustment for the growth in the Florida economy, as measured by state personal income.² The revenue limit in any year is determined by multiplying the average annual growth rate in Florida personal income in the previous five years by the maximum amount of revenue permitted under the limitation in the previous year. Excess collections are deposited in the Budget Stabilization Fund until it is fully funded and thereafter must be refunded to taxpayers as provided by general law. The Legislature, by a two-thirds vote of the membership of each house, may increase the allowable state revenue for any fiscal year. Such an increase must be in a separate bill that contains no other subject and must set forth the dollar amount by which the state revenues are increased. The Legislature must wait 72 hours after the third reading of the bill before taking a vote.

For purposes of the limitation, "state revenues" are defined as taxes, fees, licenses, and charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government.³ "State revenues" does not include:

- Revenues necessary to meet bond requirements
- Revenues that provide matching funds for the federal Medicaid program (with the exception of revenues used to support the Public Medical Assistance Trust Fund and revenues used to fund elective expansions to Medicaid made after July 1, 1994);
- Proceeds from the state lottery returned as prizes;
- Receipts of the Florida Hurricane Catastrophe Trust Fund;
- Balances carried forward from prior fiscal years;
- Taxes, licenses, fees, and charges for services imposed by local governments; or
- Taxes, licenses, fees and charges for services required to be imposed by an amendment or revision to the constitution after July 1, 1994.

In addition to the revenues explicitly not included, the definition of state revenues excludes grants from the federal government and other revenues that are not "taxes, fees, licenses, and charges for services imposed by the legislature . . ."

¹ Article VII, Section 1(e), Florida Constitution.

² Generally, Florida personal income is a measure of all earnings (wages, salaries, proprietor's income), plus dividends, interest, rent and transfer payments.

³ Examples of state revenue sources covered by the limitation include auto title and lien fees, beverage licenses, cigarette and other tobacco products tax, corporation fees and income tax, documentary stamp taxes, estate tax, hotel and restaurant licenses and fees, hunting and fishing licenses, insurance premium tax, motor fuels taxes, pari-mutuel tax, pollutant taxes, sales and use tax, severance taxes, and unemployment compensation tax. (See *2010 Florida Tax Handbook* for examples of other state revenue sources, <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2010.pdf>)

The constitution requires that in the event there is a transfer of responsibility for the funding of governmental functions between the state and other level of government, an adjustment to the revenue limitation must be made by general law to reflect the fiscal impact of this transfer.⁴

The constitution also requires the legislature to adopt procedures necessary to administer the revenue limitation by general law; however, such legislation has not been enacted.

Impacts of the Constitutional Revenue Limitation

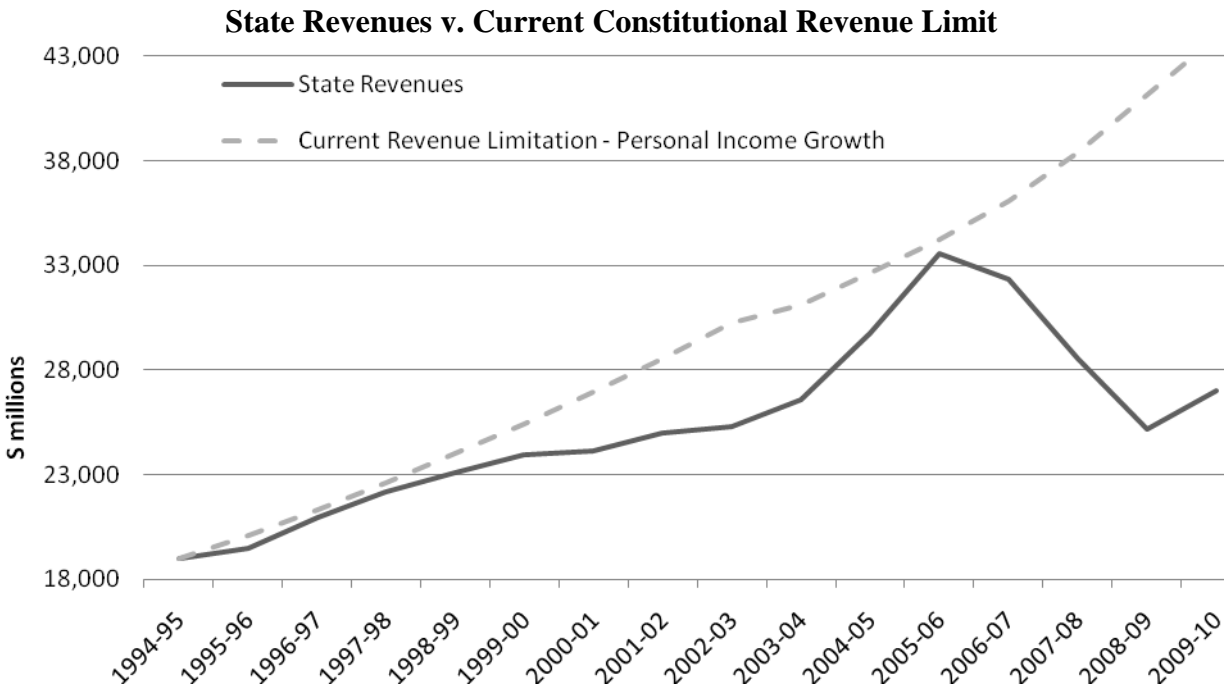
In the first few years after the adoption of the constitutional revenue limitation, state revenue collections were close to the constitutional limitation. Since that time, however, revenues subject to the limitation have generally grown more slowly than personal income. The only other year revenues came close to the limitation was in 2005-2006 when state revenues came within \$658m of the limitation.

Since 1999, the Florida Legislature has enacted several measures to reduce state revenue. For example, the intangibles tax, sales and use tax, beverage tax, corporate income tax, and pari-mutuel tax have all been reduced by the Legislature. Additionally, changes in federal law have caused a reduction in estate tax revenue. These changes in tax laws have contributed to the widening gap between state revenues and the revenue limit.

Finally, the effects of the recent recession have also contributed to the widening gap. The gap is not expected to narrow in the foreseeable future.

The following chart displays the history of the current revenue limitation.

⁴ In 2002, the Legislature removed State University System revenues from the definition of “state revenues.” See Chapter 2002-387, Laws of Florida.



Tax and Expenditure Limits in Other States

Thirty states currently have some kind of limit on taxes or expenditures.⁵ These limits are designed to restrain growth in government spending by placing constitutional or statutory restrictions on the amount government can spend or on the amount of revenue government can raise. Generally, they fall into one of the categories described below:

- Revenue limits which tie yearly increases in revenue to personal income or some other type of measure such as inflation or population;
- Expenditure limits similarly linked to personal income or another growth index;
- Appropriations limited to a percentage of the revenue estimate;
- Voter approval requirements for all tax increases over a specified amount; or
- Legislative supermajority requirements for a two-thirds, three-fourths, or four-fifths majority vote in both chambers to pass a tax increase or new taxes.
- Some states have combined components of these types of limits.

In terms of limiting budgets, results from studies are mixed. Many studies conclude that the state limits have not been as effective as proponents envisioned because of the ease with which state governments can circumvent the limits. Some fiscal policy experts agree that voter approval and supermajority requirements place tighter constraints on state governments than other revenue and expenditure limits.

⁵ This discussion of other state limitations is largely adapted from *State Tax and Expenditure Limits 2008*, National Conference of State Legislatures, <http://www.ncsl.org/default.aspx?tabid=12633>.

Revenue Limitation in Colorado

In 1992, Colorado voters passed what some consider the most restrictive revenue limitation in the nation.⁶ The Colorado law applies to all taxing districts within the state and voter approval is required to approve any tax increase. Additionally, the Colorado revenue limitation restricts general revenue to the prior year's revenues adjusted for population growth and inflation. Since the limit is based on prior year's revenues rather than the prior year's revenue limitation, any decline in revenues due to a recession leads to a permanent ratcheting down of spending levels. After the recession in the early 2000s, the ratcheting down effect held the revenue base at recessionary levels. In 2005, Colorado voters suspended the revenue limitation for a period of five years to ease existing limits and allow the budget to recover and move forward.

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to the Florida Constitution that replaces the current state revenue limitation with a new limitation. The major changes are:

- the use of personal income in the growth factor is replaced with a growth factor based on population and inflation;
- the base year is updated to Fiscal Year 2013-14;
- the definition of "state revenues" subject to the limitation is expanded to include fines and revenues used to pay debt service for bonds issued by the state after July 1, 2012; and
- the definition of "state revenues" subject to the limitation is revised to explicitly exclude receipts of Citizens Property Insurance Corporation, public universities and colleges.

State Revenue Limitation

Section 19 of Article VII of the State Constitution is created and limits state revenues in any fiscal year as follows:

- For the 2014-2015 fiscal year, to an amount equal to the state revenues collected during the 2013-2014 fiscal year multiplied by the sum of the adjustment for growth plus four one-hundredths.
- For the 2015-2016 fiscal year, to an amount equal to the state revenues collected during the 2014-2015 fiscal year multiplied by the sum of the adjustment for growth plus three one-hundredths.
- For the 2016-2017 fiscal year, to an amount equal to the state revenues collected during the 2015-2016 fiscal year multiplied by the sum of the adjustment for growth plus two one-hundredths.

⁶See, e.g., McGuire, Therese and Kim Rueben. 2006. "The Colorado revenue limit: The economic effects of TABOR." Washington, DC: Economic Policy Institute Briefing Paper No. 172, <http://www.epi.org/publications/entry/bp172/>.

- For the 2017-2018 fiscal year, to an amount equal to the state revenues collected during the 2016-2017 fiscal year multiplied by the sum of the adjustment for growth plus one one-hundredth.
- For the 2018-2019 fiscal year and thereafter, state revenues are limited to an amount equal to the state revenue limitation for the previous fiscal year multiplied by the adjustment for growth.

The “adjustment for growth” is defined as an amount equal to the average for the previous five years of the product of the inflation factor and the population factor. The “inflation factor” is defined as an amount equal to one plus the percent change in the calendar year annual average Consumer Price Index for All Urban Consumers, U.S city average, as published by the United States Department of Labor. Finally, the “population factor” is defined as an amount equal to one plus the percent change in the population of the state as of April 1 compared to April 1 of the prior year.

The adjustment for growth must be determined by March 1 preceding the applicable fiscal year using the latest available information, and once determined, may not be changed based on revisions to such information.

Like the current limitation, the proposed limitation does not apply to all revenues received by the state. The limitation applies only to revenues generally considered to be within the Legislature’s control and used to fund state expenditures. “State revenues” are defined to mean taxes, fees, licenses, fines, and charges for services imposed by the legislature on individuals, businesses or agencies outside state government. “State revenues” does not include:

- Revenues necessary to meet bond requirements set forth in documents authorizing the issuance of bonds by the state for bonds issues prior to July 1, 2012;
- Revenues that provide matching funds for the federal Medicaid program (with the exception of revenues used to support the Public Medical Assistance Trust Fund and revenues used to fund optional expansions made after July 1, 1994);
- Proceeds from the state lottery returned as prizes;
- Receipts of the Florida Hurricane Catastrophe Trust Fund and Citizens Property Insurance Corporation;
- Receipts of public universities and colleges;
- Balances carried forward from prior fiscal years;
- Taxes, licenses, fees, fines and charges for services imposed by local, regional or school district governing bodies; or
- Taxes, licenses, fees, fines and charges for services authorized by an amendment or revision to the constitution after May 6, 2011.

Revenues in Excess of the Limit

State revenues collected for any fiscal year in excess of the revenue limitation are transferred to the Budget Stabilization Fund until the fund reaches its maximum balance as provided in Article

III, Section 19(g) of the Florida Constitution⁷. Thereafter, excess revenues must be used for the support and maintenance of public schools by reducing the minimum financial effort required from school districts for participation in a state-funded education finance program, or, if the minimum financial effort is no longer required, returned to taxpayers as provided by general law.

Authority of the Legislature to Increase the Revenue Limitation

The Legislature has two options to increase the state revenue limitation:

- 1) The Legislature, by a two-thirds vote of the membership of each house, may increase the revenue limitation for any fiscal year. Unless otherwise provided by the bill increasing the revenue limitation, the increased revenue limitation shall be used to determine the revenue limitation for future fiscal years.
- 2) The Legislature, by a three-fifths vote of the membership of each house, may increase the allowable state revenue for any one fiscal year. Increases to the revenue limitation by a three-fifths vote must be disregarded when determining the revenue limitation in subsequent fiscal years.

A bill increasing the revenue limitation must contain no other subject and set forth the dollar amount by which the state revenue limitation is increased. The vote may not be taken less than 72 hours after the third reading in either house of the legislature of the bill in the form that it will be presented to the Governor before taking a vote.

Authority of the Voters to Increase the Revenue Limitation

The Legislature may place before the voters a measure to increase the state revenue limitation by a concurrent resolution approved by a two-thirds vote of the membership of each house. The measure must set forth the dollar amount by which the state revenue limitation will be increased and must be approved by a vote of at least 60 percent of the electors voting on the measure in a general election. Unless otherwise provided by the ballot language presented to the voters, the increased revenue limitation must be used to determine the revenue limitation for future fiscal years.

Revenue Limit Adjustment by the Legislature

The Legislature must provide by general law for adjustments to the state revenue limitation to reflect the fiscal impact of transfers of responsibility for the funding of government functions between the state and other levels of government occurring after May 6, 2011 or the fiscal impact of a new federal mandate.

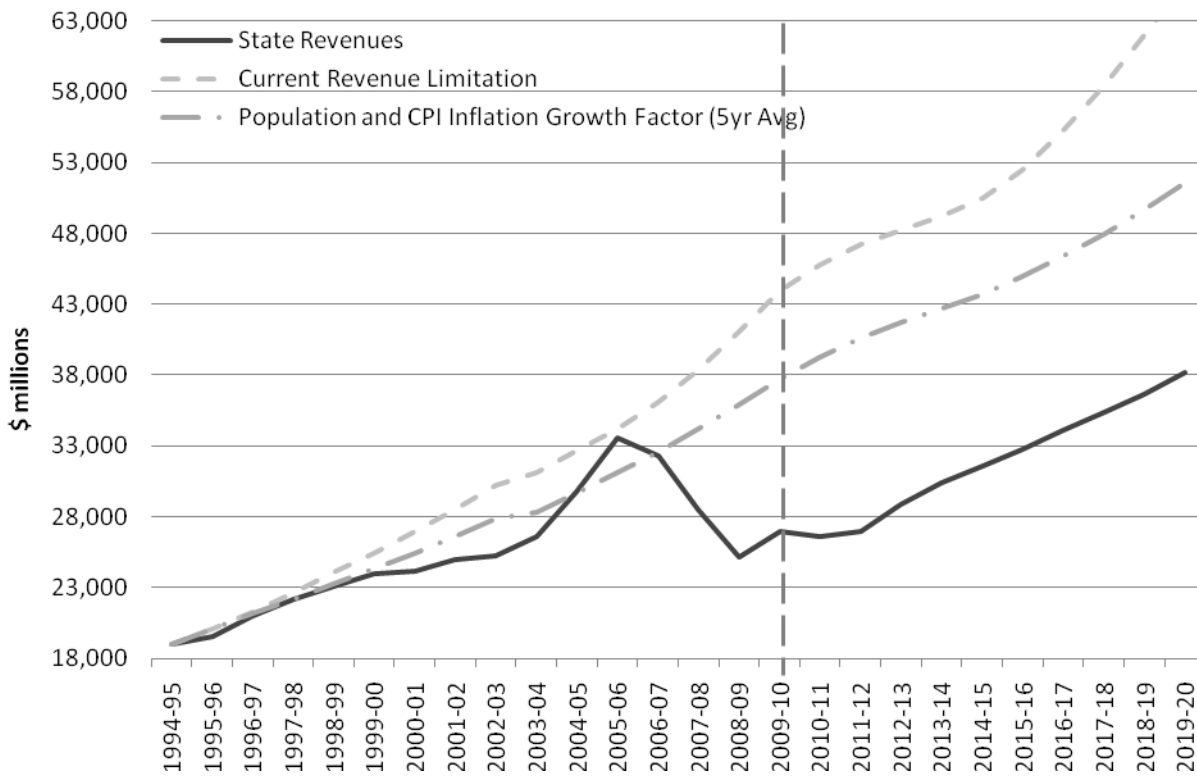
⁷ Ten percent of the last completed fiscal year's net revenue collections for the General Revenue Fund.

Likely Impacts of Proposed Constitutional Amendment

Over time, the proposed state revenue limitation is more likely to constrain growth in state revenues than the current limitation.

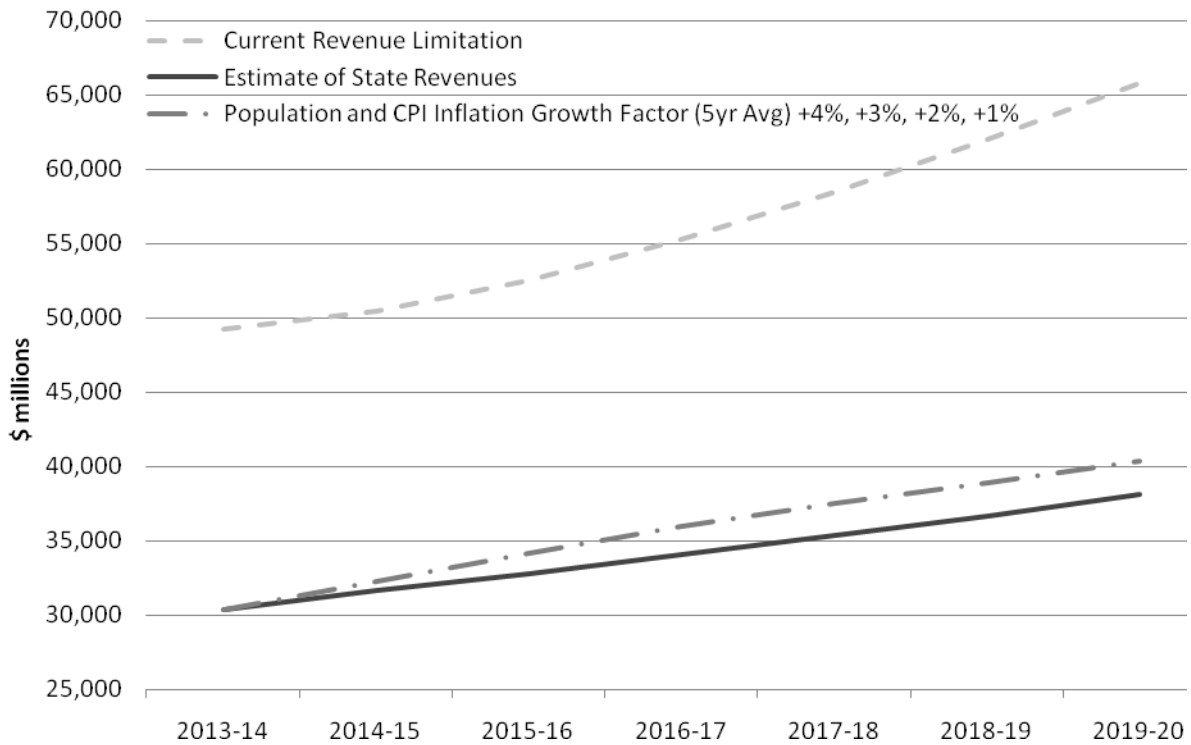
The limitation adopted by the voters in 1994 does not appear to have worked as a meaningful limitation on state revenues. Revenue growth since that time has lagged behind growth in the state’s economy. If the adjustment for growth proposed in this CS/SJR 958 had been in effect since 1994, all other things being equal, state revenues would have exceeded the revenue limitation in fiscal years 2004-05 and 2005-06, as shown on the following chart.

**Current vs. Proposed Growth Factors
starting with 1994-95 base year**



Based on the most current revenue projections and estimates of near term growth in population and inflation, the proposed revenue limitation is expected to exceed the amount of state revenues subject to the limitation at least until fiscal year 2019-2020, as shown on the following chart. These projections will change based on new estimates of revenues, population, and the consumer price index.

**Current vs. Proposed Revenue Limitation
starting with 2013-14 base year⁸**



Population and CPI Inflation Growth Factor (5yr Avg.) +4%, +3%, +2%, +1%							
		4%	3%	2%	1%		
Base Year 2013-14	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Estimate of State Revenues	30,399	31,619	32,766	34,067	35,348	36,655	38,145
Adjustment for growth		1,0617	1,0589	1,0522	1,0443	1,0363	1,0365
Revenue Limit	30,399	32,276	34,178	35,962	37,556	38,918	40,340
Revenues (Over) or Under the Limit		657	1,413	1,895	2,208	2,263	2,194

⁸ “State revenues” shown on this chart and graph are state revenues covered under the current limitation and do not include fines or revenues used to pay debt service for bonds issued by the state after July 1, 2012. The inclusion of these additional revenues is not expected to materially affect the general shape of state revenues. State Medicaid expenditures excluded from state revenues are based on the estimated percentage growth between FY 2012-13 and FY 2013-2014 remaining constant into the future. The Medicaid expenditure estimate does not include the impact of federal health care reform legislation.

IV. Constitutional Issues:

- A. Municipality/County Mandates Restrictions:
- B. None. Public Records/Open Meetings Issues:
None.
- C. Trust Funds Restrictions:
None.
- D. Other Constitutional Issues:

Section 1, Article XI of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held 90 days after the proposal has been filed with the Secretary of State's office, or at an earlier special election, if approved by a law enacted with a three-fourths vote of the membership of each house of the legislature.

Section 5(e), Article XI of the State Constitution, requires 60 percent voter approval for a constitutional amendment to take effect. If approved by 60 percent of the electors voting on the measure in the next general election, the amendment will take effect upon approval.

V. Fiscal Impact Statement:

- A. Tax/Fee Issues:

The provisions of this joint resolution will restrict the ability of state government to raise taxes, licenses, fees, fines, or charges for services and limits the use of revenues received in excess of the constitutional limitation.

- B. Private Sector Impact:

None.

- C. Government Sector Impact:

The Division of Elections of the Department of State (division) is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$106.14 according to the division.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Subcommittee on Finance and Tax on February 17, 2011:

The CS makes two technical changes:

- Replaces the phrase “community colleges” with “public colleges”.
- Replaces the term “percentage point” with the term “one-hundredths” to reflect proper form.

The CS also clarifies the language of the ballot summary statement that explains the use of revenues in excess of the limit. This language parallels the language in the bill.

- B. **Amendments:**

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 736

INTRODUCER: Education Pre-K 12 Committee and Senator Wise

SUBJECT: Education Personnel

DATE: February 15, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	Armstrong	Hamon	BEA	Favorable
3.	Hamon	Meyer	BC	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill is a comprehensive education personnel initiative that provides for a reform of the evaluations of instructional personnel and school administrators; compensation; and employment practices. The bill provides for the following:

Performance Evaluations for Instructional Personnel and School Administrators

- Requires the Commissioner of Education (Commissioner) to establish a learning growth model for school district use for the Florida Comprehensive Assessment Test (FCAT) and other statewide assessments to measure the effectiveness of instructional personnel and school administrators based on what a student learns;
- Provides that 50 percent of an evaluation is based on student performance over a 3-year period, with the remainder of the evaluation based on instructional practice or leadership, as applicable;

Compensation for Performance

- Requires school districts to establish a new performance salary schedule by July 1, 2014, that provides annual salary increases based upon the performance evaluation;
- Allows current teachers and school administrators to remain on the current salary schedule with an option to move to the new performance salary schedule;
- Beginning with instructional personnel hired on or after July 1, 2011, prohibits a district school board from using advanced degrees to set the salary schedule unless the advanced degree is held in the individual's area of certification;
- Provides for earning additional salary supplements for differentiated pay based on assignment to a high priority location, certification and teaching in critical teacher shortage areas, or assignment of additional academic responsibilities;

Employment

- Eliminates professional service contracts for instructional personnel newly-hired, beginning July 1, 2011;
- Revises the criteria for renewal of contracts by tying renewal to the performance evaluation; and
- Clarifies that just cause under a professional service contract includes unsatisfactory performance on the individual's evaluation.

This bill substantially amends sections 1002.33, 1003.621, 1008.22, 1012.07, 1012.2315, 1012.22, 1012.27, 1012.28, 1012.33, 1012.34, 1012.795; creates section 1012.335; and repeals section 1012.52, of the Florida Statutes.

II. Present Situation:

Education Reform

Florida's education system is now ranked fifth in the nation, according to Education Week's 2010 Quality Counts Report.¹ This year's increase follows continuing trends of improvement that saw the state ranked 8th last year, 10th in 2009, and 14th in 2008, up from 31st in 2007.² The state has also received accolades for narrowing the achievement gap among more groups of students than most other states.³

Florida's success is based on measuring student performance and rewarding results. The Florida School Recognition Program provides public recognition and financial awards to schools that have sustained high student performance or schools that demonstrate substantial improvement in student performance.

Florida's education reform efforts have resulted in progress for students and schools. Despite these accomplishments, 61 percent of tenth grade students read below grade level in 2009-2010, meaning that these students had limited or minimal success with grade-level content.⁴

¹ See <http://www.edweek.org/ew/toc/2010/01/14/index.html>.

² Florida Department of Education, February 7, 2011.

³ *Gauging the Gaps: A Deeper Look at Student Achievement*, The Education Trust, January 2010.

See http://www.edtrust.org/sites/edtrust.org/files/publications/files/NAEP%20Gap_0.pdf.

⁴ Florida Department of Education, June 2010. See <http://fcats.fldoe.org/mediapacket/2010/>.

The labor market demands in a global economy underscore the need for a marked departure from current educational practices. In 2009, 15-year-old students in the United States ranked 14th in reading literacy, 17th in science literacy, and 25th in mathematics literacy among the 34 Organization for Economic Co-Operation and Development (OECD) member countries.⁵ The OECD notes that global drivers increasingly focus on “21st century competencies” and that the quantity and quality of learning become central, with the accompanying concern that traditional educational approaches are insufficient.⁶ The recently released report by the Harvard Graduate School of Education recommends an examination of the experience of OECD countries, especially those with the best developed career education systems, to address a more demanding labor market and widening skills and opportunities gaps.⁷

Instructional Quality

A consensus of research finds that the single greatest indicator of student achievement is the quality of the teacher in the classroom.⁸ Despite this research, the state continues to have an evaluation system, compensation system, and employment system that does not sufficiently take into consideration student performance.

Evaluations

Recent federal policy changes tacitly recognize the flaws in educator performance evaluations and the absence of a performance management system that gives educators the tools they need to be effective, supports their development, rewards their accomplishments, and holds them accountable for results. The American Recovery and Reinvestment Act of 2009 (ARRA) provides \$4.3 billion for the Race to the Top Fund, a competitive grant program designed to encourage and reward states that are implementing significant education reforms across four education areas: implementing standards and assessments, improving teacher effectiveness and achieving equity in teacher distribution, improving the collection and use of data, and supporting struggling schools.⁹

To receive funds, a state must provide assurance that it will improve teacher effectiveness and comply with the requirements that school programs and targeted assistance schools provide instruction by highly qualified teachers, that poor and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers, and that it will evaluate and publicly report progress with respect to these requirements.¹⁰ The criteria include

⁵ National Center for Education Statistics, *Highlights from PISA 2009*, U.S. Department of Education. The OECD is an international organization that helps governments foster prosperity and fight poverty through economic growth and financial stability. See <http://www.oecd.org/>. The OECD’s Programme for International Student Assessment (PISA) is an international study that is administered every three years. The 2009 assessment focused on reading. Rather than examining how well students have learned the school curriculum, PISA looks at how well prepared they are for life beyond school.

⁶ OECD, *The Nature of Learning: Using Research to Inspire Practice*, September 9, 2010. <http://www.oecd.org/dataoecd/8/35/45984003.pdf>.

⁷ Harvard Graduate School of Education, *Pathways to Prosperity, Meeting the Challenge of Preparing Young Americans for the 21st Century*, February 2011.

⁸ See *Teacher Quality*, Florida Senate Issue Brief 2010-313, available at:

http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-313ed.pdf.

⁹ ARRA, Public Law 111-5, section 14005(d)(2),(3),(4), and (5). See also section 14006 which provides for incentive grants to states that have made significant progress in meeting the objectives in paragraphs (2),(3),(4), and (5) of section 14005(d).

¹⁰ 20 U.S.C. section 6311(b)(8)(C).

the extent to which a state differentiates the effectiveness of teachers and principals and uses this information for decisions on evaluation, compensation, promotion, termination, and tenure.¹¹ Under the criteria, teacher and principal effectiveness would be judged in significant part by student growth.¹² On August 24, 2010, Florida was awarded a \$700,000,000 Race to the Top grant. Sixty-five of Florida's 67 school districts signed a memorandum of understanding to participate in the grant. The districts have developed and bargained scopes of work to carry out those reforms and receive grant dollars to do so over the next four years.¹³

Compensation for Performance

Most school district compensation systems are not aligned with the state's primary needs: improving student achievement and placing the best teachers where they are needed most. The traditional salary schedule rewards teachers for years of experience, irrespective of whether that experience benefits students. Talented instructional personnel and school administrators are compensated at the same rate as ineffective personnel, or worse.

Employment

Without a robust evaluation system, school districts do not have sufficient means to tie continued employment to effective work. The current system creates an automatic renewal of employment with as little as three years of teaching, unless the district school superintendent "charges" an employee with unsatisfactory performance. As a result, it can take up to two years or more to terminate an ineffective employee who has received a professional service contract. Students can actually regress in learning with an ineffective teacher, while the process to terminate moves forward.

III. Effect of Proposed Changes:

The bill focuses on student success by revising and modernizing three main areas: evaluations, performance pay, and employment. The bill reinforces Florida's successful Race to the Top application.

Performance Evaluations

Performance of Students

Most school districts' evaluation systems do not appear to comply with current law. For example, the Auditor General recently reviewed 11 school district financial or operational audit reports for FY 2009-2010. All 11 districts were found to have deficiencies with respect to the evaluation requirements in s. 1012.34(3), F.S.¹⁴ In addition, the Auditor General's preliminary and tentative findings report found 24 of an additional 27 school districts had a preliminary and

¹¹ Federal Register, Vol. 74, No. 221, *Final Priorities, Requirements, Definitions, and Selection Criteria*, November 18, 2009, and *Supplemental Information*, Federal Register, Vol. 75, No. 17, January 27, 2010. See <http://www2.ed.gov/legislation/FedRegister/finrule/2009-4/111809a.html>. The U.S. DOE proposes the use of \$4 billion for this initiative and a potential for \$350 million to support the development of assessments by a consortia of states.

¹² *Id.*

¹³ DOE bill analysis, February 7, 2011. This includes 62 traditional districts and 3 lab schools. The following school districts are not participating in the grant: Baker, Dixie, Hamilton, Palm Beach, and Suwannee.

¹⁴ See Brevard (2011-060), Calhoun (2011-048), Duval (2011-042), Gulf (2011-067), Hernando (2011-034), Indian River (2011-055), Martin (2011-056), Manatee (2011-050), Osceola (2011-051), Pasco (2011-072), and Walton (2011-066).

tentative finding related to s. 1012.34(3), F.S.¹⁵ Many evaluation systems do not weight student performance as the primary factor in the evaluation of instructional personnel. Despite a requirement in law to develop local assessments more than 10 years ago for subjects and grade levels not assessed by the FCAT, most districts have not developed assessments to measure student learning for purposes of evaluating the effectiveness of their instructional personnel or school administrators.¹⁶ School districts that have developed assessments do not appear confident in their validity.¹⁷ Current practice results in almost a completely subjective evaluation, without using any objective data. As a result, school districts may not objectively know who the best teachers are, which teachers need help to perfect their instruction, and which teachers need to seek a different profession.

The bill reinforces Florida's successful Race to the Top grant application, which requires 50 percent of an individual's evaluation to be based on student learning growth or achievement.¹⁸ The bill specifies that 50 percent of an instructional personnel or school administrator's evaluation is based upon the performance of the students assigned to these individuals. This provision places a significant focus on student outcomes in determining the effectiveness of instructional personnel and school administrators.

Learning Growth Model

Under Florida's Race to the Top Memorandum of Understanding, the Department of Education is required to develop a student learning growth model that takes into consideration unique student characteristics, challenges, and other factors that affect student performance.¹⁹ School districts are required to measure student growth based on the performance of students on the state-required assessments.²⁰ Moreover, school districts must use the state-adopted teacher-level student growth measure as the primary factor of the teacher and principal evaluation systems.²¹

Under the bill, the Commissioner would establish a learning growth model for the FCAT and other statewide assessments to measure the effectiveness of a classroom teacher or school administrator based on what a student learns. The model would use the student's prior performance, while considering factors that may be outside a teacher's control, such as a student's attendance, discipline, disability, or English language proficiency. However, the model may not take into consideration a student's gender, race, ethnicity, or socioeconomic status. The legislation does not specify that student growth is the same for all students.

School districts would be required to use the state's learning growth model for FCAT-related courses beginning in the 2011-2012 school year. School districts must use comparable measures of student growth for other grades and subjects with the department's assistance, if needed.

¹⁵ See email correspondence from Ted Sauerbeck, Deputy Auditor General, dated February 7, 2011, on file with the committee.

¹⁶ See s. 57, ch. 99-398, L.O.F., codified in s. 1012.34(3), F.S. See also s. 1008.22(8), F.S.

¹⁷ See testimony by Duval County Public Schools Superintendent of Schools, Ed Pratt-Dannals, before the Education Pre-K – 12 Committee, Workshop and Panel Discussion on Instructional Quality, January 26, 2011, on file with the committee.

¹⁸ See Florida's Race to the Top Memorandum of Understanding for Phase 2, (D)(2)(ii), available at: <http://www.fldoe.org/ARRA/pdf/phase2mou.pdf>.

¹⁹ *Id.* at (D)(2)(i).

²⁰ *Id.*

²¹ *Id.* at (D)(2)(ii).

Additionally, districts would be permitted to request alternatives to the growth measure if justified.

The DOE is pursuing a contract for assistance in the construction of Florida's value added student growth measure as a part of the Race to the Top grant.²² Value added measures will form the basis of the student performance aspect of the new evaluation system, relying on calculations that are able to account for a variety of student variables.²³

Evaluation Criteria

The current evaluation system does not connect meaningful evidence of student performance to continued employment and compensation. For the last two years, districts reported that less than one percent of classroom teachers received an unsatisfactory evaluation.²⁴

Components of the evaluation system described in the bill are divided into three parts: performance of students, instructional practice or leadership, (for instructional or administrative personnel, respectively), and professional responsibilities. The evaluation system must differentiate among four levels: highly effective; effective; needs improvement or, for instructional personnel in the first three years of employment or in the first year of a new teaching assignment who need improvement, developing; and unsatisfactory. Florida's Race to the Top Memorandum of Understanding required a comprehensive range of ratings beyond a simple satisfactory or unsatisfactory, including "effective" and "highly effective".²⁵ The Commissioner of Education would be required to consult with classroom teachers, other stakeholders, and experts in developing the performance levels for the evaluation system.

Fifty percent of the evaluation for classroom teachers and other instructional personnel would be based on student performance for students assigned to them over a 3-year period. For other instructional personnel, a school district may include specific job-performance expectations related to student support and use growth data and other measurable student outcomes specific to the individual's assignment, as long as the growth accounts for at least 30 percent of the evaluation. The remainder of the evaluation would be based on the Florida Educator Accomplished Practices and professional responsibilities.

Fifty percent of a school administrator's evaluation would also be based on student performance over a 3-year period. The remainder of the evaluation would be based on indicators that include the recruitment and retention of effective or highly effective teachers, improvement in the percentage of classroom teachers evaluated at the effective or highly effective level, management of the school to maximize resources for direct instruction, other leadership practices that result in improved student outcomes, and professional responsibilities.

²² See http://www.fldoe.org/news/2010/2010_11_08-3.asp.

²³ Value-added modeling (VAM) is a collection of complex statistical techniques that use student test score data. It is referred to as value-added in that it estimates how much teachers and schools add to the academic growth of entering students, while accounting for other factors that impact student learning, such as prior performance.

²⁴ DOE bill analysis for SB 736, February 7, 2011.

²⁵ See Florida's Race to the Top Memorandum of Understanding for Phase 2, (D)(2)(ii), available at: <http://www.fldoe.org/ARRA/pdf/phase2mou.pdf>.

If less than 3 years of student growth data is available for an evaluation, the district must include the years for which data is available and may reduce the percentage of the evaluation based on student growth to not less than 40 percent for classroom teachers and school administrators and not less than 20 percent for other instructional personnel.

Under Florida's Race to the Top Memorandum of Understanding, school districts are required to use state assessments or district-selected assessments to measure student growth for purposes of improving teacher and principal effectiveness.²⁶ The assessments must be aligned to state standards. School districts may develop or select the assessments or use valid, rigorous national assessments.²⁷ The bill requires school districts, beginning with the 2014-2015 school year, to administer local assessments that measure student mastery of the content. The school district can use statewide assessments, other standardized assessments, industry certification examinations, or district-developed or selected end-of-course assessments. The bill phases in the local assessments requirement by tying the requirement to the Commissioner of Education identifying methods to assist districts, such as through item banks, the sharing of developed assessments among districts, or other methods.

If a district has not implemented an assessment for a course or has not adopted a comparable measure of student growth, two alternative growth measures may be used for a classroom teacher who teaches the course: student growth on statewide assessments or based on measurable learning targets in the school improvement plan. Additionally, a district school superintendent may assign growth to an instructional team, in lieu of the overall student learning growth of the school on statewide assessments for reading and math.

Florida's Race to the Top Memorandum of Understanding requires multiple evaluations for each first-year teacher.²⁸ Accordingly, the bill requires newly hired teachers to be evaluated at least twice in the first year of teaching. Finally, evaluations of instructional personnel and school administrators may include parent and peer input.

Compensation for Performance

Under the current compensation system, most individuals are paid on a "steps and lanes" approach, in which salary schedules list increments of pay that are typically tied to years of experience and academic degrees.²⁹ The current system rewards or, alternatively punishes, instructional personnel irrespective of performance. In most school district compensation systems, the largest rewards are tied to the final five years before retirement, while salary increases for new teachers would increase at a significantly reduced rate.

Florida's Race to the Top Memorandum of Understanding requires the most significant gains in salary to be tied to effectiveness under an individual's annual evaluation.³⁰ This bill ties the evaluation to the salary schedule for instructional personnel or school administrators hired on or

²⁶ *Id.* at (D)(2)(i).

²⁷ *Id.*

²⁸ *Id.* at (D)(2)(iii).

²⁹ *Performance Pay*, Florida Senate Issue Brief 2011-214, December 2010 available at <http://www.flsenate.gov/Committees/InterimReports/2011/2011-214ed.pdf>.

³⁰ See Florida's Race to the Top Memorandum of Understanding for Phase 2, (D)(2)(iv)(b), available at: <http://www.fldoe.org/ARRA/pdf/phase2mou.pdf>.

after July 1, 2014. Student outcomes would have a potentially significant affect on future compensation. The salaries of quality teachers, other instructional personnel, and school administrators would grow more quickly, while those of poor performing employees would not.

The new salary schedule would require a base salary schedule with the following salary increases:

- A highly effective teacher or school administrator, as determined by his or her evaluation, would receive a salary increase that must be greater than the highest annual salary adjustment available to that individual through any other salary schedule adopted by the school district.
- An effective teacher or school administrator, as determined by his or her evaluation, would receive a salary increase between 50 and 75 percent of the annual salary increase provided to a highly effective employee.
- A teacher or administrator under any other performance rating would not be eligible for a salary increase.

Current teachers and school administrators could remain on their current salary schedule as long as they remain employed by the school district. They may also opt to participate in the new performance salary schedule, but the option is irrevocable.

Florida's Race to the Top Memorandum of Understanding requires differentiated pay for additional academic responsibilities, school demographics, critical teaching shortage areas and level of job-performance difficulties.³¹ The bill comports with Race to the Top by requiring school districts to provide opportunities for instructional personnel and school administrators to earn additional salary supplements for assignment to a high priority location (e.g., a Title I eligible school or an eligible low-performing school), certification and teaching in critical teacher shortage areas, or assignment of additional academic responsibilities. This provision allows districts to attract and compensate classroom teachers in high-need areas, such as STEM (Science, Technology, Engineering, and Mathematics), who will better prepare students to graduate ready to meet the demands of the global economy.

Beginning with instructional personnel hired on or after July 1, 2011, a district school board may not use advanced degrees in setting the salary schedule unless the advanced degree is held in the individual's areas of certification. The bill awards compensation for advanced degrees in these areas notwithstanding the research, which indicates that advanced degrees have little, or in some circumstances, a deleterious effect on student learning.³²

When budget constraints limit a school board's ability to fully fund all adopted salary schedules, the bill prohibits the board from disproportionately reducing performance pay schedules.

Employment

³¹ *Id.*

³² See *Teacher Quality and Student Achievement: Making the Most of Recent Research*, Laura Goe and Leslie M. Stickler, National Comprehensive Center for Teacher Quality, March 2008.

As discussed above, current practice divorces student performance under the evaluation from employment or contracting decisions. Once granted a professional service contract after as little as three years, the law provides for automatic renewal of the contract unless the superintendent “charges” the employee with unsatisfactory performance.³³ The process for removing an individual under a professional service contract for unsatisfactory performance may take over a year and, in some instances, two years or more.³⁴ Meanwhile, the individual may still be in the classroom with students regressing because of ineffective instruction.

Florida’s Race to the Top Memorandum of Understanding requires employment decisions and contract decisions to be tied to effectiveness as demonstrated through the annual evaluation.³⁵ The bill revises the employment parameters under which a school district would award contracts for instructional personnel hired in a Florida school district on or after July 1, 2011. In effect, professional service contracts and tenure would not be given to any instructional personnel hired on or after that date. Instead, these individuals would be employed on the basis of an annual contract. This gives school districts greater flexibility in meeting student instructional needs by retaining effective employees and quickly removing poor performing employees.

The probationary contract would not extend beyond one year. An employee would be dismissed at any time for just cause or may resign without creating a breach of the contract.

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

- Holds a temporary or professional certificate as prescribed by s. 1012.56, F.S., and State Board of Education rules; and
- Is recommended by the superintendent for the contract and approved by the district school board.

However, districts would be prohibited from renewing an annual contract if the individual receives:

- Two consecutive unsatisfactory evaluations;
- Two unsatisfactory evaluations within a 3-year period; or
- Three needs improvement evaluations within any 5-year period.

Instructional personnel with an annual contract may be suspended or dismissed at any time for just cause, which includes poor performance. If charges against an employee are not sustained, he or she would be immediately reinstated with back pay.

³³ See s. 1012.33(3)(e), F.S.

³⁴ See testimony of Okaloosa County School District, Superintendent of Schools, Alexis Tibbetts, Ph.D., Senate Committee on Education Pre-K – 12, Presentation on the Termination of Ineffective Teachers, March 26, 2009.

³⁵ See Florida’s Race to the Top Memorandum of Understanding for Phase 2, (D)(2)(iv)(c)-(d), available at: <http://www.fldoe.org/ARRA/pdf/phase2mou.pdf>.

Performance evaluation results would also be used in making decisions related to the transfer and placement of employees and workforce reductions. Additionally, each school district must annually report to the parent of a student who is assigned to a classroom teacher or school administrator with an unsatisfactory evaluation, needs improvement, or a combination of unsatisfactory or needs improvement for three consecutive years. Finally, the bill provides that two consecutive “unsatisfactory” evaluations, two “unsatisfactory” evaluations within a 3-year period, or three “needs improvement” evaluations within any 5-year period is just cause for terminating an individual with a professional service contract.

Application to Charter School

Florida law specifies that all charter schools are considered public schools and are exempt from certain laws and rules.³⁶ However, charter schools are not exempt from the provisions of this bill. The bill holds them to the same standard as other public schools with respect to performance evaluations for instructional personnel and school administrators, assessments, performance pay and salary schedules, contracts with instructional personnel, and workforce reductions.

Other

For school districts that receive a grant of \$75 million or more from a private foundation to improve teacher effectiveness, the bill provides an annual renewable exemption to the requirements for performance pay and evaluations, provided specific criteria are met.

In conformance with the bill’s new contracting provisions, the bill repeals certain special laws or general laws of local application regarding contracting provisions for instructional personnel and school administrators in public schools. At this time, it appears the local public school tenure acts of Duval and Volusia would be repealed. Hillsborough County’s special act would not be repealed because it is eligible for the annual exemption as discussed above.

Rules adopted to implement this act are exempt from legislative review in order to expedite rulemaking and meet Race to the Top timelines.

Other Potential Implications:

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁶ s. 1002.33(16), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Florida's Race to the Top (RTTT) grant will support the development of a revised teacher evaluation system as provided in this bill. Grant funds will enable the Department of Education to develop end-of-course assessments, item banks and components, such as the value-added model, for the evaluation system. The DOE will assist school districts in their development of assessment items that may be used for locally developed assessments.³⁷ Specifically, the DOE will provide the following:

- Resources for districts to develop assessment items for "hard to measure" content areas, including Physical and Health Education, Fine Arts, and World Languages;
- Assessment items for core academic areas (Math, Social Studies, Science, Language Arts, and Spanish) for grade levels and content areas that are not already tested by FCAT or state end-of-course assessments; and
- Development of a technology platform that will provide districts secure access to high-quality assessment items and tools for the creation and administration of student assessments.

During the next three years the grant will provide funding for the development of end-of-course exams in most subject areas. Additional resources may be necessary to maintain an assessment item bank or platform at the conclusion of the grant period.

District practices relating to the evaluation, compensation, and employment of instructional personnel and school administrators that are not consistent with the bill will need to be revised and implemented in accordance with bill implementation timelines.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁷ DOE bill analysis of SB 736, February 7, 2011, on file with the committee.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education Pre-K – 12 Committee on February 10, 2011:

The committee substitute:

- Adds newly-hired teachers to the requirement to be evaluated twice in the first year of teaching;
- Allows an evaluation to be amended if assessment data becomes available within 90 days after the close of the school year and requires notice to the employee and an opportunity to respond when an evaluation has been amended;
- Clarifies that just cause under a professional services contract includes two annual unsatisfactory ratings in a 3-year period and three annual “needs improvement” ratings in any 5-year period;
- Exempts rules adopted to implement this act from legislative review in order to expedite rulemaking and meet Race to the Top timelines;
- Limits the number of performance evaluation categories to four;
- Adds association representatives and others to the stakeholders working on developing the performance levels for the evaluations; and
- Requires rules that allow for teachers and other instructional personnel to review the class roster for accuracy.

- B. **Amendments:**

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: PCS/CS/SB 736

INTRODUCER: Budget Committee

SUBJECT: Education Personnel

DATE: February 21, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	Armstrong	Hamon	BEA	Favorable
3.	Hamon	Meyer	BC	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill is a comprehensive education personnel initiative that provides for a reform of the evaluations of instructional personnel and school administrators; compensation; and employment practices. The bill provides for the following:

Performance Evaluations for Instructional Personnel and School Administrators

- Requires the Commissioner of Education (Commissioner) to establish a learning growth model for school district use for the Florida Comprehensive Assessment Test (FCAT) and other statewide assessments to measure the effectiveness of instructional personnel and school administrators based on what a student learns;
- Provides that 50 percent of an evaluation is based on student performance over a 3-year period, with the remainder of the evaluation based on instructional practice or leadership, as applicable;

Compensation for Performance

- Requires school districts to establish a new performance salary schedule by July 1, 2014, that provides annual salary increases based upon the performance evaluation;

- Allows current teachers and school administrators to remain on the current salary schedule with an option to move to the new performance salary schedule;
- Requires current instructional personnel who want to move to the new performance salary schedule or who move from one district to another to relinquish their professional service contract in exchange for an annual contract;
- Beginning with instructional personnel hired on or after July 1, 2011, prohibits a district school board from using advanced degrees to set the salary schedule unless the advanced degree is held in the individual's area of certification;
- Provides for earning additional salary supplements for differentiated pay based on assignment to a high priority location, certification and teaching in critical teacher shortage areas, or assignment of additional academic responsibilities;

Employment

- Eliminates professional service contracts for instructional personnel newly-hired, beginning July 1, 2011;
- Revises the criteria for renewal of contracts by tying renewal to the performance evaluation;
- Provides that professional service contracts are not automatically renewed; and

Clarifies that just cause under a professional service contract includes unsatisfactory performance on the individual's evaluation.

This bill substantially amends sections 1002.33, 1003.621, 1006.09, 1008.22, 1012.07, 1012.2315, 1012.22, 1012.27, 1012.28, 1012.33, 1012.34, 1012.795; creates section 1012.335; and repeals section 1012.52, of the Florida Statutes.

II. Present Situation:

Education Reform

Florida's education system is now ranked fifth in the nation, according to Education Week's 2010 Quality Counts Report.¹ This year's increase follows continuing trends of improvement that saw the state ranked 8th last year, 10th in 2009, and 14th in 2008, up from 31st in 2007.² The state has also received accolades for narrowing the achievement gap among more groups of students than most other states.³

Florida's success is based on measuring student performance and rewarding results. The Florida School Recognition Program provides public recognition and financial awards to schools that have sustained high student performance or schools that demonstrate substantial improvement in student performance.

Florida's education reform efforts have resulted in progress for students and schools. Despite these accomplishments, 61 percent of tenth grade students read below grade level in 2009-2010, meaning that these students had limited or minimal success with grade-level content.⁴

¹ See <http://www.edweek.org/ew/toc/2010/01/14/index.html>.

² Florida Department of Education, February 7, 2011.

³ *Gauging the Gaps: A Deeper Look at Student Achievement*, The Education Trust, January 2010.

See http://www.edtrust.org/sites/edtrust.org/files/publications/files/NAEP%20Gap_0.pdf.

⁴ Florida Department of Education, June 2010. See <http://fcats.fldoe.org/mediapacket/2010/>.

The labor market demands in a global economy underscore the need for a marked departure from current educational practices. In 2009, 15-year-old students in the United States ranked 14th in reading literacy, 17th in science literacy, and 25th in mathematics literacy among the 34 Organisation for Economic Co-Operation and Development (OECD) member countries.⁵ The OECD notes that global drivers increasingly focus on “21st century competencies” and that the quantity and quality of learning become central, with the accompanying concern that traditional educational approaches are insufficient.⁶ The recently released report by the Harvard Graduate School of Education recommends an examination of the experience of OECD countries, especially those with the best developed career education systems, to address a more demanding labor market and widening skills and opportunities gaps.⁷

Instructional Quality

A consensus of research finds that the single greatest indicator of student achievement is the quality of the teacher in the classroom.⁸ Despite this research, the state continues to have an evaluation system, compensation system, and employment system that does not sufficiently take into consideration student performance.

Evaluations

Recent federal policy changes tacitly recognize the flaws in educator performance evaluations and the absence of a performance management system that gives educators the tools they need to be effective, supports their development, rewards their accomplishments, and holds them accountable for results. The American Recovery and Reinvestment Act of 2009 (ARRA) provides \$4.3 billion for the Race to the Top Fund, a competitive grant program designed to encourage and reward states that are implementing significant education reforms across four education areas: implementing standards and assessments, improving teacher effectiveness and achieving equity in teacher distribution, improving the collection and use of data, and supporting struggling schools.⁹

To receive funds, a state must provide assurance that it will improve teacher effectiveness and comply with the requirements that school programs and targeted assistance schools provide instruction by highly qualified teachers, that poor and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers, and that it will evaluate and publicly report progress with respect to these requirements.¹⁰ The criteria include

⁵ National Center for Education Statistics, *Highlights from PISA 2009*, U.S. Department of Education. The OECD is an international organization that helps governments foster prosperity and fight poverty through economic growth and financial stability. See <http://www.oecd.org/>. The OECD’s Programme for International Student Assessment (PISA) is an international study that is administered every three years. The 2009 assessment focused on reading. Rather than examining how well students have learned the school curriculum, PISA looks at how well prepared they are for life beyond school.

⁶ OECD, *The Nature of Learning: Using Research to Inspire Practice*, September 9, 2010. <http://www.oecd.org/dataoecd/8/35/45984003.pdf>.

⁷ Harvard Graduate School of Education, *Pathways to Prosperity, Meeting the Challenge of Preparing Young Americans for the 21st Century*, February 2011.

⁸ See *Teacher Quality*, Florida Senate Issue Brief 2010-313, available at:

http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-313ed.pdf.

⁹ ARRA, Public Law 111-5, section 14005(d)(2),(3),(4), and (5). See also section 14006 which provides for incentive grants to states that have made significant progress in meeting the objectives in paragraphs (2),(3),(4), and (5) of section 14005(d).

¹⁰ 20 U.S.C. section 6311(b)(8)(C).

the extent to which a state differentiates the effectiveness of teachers and principals and uses this information for decisions on evaluation, compensation, promotion, termination, and tenure.¹¹ Under the criteria, teacher and principal effectiveness would be judged in significant part by student growth.¹² On August 24, 2010, Florida was awarded a \$700,000,000 Race to the Top grant. Sixty-five of Florida's 67 school districts signed a memorandum of understanding to participate in the grant. The districts have developed and bargained scopes of work to carry out those reforms and receive grant dollars to do so over the next four years.¹³

Compensation for Performance

Most school district compensation systems are not aligned with the state's primary needs: improving student achievement and placing the best teachers where they are needed most. The traditional salary schedule rewards teachers for years of experience, irrespective of whether that experience benefits students. Talented instructional personnel and school administrators are compensated at the same rate as ineffective personnel, or worse.

Employment

Without a robust evaluation system, school districts do not have sufficient means to tie continued employment to effective work. The current system creates an automatic renewal of employment with as little as three years of teaching, unless the district school superintendent "charges" an employee with unsatisfactory performance. As a result, it can take up to two years or more to terminate an ineffective employee who has received a professional service contract. Students can actually regress in learning with an ineffective teacher, while the process to terminate grinds forward.

III. Effect of Proposed Changes:

The bill focuses on student success by revising and modernizing three main areas: evaluations, performance pay, and employment. The bill reinforces Florida's successful Race to the Top application.

Performance Evaluations

Performance of Students

Most school districts' evaluation systems do not appear to comply with current law. For example, the Auditor General recently reviewed 11 school district financial or operational audit reports for FY 2009-2010. All 11 districts were found to have deficiencies with respect to the evaluation requirements in s. 1012.34(3), F.S.¹⁴ In addition, the Auditor General's preliminary and tentative findings report found 24 of an additional 27 school districts had a preliminary and

¹¹ Federal Register, Vol. 74, No. 221, *Final Priorities, Requirements, Definitions, and Selection Criteria*, November 18, 2009, and *Supplemental Information*, Federal Register, Vol. 75, No. 17, January 27, 2010. See <http://www2.ed.gov/legislation/FedRegister/finrule/2009-4/111809a.html>. The U.S. DOE proposes the use of \$4 billion for this initiative and a potential for \$350 million to support the development of assessments by a consortia of states.

¹² *Id.*

¹³ DOE bill analysis, February 7, 2011. This includes 62 traditional districts and 3 lab schools. The following school districts are not participating in the grant: Baker, Dixie, Hamilton, Palm Beach, and Suwannee.

¹⁴ See Brevard (2011-060), Calhoun (2011-048), Duval (2011-042), Gulf (2011-067), Hernando (2011-034), Indian River (2011-055), Martin (2011-056), Manatee (2011-050), Osceola (2011-051), Pasco (2011-072), and Walton (2011-066).

tentative finding related to s. 1012.34(3), F.S.¹⁵ Many evaluation systems do not weight student performance as the primary factor in the evaluation of instructional personnel. Despite a requirement in law to develop local assessments more than 10 years ago for subjects and grade levels not assessed by the FCAT, most districts have not developed assessments to measure student learning for purposes of evaluating the effectiveness of their instructional personnel or school administrators.¹⁶ School districts that have developed assessments do not appear confident in their validity.¹⁷ Current practice results in almost a completely subjective evaluation, without using any objective data. As a result, school districts may not objectively know who the best teachers are, which teachers need help to perfect their instruction, and which teachers need to seek a different profession.

The bill reinforces Florida's successful Race to the Top grant application, which requires 50 percent of an individual's evaluation to be based on student learning growth or achievement.¹⁸ The bill specifies that 50 percent of an instructional personnel or school administrator's evaluation is based upon the performance of the students assigned to these individuals. This provision places a significant focus on student outcomes in determining the effectiveness of instructional personnel and school administrators.

Learning Growth Model

Under Florida's Race to the Top Memorandum of Understanding, the Department of Education is required to develop a student learning growth model that takes into consideration unique student characteristics, challenges, and other factors that affect student performance.¹⁹ School districts are required to measure student growth based on the performance of students on the state-required assessments.²⁰ Moreover, school districts must use the state-adopted teacher-level student growth measure as the primary factor of the teacher and principal evaluation systems.²¹

Under the bill, the Commissioner would establish a learning growth model for the FCAT and other statewide assessments to measure the effectiveness of a classroom teacher or school administrator based on what a student learns. The model would use the student's prior performance, while considering factors that may be outside a teacher's control, such as a student's attendance, discipline, disability, or English language proficiency. However, the model may not take into consideration a student's gender, race, ethnicity, or socioeconomic status. The legislation does not specify that student growth is the same for all students.

School districts would be required to use the state's learning growth model for FCAT-related courses beginning in the 2011-2012 school year. School districts must use comparable measures of student growth for other grades and subjects with the department's assistance, if needed.

¹⁵ See email correspondence from Ted Sauerbeck, Deputy Auditor General, dated February 7, 2011, on file with the committee.

¹⁶ See s. 57, ch. 99-398, L.O.F., codified in s. 1012.34(3), F.S. See also s. 1008.22(8), F.S.

¹⁷ See testimony by Duval County Public Schools Superintendent of Schools, Ed Pratt-Dannals, before the Education Pre-K – 12 Committee, Workshop and Panel Discussion on Instructional Quality, January 26, 2011, on file with the committee.

¹⁸ See Florida's Race to the Top Memorandum of Understanding for Phase 2, (D)(2)(ii), available at: <http://www.fldoe.org/ARRA/pdf/phase2mou.pdf>.

¹⁹ *Id.* at (D)(2)(i).

²⁰ *Id.*

²¹ *Id.* at (D)(2)(ii).

Additionally, districts would be permitted to request alternatives to the growth measure if justified.

The DOE is pursuing a contract for assistance in the construction of Florida's value added student growth measure as a part of the Race to the Top grant.²² Value added measures will form the basis of the student performance aspect of the new evaluation system, relying on calculations that are able to account for a variety of student variables.²³

Evaluation Criteria

The current evaluation system does not connect meaningful evidence of student performance to continued employment and compensation. For the last two years, districts reported that less than one percent of classroom teachers received an unsatisfactory evaluation.²⁴

Components of the evaluation system described in the bill are divided into three parts: performance of students, instructional practice or leadership, (for instructional or administrative personnel, respectively), and professional responsibilities. The evaluation system must differentiate among four levels: highly effective; effective; needs improvement or, for instructional personnel in the first three years of employment or in the first year of a new teaching assignment who need improvement, developing; and unsatisfactory. Florida's Race to the Top Memorandum of Understanding required a comprehensive range of ratings beyond a simple satisfactory or unsatisfactory, including "effective" and "highly effective".²⁵ The Commissioner of Education would be required to consult with instructional personnel, education stakeholders, and experts in developing the performance levels for the evaluation system.

Fifty percent of the evaluation for classroom teachers and other instructional personnel would be based on student performance for students assigned to them over a 3-year period. For other instructional personnel, a school district may include specific job-performance expectations related to student support and use growth data and other measurable student outcomes specific to the individual's assignment, as long as the growth accounts for at least 30 percent of the evaluation. The remainder of the evaluation would be based on the Florida Educator Accomplished Practices and professional responsibilities.

Fifty percent of a school administrator's evaluation would also be based on student performance over a 3-year period. The remainder of the evaluation would be based on indicators that include the recruitment and retention of effective or highly effective teachers, improvement in the percentage of classroom teachers evaluated at the effective or highly effective level, management of the school to maximize resources for direct instruction, other leadership practices that result in improved student outcomes, and professional responsibilities.

²² See http://www.fldoe.org/news/2010/2010_11_08-3.asp.

²³ Value-added modeling (VAM) is a collection of complex statistical techniques that use student test score data. It is referred to as value-added in that it estimates how much teachers and schools add to the academic growth of entering students, while accounting for other factors that impact student learning, such as prior performance.

²⁴ DOE bill analysis for SB 736, February 7, 2011.

²⁵ See Florida's Race to the Top Memorandum of Understanding for Phase 2, (D)(2)(ii), available at: <http://www.fldoe.org/ARRA/pdf/phase2mou.pdf>.

If less than 3 years of student growth data is available for an evaluation, the district must include the years for which data is available and may reduce the percentage of the evaluation based on student growth to not less than 40 percent for classroom teachers and school administrators and not less than 20 percent for other instructional personnel.

Under Florida's Race to the Top Memorandum of Understanding, school districts are required to use state assessments or district-selected assessments to measure student growth for purposes of improving teacher and principal effectiveness.²⁶ The assessments must be aligned to state standards. School districts may develop or select the assessments or use valid, rigorous national assessments.²⁷ The bill requires school districts, beginning with the 2014-2015 school year, to administer local assessments that measure student mastery of the content. The school district can use statewide assessments, other standardized assessments, industry certification examinations, or district-developed or selected end-of-course assessments.

If a district has not implemented an assessment for a course or has not adopted a comparable measure of student growth, two alternative growth measures may be used for a classroom teacher who teaches the course: student growth on statewide assessments or based on measurable learning targets in the school improvement plan. Additionally, a district school superintendent may assign to an instructional team, the student learning growth of the team's students on statewide assessments.

Florida's Race to the Top Memorandum of Understanding requires multiple evaluations for each first-year teacher.²⁸ Accordingly, the bill requires newly hired teachers to be evaluated at least twice in the first year of teaching. Finally, evaluations of instructional personnel and school administrators may include parent and peer input.

Compensation for Performance

Under the current compensation system, most individuals are paid on a "steps and lanes" approach, in which salary schedules list increments of pay that are typically tied to years of experience and academic degrees.²⁹ The current system rewards or, alternatively punishes, instructional personnel irrespective of performance. In most school district compensation systems, the largest rewards are tied to the final five years before retirement, while salary increases for new teachers would increase at a significantly reduced rate.

Florida's Race to the Top Memorandum of Understanding requires the most significant gains in salary to be tied to effectiveness under an individual's annual evaluation.³⁰ This bill ties the evaluation to the salary schedule for instructional personnel or school administrators hired on or after July 1, 2014. Student outcomes would have a potentially significant affect on future compensation. The salaries of quality teachers, other instructional personnel, and school administrators would grow more quickly, while those of poor performing employees would not.

²⁶ *Id.* at (D)(2)(i).

²⁷ *Id.*

²⁸ *Id.* at (D)(2)(iii).

²⁹ *Performance Pay*, Florida Senate Issue Brief 2011-214, December 2010 available at <http://www.flsenate.gov/Committees/InterimReports/2011/2011-214ed.pdf>.

³⁰ See Florida's Race to the Top Memorandum of Understanding for Phase 2, (D)(2)(iv)(b), available at: <http://www.fldoe.org/ARRA/pdf/phase2mou.pdf>.

The new salary schedule would require a base salary schedule with the following salary increases:

- A highly effective teacher or school administrator, as determined by his or her evaluation, would receive a salary increase that must be greater than the highest annual salary adjustment available to that individual through any other salary schedule adopted by the school district.
- An effective teacher or school administrator, as determined by his or her evaluation, would receive a salary increase between 50 and 75 percent of the annual salary increase provided to a highly effective employee.
- A teacher or administrator under any other performance rating would not be eligible for a salary increase.

Current teachers and school administrators could remain on their current salary schedule as long as they remain employed by the school district. They may also opt to participate in the new performance salary schedule, but the option is irrevocable. Current instructional personnel who want to move to the new performance salary schedule or who move from one district to another would relinquish their professional service contract in exchange for an annual contract.

Florida's Race to the Top Memorandum of Understanding requires differentiated pay for additional academic responsibilities, school demographics, critical teaching shortage areas and level of job-performance difficulties.³¹ The bill comports with Race to the Top by requiring school districts to provide opportunities for instructional personnel and school administrators to earn additional salary supplements for assignment to a high priority location (e.g., a Title I eligible school or an eligible low-performing school), certification and teaching in critical teacher shortage areas, or assignment of additional academic responsibilities. This provision allows districts to attract and compensate classroom teachers in high-need areas, such as STEM (Science, Technology, Engineering, and Mathematics), who will better prepare students to graduate ready to meet the demands of the global economy.

Beginning with instructional personnel hired on or after July 1, 2011, a district school board may not use advanced degrees in setting the salary schedule unless the advanced degree is held in the individual's areas of certification. The bill awards compensation for advanced degrees in these areas notwithstanding the research, which indicates that advanced degrees have little, or in some circumstances, a deleterious effect on student learning.³²

When budget constraints limit a school board's ability to fully fund all adopted salary schedules, the bill prohibits the board from disproportionately reducing performance pay schedules.

Employment

As discussed above, current practice divorces student performance under the evaluation from employment or contracting decisions. Once granted a professional service contract after as little

³¹ *Id.*

³² See *Teacher Quality and Student Achievement: Making the Most of Recent Research*, Laura Goe and Leslie M. Stickler, National Comprehensive Center for Teacher Quality, March 2008.

as three years, the law provides for automatic renewal of the contract unless the superintendent “charges” the employee with unsatisfactory performance.³³ The process for removing an individual under a professional service contract for unsatisfactory performance may take over a year and, in some instances, two years or more.³⁴ Meanwhile, the individual may still be in the classroom with students regressing because of ineffective instruction.

Florida’s Race to the Top Memorandum of Understanding requires employment decisions and contract decisions to be tied to effectiveness as demonstrated through the annual evaluation.³⁵ The bill revises the employment parameters under which a school district would award contracts for instructional personnel hired in a Florida school district on or after July 1, 2011. In effect, professional service contracts and tenure would not be given to any instructional personnel hired on or after that date. Instead, these individuals would be employed on the basis of an annual contract. This gives school districts greater flexibility in meeting student instructional needs by retaining effective employees and quickly removing poor performing employees.

The probationary contract would not extend beyond one year. An employee would be dismissed at any time for just cause or may resign without creating a breach of the contract.

Upon successful completion of a probationary contract, a classroom teacher would be eligible to receive an annual contract. This includes instructional personnel who move from another state or district. The contract may not exceed one year in duration and the school board can choose to renew or not renew without cause. Instructional personnel may receive an annual contract if he or she:

- Holds a temporary or professional certificate as prescribed by s. 1012.56, F.S., and State Board of Education rules; and
- Is recommended by the superintendent for the contract and approved by the district school board.

However, districts would be prohibited from renewing an annual contract if the individual receives:

- Two consecutive unsatisfactory evaluations;
 - Two unsatisfactory evaluations within a 3-year period;
 - Three consecutive needs improvement evaluations; or
- A combination of unsatisfactory and needs improvement evaluations.

Instructional personnel with an annual contract may be suspended or dismissed at any time for just cause, which includes poor performance. If charges against an employee are not sustained, he or she would be immediately reinstated with back pay.

³³ See s. 1012.33(3)(e), F.S.

³⁴ See testimony of Okaloosa County School District, Superintendent of Schools, Alexis Tibbetts, Ph.D., Senate Committee on Education Pre-K – 12, Presentation on the Termination of Ineffective Teachers, March 26, 2009.

³⁵ See Florida’s Race to the Top Memorandum of Understanding for Phase 2, (D)(2)(iv)(c)-(d), available at: <http://www.fldoe.org/ARRA/pdf/phase2mou.pdf>.

Performance evaluation results would also be used in making decisions related to the transfer and placement of employees and workforce reductions. Additionally, each school district must annually report to the parent of a student who is assigned to a classroom teacher or school administrator with an unsatisfactory evaluation, needs improvement, or a combination of unsatisfactory or needs improvement. The bill also provides that two consecutive “unsatisfactory” evaluations, two “unsatisfactory” evaluations within a 3-year period, three consecutive “needs improvement” evaluations, or a combination of “unsatisfactory” and “needs improvement” evaluations is just cause for terminating an individual with a professional service contract. Finally, the renewal of a professional service contract would be tied to the performance evaluation. The professional service contract would no longer be automatically renewed. Rather, it would be at the discretion of the district school board.

Application to Charter School

Florida law specifies that all charter schools are considered public schools and are exempt from certain laws and rules.³⁶ However, charter schools are not exempt from the provisions of this bill. The bill holds them to the same standard as other public schools with respect to performance evaluations for instructional personnel and school administrators, assessments, performance pay and salary schedules, contracts with instructional personnel, and workforce reductions.

Other

For school districts that receive a grant of \$75 million or more from a private foundation to improve teacher effectiveness, the bill provides an annual renewable exemption to the requirements for performance pay and the weight given to student growth in performance evaluations, provided specific criteria are met. The exemption sunsets August 1, 2017.

In conformance with the bill’s new contracting provisions, the bill repeals certain special laws or general laws of local application regarding contracting provisions for instructional personnel and school administrators in public schools. At this time, it appears the local public school tenure acts of Duval, Hillsborough, and Volusia would be repealed.’.

Rules adopted to implement this act are exempt from legislative review in order to expedite rulemaking and meet Race to the Top timelines.

Other Potential Implications:

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁶ s. 1002.33(16), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Florida's Race to the Top (RTTT) grant will support the development of a revised teacher evaluation system as provided in this bill. Grant funds will enable the Department of Education to develop end-of-course assessments, item banks and components, such as the value-added model, for the evaluation system. The DOE will assist school districts in their development of assessment items that may be used for locally developed assessments.³⁷ Specifically, the DOE will provide the following:

- Resources for districts to develop assessment items for "hard to measure" content areas, including Physical and Health Education, Fine Arts, and World Languages;
- Assessment items for core academic areas (Math, Social Studies, Science, Language Arts, and Spanish) for grade levels and content areas that are not already tested by FCAT or state end-of-course assessments; and
- Development of a technology platform that will provide districts secure access to high-quality assessment items and tools for the creation and administration of student assessments.

During the next three years the grant will provide funding for the development of end-of-course exams in most subject areas. Additional resources may be necessary to maintain an assessment item bank or platform at the conclusion of the grant period.

District practices relating to the evaluation, compensation, and employment of instructional personnel and school administrators that are not consistent with the bill will need to be revised and implemented in accordance with bill implementation timelines.

VI. Technical Deficiencies:

None.

³⁷ DOE bill analysis of SB 736, February 7, 2011, on file with the committee.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Education Pre-K – 12 Committee on February 10, 2011:**

The committee substitute:

- Adds newly-hired teachers to the requirement to be evaluated twice in the first year of teaching;
- Allows an evaluation to be amended if assessment data becomes available within 90 days after the close of the school year and requires notice to the employee and an opportunity to respond when an evaluation has been amended;
- Clarifies that just cause under a professional services contract includes two annual unsatisfactory ratings in a 3-year period and three annual “needs improvement” ratings in any 5-year period;
- Exempts rules adopted to implement this act from legislative review in order to expedite rulemaking and meet Race to the Top timelines;
- Limits the number of performance evaluation categories to four;
- Adds association representatives and others to the stakeholders working on developing the performance levels for the evaluations; and
- Requires rules that allow for teachers and other instructional personnel to review the class roster for accuracy.

B. Amendments:

None.



248470

576-01909E-11

Proposed Committee Substitute by the Committee on Budget

A bill to be entitled

An act relating to education personnel; providing a short title; amending s. 1012.34, F.S.; revising provisions relating to the evaluation of instructional personnel and school administrators; requiring the Department of Education to approve each school district's instructional personnel and school administrator evaluation systems; requiring reporting by the Commissioner of Education relating to the evaluation systems; providing requirements and revising procedures and criteria for the evaluation systems; requiring the commissioner to approve or select and the State Board of Education to adopt formulas for school districts to use in measuring student learning growth; requiring the state board to adopt rules relating to standards and measures for implementation of the evaluation systems; amending s. 1008.22, F.S.; requiring school districts to administer assessments for each course offered in the district; amending s. 1012.22, F.S.; revising provisions relating to instructional personnel and school administrator compensation and salary schedules; providing requirements for a performance salary schedule, a grandfathered salary schedule, adjustments, and supplements; revising criteria for the promotion of instructional personnel; creating s. 1012.335, F.S.; providing employment criteria for instructional personnel hired on or after July 1,



248470

576-01909E-11

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



248470

576-01909E-11

58 made by the act; revising the criteria for renewing a
59 professional service contract; requiring that a
60 district school board's decision to retain personnel
61 be primarily based on the employee's performance;
62 repealing s. 1012.52, F.S., relating to legislative
63 intent and findings to improve student achievement and
64 teacher quality; amending s. 1012.795, F.S.;
65 conforming provisions to changes made by the act;
66 authorizing an exemption from requirements for
67 performance evaluation systems and compensation and
68 salary schedules for certain school districts;
69 providing that specified provisions of law do not
70 apply to rulemaking required to administer the act;
71 providing for the repeal of certain special acts or
72 general laws of local application relating to
73 contracts for instructional personnel or school
74 administrators; providing for application of specified
75 provisions of the act; providing for severability;
76 providing effective dates.

77

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

79

80 Section 1. This act may be cited as the "Student Success
81 Act."

82 Section 2. Effective upon this act becoming a law, section
83 1012.34, Florida Statutes, is amended to read:

84 1012.34 Personnel evaluation ~~Assessment~~ procedures and
85 criteria.—

86 (1) EVALUATION SYSTEM APPROVAL AND REPORTING.—



248470

576-01909E-11

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

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

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



248470

576-01909E-11

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

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

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

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

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

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

142 (e) Differentiate among four levels of performance as
143 follows:

144 1. Highly effective.



248470

576-01909E-11

145 2. Effective.

146 3. Needs improvement or, for instructional personnel in the
147 first 3 years of employment who need improvement, developing.

148 4. Unsatisfactory.

149
150 The Commissioner of Education shall consult with experts,
151 instructional personnel, school administrators, and education
152 stakeholders in developing the criteria for the performance
153 levels. Each district school board may establish a peer
154 assistance process. The plan may provide a mechanism for
155 assistance of persons who are placed on performance probation as
156 well as offer assistance to other employees who request it.

157 (f) The district school board shall Provide for training
158 programs that are based upon guidelines provided by the
159 department of Education to ensure that all individuals with
160 evaluation responsibilities understand the proper use of the
161 evaluation assessment criteria and procedures.

162 (g) Include a process for monitoring and evaluating the
163 effective and consistent use of the evaluation criteria by
164 employees with evaluation responsibilities.

165 (h) Include a process for monitoring and evaluating the
166 effectiveness of the system itself in improving instruction and
167 student learning.

168
169 In addition, each district school board may establish a peer
170 assistance process. This process may be a part of the regular
171 evaluation system or used to assist employees placed on
172 performance probation, newly hired classroom teachers, or
173 employees who request assistance.



248470

576-01909E-11

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

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



248470

576-01909E-11

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

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

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

224 b. For instructional personnel who are not classroom
225 teachers, the student learning growth portion of the evaluation
226 must include growth data on statewide assessments for students
227 assigned to the instructional personnel over the course of at
228 least 3 years, or may include a combination of student learning
229 growth data and other measureable student outcomes that are
230 specific to the assigned position, provided that the student
231 learning growth data accounts for not less than 30 percent of



576-01909E-11

232 the evaluation. If less than 3 years of student growth data are
233 available, the years for which data are available must be used
234 and the percentage of the evaluation based upon student learning
235 growth may be reduced to not less than 20 percent.

236 c. For school administrators, the student learning growth
237 portion of the evaluation must include growth data for students
238 assigned to the school over the course of at least 3 years. If
239 less than 3 years of data are available, the years for which
240 data are available must be used and the percentage of the
241 evaluation based upon student learning growth may be reduced to
242 not less than 40 percent.

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

252 3. Instructional leadership. For school administrators,
253 evaluation criteria must include indicators based upon each of
254 the leadership standards adopted by the State Board of Education
255 under s. 1012.986, including performance measures related to the
256 effectiveness of classroom teachers in the school, the
257 administrator's appropriate use of evaluation criteria and
258 procedures, recruitment and retention of effective and highly
259 effective classroom teachers, improvement in the percentage of
260 instructional personnel evaluated at the highly effective or



248470

576-01909E-11

261 effective level, and other leadership practices that result in
262 student learning growth. The system may include a means to give
263 parents and instructional personnel an opportunity to provide
264 input into the administrator's performance evaluation.

265 4. Professional and job responsibilities. For instructional
266 personnel and school administrators, other professional and job
267 responsibilities must be included as adopted by the State Board
268 of Education. The district school board may identify additional
269 professional and job responsibilities.

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

271 ~~3. Knowledge of subject matter. The district school board~~
272 ~~shall make special provisions for evaluating teachers who are~~
273 ~~assigned to teach out of field.~~

274 ~~4. Ability to plan and deliver instruction and the use of~~
275 ~~technology in the classroom.~~

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

277 ~~6. Ability to establish and maintain a positive~~
278 ~~collaborative relationship with students' families to increase~~
279 ~~student achievement.~~

280 ~~7. Other professional competencies, responsibilities, and~~
281 ~~requirements as established by rules of the State Board of~~
282 ~~Education and policies of the district school board.~~

283 (b) All personnel must be fully informed of the criteria
284 and procedures associated with the evaluation ~~assessment~~ process
285 before the evaluation ~~assessment~~ takes place.

286 (c) The individual responsible for supervising the employee
287 must evaluate ~~assess~~ the employee's performance. The evaluation
288 system may provide for the evaluator to consider input from
289 other personnel trained under paragraph (2) (f). The evaluator



248470

576-01909E-11

290 must submit a written report of the evaluation ~~assessment~~ to the
291 district school superintendent for the purpose of reviewing the
292 employee's contract. The evaluator must submit the written
293 report to the employee no later than 10 days after the
294 evaluation ~~assessment~~ takes place. The evaluator must discuss
295 the written evaluation report ~~of assessment~~ with the employee.
296 The employee shall have the right to initiate a written response
297 to the evaluation ~~assessment~~, and the response shall become a
298 permanent attachment to his or her personnel file.

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

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

311 (a) ~~1.~~ Upon delivery of a notice of unsatisfactory
312 performance, the evaluator must confer with the employee who
313 holds a professional service contract, make recommendations with
314 respect to specific areas of unsatisfactory performance, and
315 provide assistance in helping to correct deficiencies within a
316 prescribed period of time.

317 (b) ~~1.2.a.~~ ~~If~~ The employee who holds a professional service
318 contract ~~as provided in s. 1012.33~~, ~~the employee~~ shall be placed



248470

576-01909E-11

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

334 2.b. Within 14 days after the close of the 90 calendar
335 days, the evaluator must evaluate ~~assess~~ whether the performance
336 deficiencies have been corrected and forward a recommendation to
337 the district school superintendent. Within 14 days after
338 receiving the evaluator's recommendation, the district school
339 superintendent must notify the employee who holds a professional
340 service contract in writing whether the performance deficiencies
341 have been satisfactorily corrected and whether the district
342 school superintendent will recommend that the district school
343 board continue or terminate his or her employment contract. If
344 the employee wishes to contest the district school
345 superintendent's recommendation, the employee must, within 15
346 days after receipt of the district school superintendent's
347 recommendation, submit a written request for a hearing. The



248470

576-01909E-11

348 hearing shall be conducted at the district school board's
349 election in accordance with one of the following procedures:

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

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

369 (5)-(4) ADDITIONAL NOTIFICATIONS.-The district school
370 superintendent shall annually notify the department of any
371 instructional personnel or school administrators who receive two
372 consecutive unsatisfactory evaluations. The district school
373 superintendent shall also notify the department of any
374 instructional personnel or school administrators ~~and~~ who are
375 ~~have been~~ given written notice by the district of intent to
376 terminate or not renew ~~that~~ their employment ~~is being terminated~~



248470

576-01909E-11

377 ~~or is not being renewed or that the district school board~~
378 ~~intends to terminate, or not renew, their employment.~~ The
379 department shall conduct an investigation to determine whether
380 action shall be taken against the certificateholder pursuant to
381 s. 1012.795(1)(e).

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

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

395 ~~(6)(7)~~ ANNUAL REVIEW OF AND REVISIONS TO THE SCHOOL
396 DISTRICT EVALUATION SYSTEMS.—The district school board shall
397 establish a procedure for annually reviewing instructional
398 personnel and school administrator evaluation ~~assessment~~ systems
399 to determine compliance with this section. All substantial
400 revisions to an approved system must be reviewed and approved by
401 the district school board before being used to evaluate ~~assess~~
402 instructional personnel or school administrators. Upon request
403 by a school district, the department shall provide assistance in
404 developing, improving, or reviewing an evaluation ~~assessment~~
405 system.



248470

576-01909E-11

406 (7) MEASUREMENT OF STUDENT LEARNING GROWTH.—

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

426 (b) Beginning in the 2011-2012 school year, each school
427 district shall measure student learning growth using the formula
428 approved by the commissioner under paragraph (a) for courses
429 associated with the FCAT. Each school district shall implement
430 the additional student learning growth measures selected by the
431 commissioner under paragraph (a) for the remainder of the
432 statewide assessments included under s. 1008.22 as they become
433 available. Beginning in the 2014-2015 school year, for grades
434 and subjects not assessed by statewide assessments but otherwise



248470

576-01909E-11

435 assessed as required under s. 1008.22(8), each school district
436 shall measure student learning growth using an equally
437 appropriate formula. The department shall provide models for
438 measuring student learning growth which school districts may
439 adopt.

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

448 (d) If the student learning growth in a course is not
449 measured by a statewide assessment but is measured by a school
450 district assessment, a school district may request, through the
451 evaluation system approval process, that the performance
452 evaluation for the classroom teacher assigned to that course
453 include the learning growth of his or her students on FCAT
454 Reading or FCAT Mathematics. The request must clearly explain
455 the rationale supporting the request. However, the classroom
456 teacher's performance evaluation must give greater weight to
457 student learning growth on the district assessment.

458 (e) For classroom teachers of courses for which the
459 district has not implemented appropriate assessments under s.
460 1008.22(8) or for which the school district has not adopted an
461 equally appropriate measure of student learning growth under
462 paragraphs (b)-(d), student learning growth must be measured by
463 the growth in learning of the classroom teacher's students on



248470

576-01909E-11

464 statewide assessments, or, for courses in which enrolled
465 students do not take the statewide assessments, measurable
466 learning targets must be established based upon the goals of the
467 school improvement plan and approved by the school principal. A
468 district school superintendent may assign to instructional
469 personnel in an instructional team the student learning growth
470 of the instructional team's students on statewide assessments.
471 This paragraph expires July 1, 2015.

472 (8) RULEMAKING.—The State Board of Education shall adopt
473 rules pursuant to ss. 120.536(1) and 120.54 which, that
474 establish uniform procedures ~~guidelines~~ for the submission,
475 review, and approval of district evaluation systems and
476 reporting requirements ~~procedures~~ for the annual evaluation
477 assessment of instructional personnel and school administrators;
478 specific, discrete standards for each performance level required
479 under subsection (2) to ensure clear and sufficient
480 differentiation in the performance levels and to provide
481 consistency in meaning across school districts; the measurement
482 of student learning growth and associated implementation
483 procedures required under subsection (7); a process to permit
484 instructional personnel to review the class roster for accuracy
485 and to correct any mistakes relating to the identity of students
486 for whom the individual is responsible; and a process for
487 monitoring school district implementation of evaluation systems
488 in accordance with this section ~~that include criteria for~~
489 evaluating professional performance. Specifically, the rules
490 shall establish a student learning growth standard that if not
491 met will result in the employee receiving an unsatisfactory
492 performance evaluation rating. In like manner, the rules shall



248470

576-01909E-11

493 establish a student learning growth standard that must be met in
494 order for an employee to receive a highly effective rating and a
495 student learning growth standard that must be met in order for
496 an employee to receive an effective rating.

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

499 1008.22 Student assessment program for public schools.—

500 (8) LOCAL ASSESSMENTS.—

501 (a) Measurement of the learning gains of students in all
502 subjects and grade levels other than subjects and grade levels
503 required for the state student achievement testing program is
504 the responsibility of the school districts.

505 (b) Beginning with the 2014-2015 school year, each school
506 district shall administer for each course offered in the
507 district a student assessment that measures mastery of the
508 content, as described in the state-adopted course description,
509 at the necessary level of rigor for the course. Such assessments
510 may include:

511 1. Statewide assessments.

512 2. Other standardized assessments, including nationally
513 recognized standardized assessments.

514 3. Industry certification examinations.

515 4. District-developed or district-selected end-of-course
516 assessments.

517 (c) The Commissioner of Education shall identify methods to
518 assist and support districts in the development and acquisition
519 of assessments required under this subsection. Methods may
520 include developing item banks, facilitating the sharing of
521 developed tests among school districts, acquiring assessments



248470

576-01909E-11

522 from state and national curriculum-area organizations, and
523 providing technical assistance in best professional practices of
524 test development based upon state-adopted curriculum standards,
525 administration, and security.

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

528 1012.22 Public school personnel; powers and duties of the
529 district school board.—The district school board shall:

530 (1) Designate positions to be filled, prescribe
531 qualifications for those positions, and provide for the
532 appointment, compensation, promotion, suspension, and dismissal
533 of employees as follows, subject to the requirements of this
534 chapter:

535 (c) *Compensation and salary schedules.*—

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

537 a. “Adjustment” means an addition to the base salary
538 schedule that is not a bonus and becomes part of the employee’s
539 permanent base salary and shall be considered compensation under
540 s. 121.021(22).

541 b. “Grandfathered salary schedule” means the salary
542 schedule or schedules adopted by a district school board before
543 July 1, 2014, pursuant to subparagraph 4.

544 c. “Instructional personnel” means instructional personnel
545 as defined in s. 1012.01(2) (a)-(d), excluding substitute
546 teachers.

547 d. “Performance salary schedule” means the salary schedule
548 or schedules adopted by a district school board pursuant to
549 subparagraph 5.

550 e. “Salary schedule” means the schedule or schedules used



248470

576-01909E-11

551 to provide the base salary for district school board personnel.

552 f. "School administrator" means a school administrator as
553 defined in s. 1012.01(3)(c).

554 g. "Supplement" means an annual addition to the base salary
555 for the term of the negotiated supplement as long as the
556 employee continues his or her employment for the purpose of the
557 supplement. A supplement does not become part of the employee's
558 continuing base salary but shall be considered compensation
559 under s. 121.021(22).

560 2. Cost-of-living adjustment.—A district school board may
561 provide a cost-of-living salary adjustment if the adjustment:

562 a. Does not discriminate among comparable classes of
563 employees based upon the salary schedule under which they are
564 compensated.

565 b. Does not exceed 50 percent of the annual adjustment
566 provided to instructional personnel rated as effective.

567 3. Advanced degrees.—A district school board may not use
568 advanced degrees in setting a salary schedule for instructional
569 personnel or school administrators hired on or after July 1,
570 2011, unless the advanced degree is held in the individual's
571 area of certification and is only a salary supplement.

572 4. Grandfathered salary schedule.—

573 a. The district school board shall adopt a salary schedule
574 or salary schedules to be used as the basis for paying all
575 school employees hired before July 1, 2014. Instructional
576 personnel on annual contract as of July 1, 2014, shall be placed
577 on the performance salary schedule adopted under subparagraph 5.
578 Instructional personnel on continuing contract or professional
579 service contract may opt into the performance salary schedule if



248470

576-01909E-11

580 the employee relinquishes such contract and agrees to be
581 employed on an annual contract under s. 1012.335. Such an
582 employee shall be placed on the performance salary schedule and
583 may not return to continuing contract or professional service
584 contract status. Any employee who opts into the performance
585 salary schedule may not return to the grandfathered salary
586 schedule.

587 b. In determining the grandfathered salary schedule for
588 instructional personnel, a district school board must base a
589 portion of each employee's compensation upon performance
590 demonstrated under s. 1012.34 and shall provide differentiated
591 pay for both instructional personnel and school administrators
592 based upon district-determined factors, including, but not
593 limited to, additional responsibilities, school demographics,
594 critical shortage areas, and level of job performance
595 difficulties.

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



248470

576-01909E-11

609 a subject for which there is an assessment or the school
610 district establishes equally appropriate measures of student
611 learning growth as defined under s. 1012.34 and rules of the
612 State Board of Education.

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

615 (I) The base salary for instructional personnel or school
616 administrators who opt into the performance salary schedule
617 shall be the salary paid in the prior year, including
618 adjustments only.

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

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

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

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



248470

576-01909E-11

638 classification.

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

642 c. Salary supplements.-In addition to the salary
643 adjustments, each district school board shall provide for salary
644 supplements for activities that must include, but are not
645 limited to:

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

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

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

658 (IV) Assignment of additional academic responsibilities.

659
660 If budget constraints in any given year limit a district school
661 board's ability to fully fund all adopted salary schedules, the
662 performance salary schedule shall not be reduced on the basis of
663 total cost or the value of individual awards in a manner that is
664 proportionally greater than reductions to any other salary
665 schedules adopted by the district. ~~The district school board~~
666 ~~shall adopt a salary schedule or salary schedules designed to~~



248470

576-01909E-11

667 ~~furnish incentives for improvement in training and for continued~~
668 ~~efficient service to be used as a basis for paying all school~~
669 ~~employees and fix and authorize the compensation of school~~
670 ~~employees on the basis thereof.~~

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

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

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

692 ~~(e) *Transfer and promotion.*—The district school board shall~~
693 ~~act on recommendations of the district school superintendent~~
694 ~~regarding transfer and promotion of any employee. The district~~
695 ~~school superintendent's primary consideration in recommending an~~



248470

576-01909E-11

696 individual for a promotion must be the individual's demonstrated
697 effectiveness under s. 1012.34.

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

700 1012.335 Contracts with instructional personnel hired on or
701 after July 1, 2011.-

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

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

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

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

719 (2) EMPLOYMENT.-

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



248470

576-01909E-11

725 (b) Beginning July 1, 2011, an annual contract may be
726 awarded pursuant to paragraph (c) for instructional personnel
727 who have successfully completed a probationary contract with the
728 district school board and have received one or more annual
729 contracts from the district school board.

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

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

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

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

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

749 (4) SUSPENSION OR DISMISSAL OF INSTRUCTIONAL PERSONNEL ON
750 ANNUAL CONTRACT.—Any instructional personnel with an annual
751 contract may be suspended or dismissed at any time during the
752 term of the contract for just cause as provided in subsection

753 (5). The district school board shall notify the employee in



248470

576-01909E-11

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

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

773 (a) Immorality.

774 (b) Misconduct in office.

775 (c) Incompetency.

776 (d) Gross insubordination.

777 (e) Willful neglect of duty.

778 (f) Being convicted or found guilty of, or entering a plea
779 of guilty to, regardless of adjudication of guilt, any crime
780 involving moral turpitude.

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



248470

576-01909E-11

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

784 Section 6. Paragraph (b) of subsection (16) of section
785 1002.33, Florida Statutes, is amended to read:

786 1002.33 Charter schools.—

787 (16) EXEMPTION FROM STATUTES.—

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

790 1. Section 286.011, relating to public meetings and
791 records, public inspection, and criminal and civil penalties.

792 2. Chapter 119, relating to public records.

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

796 4. Section 1012.22(1)(c), relating to compensation and
797 salary schedules.

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

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

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

804 Section 7. Paragraph (h) of subsection (2) of section
805 1003.621, Florida Statutes, is amended to read:

806 1003.621 Academically high-performing school districts.—It
807 is the intent of the Legislature to recognize and reward school
808 districts that demonstrate the ability to consistently maintain
809 or improve their high-performing status. The purpose of this
810 section is to provide high-performing school districts with
811 flexibility in meeting the specific requirements in statute and



248470

576-01909E-11

812 rules of the State Board of Education.

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

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

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

829 1006.09 Duties of school principal relating to student
830 discipline and school safety.—

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



248470

576-01909E-11

841 Section 9. Section 1012.07, Florida Statutes, is amended to
842 read:

843 1012.07 Identification of critical teacher shortage areas.—

844 ~~(1) As used in ss. 1009.57, 1009.58, and 1009.59, The term~~
845 “critical teacher shortage area” means high-need content areas
846 ~~applies to mathematics, science, career education, and high-~~
847 priority high priority location areas identified by- the State
848 Board of Education ~~may identify career education programs having~~
849 ~~critical teacher shortages.~~ The State Board of Education shall
850 adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to
851 annually identify ~~other~~ critical teacher shortage areas ~~and high~~
852 ~~priority location areas.~~ The state board ~~must shall also~~
853 consider current and emerging educational requirements and
854 workforce demands ~~teacher characteristics such as ethnic~~
855 ~~background, race, and sex~~ in determining critical teacher
856 shortage areas. School grade levels may also be designated
857 critical teacher shortage areas. Individual district school
858 boards may identify and submit other critical teacher shortage
859 areas. Such submissions ~~shortages~~ must be aligned to current and
860 emerging educational requirements and workforce demands in order
861 to be certified to and approved by the State Board of Education.
862 High-priority High priority location areas shall be in high-
863 density, low-economic urban schools, ~~and~~ low-density, low-
864 economic rural schools, and schools identified as lowest
865 performing under s. 1008.33(4)(b) ~~shall include schools which~~
866 ~~meet criteria which include, but are not limited to, the~~
867 ~~percentage of free lunches, the percentage of students under~~
868 ~~Chapter I of the Education Consolidation and Improvement Act of~~
869 ~~1981, and the faculty attrition rate.~~



248470

576-01909E-11

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

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

874 1012.2315 Assignment of teachers.-

875 (5) REPORT.-

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

883 (b) Notwithstanding the provisions of s. 1012.31(3)(a)2.,
884 each school district shall annually report to the parent of any
885 student who is assigned to a classroom teacher or school
886 administrator having two consecutive annual performance
887 evaluation ratings of unsatisfactory under s. 1012.34, two
888 annual performance evaluation ratings of unsatisfactory within a
889 3-year period under s. 1012.34, or three consecutive annual
890 performance evaluation ratings of needs improvement or a
891 combination of needs improvement and unsatisfactory under s.
892 1012.34. Schools graded "D" or "F" shall annually report their
893 teacher-retention rate. Included in this report shall be reasons
894 listed for leaving by each teacher who left the school for any
895 reason.

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

898 1012.27 Public school personnel; powers and duties of



248470

576-01909E-11

899 district school superintendent.—The district school
900 superintendent is responsible for directing the work of the
901 personnel, subject to the requirements of this chapter, and in
902 addition the district school superintendent shall perform the
903 following:

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

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

909 (b) Recommend minimum qualifications of personnel for these
910 various positions, and nominate in writing persons to fill such
911 positions.

912
913 The district school superintendent's recommendations for filling
914 instructional positions at the school level must consider
915 nominations received from school principals of the respective
916 schools. Before transferring a teacher who holds a professional
917 teaching certificate from one school to another, the district
918 school superintendent shall consult with the principal of the
919 receiving school and allow the principal to review the teacher's
920 records, including student performance demonstrated under s.
921 1012.34, and interview the teacher. If, in the judgment of the
922 principal, students would not benefit from the placement, an
923 alternative placement may be sought. A principal may refuse the
924 placement in accordance with s. 1012.28(6).

925 (2) COMPENSATION AND SALARY SCHEDULES.—Prepare and
926 recommend to the district school board for adoption a salary
927 schedule or salary schedules in accordance with s. 1012.22. ~~The~~



248470

576-01909E-11

928 ~~district school superintendent must recommend a salary schedule~~
929 ~~for instructional personnel which bases a portion of each~~
930 ~~employee's compensation on performance demonstrated under s.~~
931 ~~1012.34. In developing the recommended salary schedule, the~~
932 ~~district school superintendent shall include input from parents,~~
933 ~~teachers, and representatives of the business community.~~
934 ~~Beginning with the 2007-2008 academic year, the recommended~~
935 ~~salary schedule for classroom teachers shall be consistent with~~
936 ~~the district's differentiated pay policy based upon s. 1012.22.~~

937 Section 12. Subsection (3) of section 1012.28, Florida
938 Statutes, is amended, present subsection (6) is renumbered and
939 amended, and a new subsection (6) is added to that section, to
940 read:

941 1012.28 Public school personnel; duties of school
942 principals.—

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

949 (6) A principal may refuse to accept the placement or
950 transfer of instructional personnel by the district school
951 superintendent to his or her school unless the instructional
952 personnel has a performance rating of effective or highly
953 effective under s. 1012.34.

954 (7) ~~(6)~~ A school principal who fails to comply with this
955 section shall be ineligible for any portion of the performance
956 pay ~~policy incentive~~ and differentiated pay under s. 1012.22.



248470

576-01909E-11

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

960 1012.33 Contracts with instructional staff, supervisors,
961 and school principals.—

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

982 (3) (a) Each district school board shall provide a
983 professional service contract as prescribed herein. Each member
984 of the instructional staff who completed the following
985 requirements prior to July 1, 1984, shall be entitled to and



248470

576-01909E-11

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

993 1. The member must hold a professional certificate as
994 prescribed by s. 1012.56 and rules of the State Board of
995 Education.

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

999 3. The member must have been recommended by the district
1000 school superintendent for such contract and reappointed by the
1001 district school board based on successful performance of duties
1002 and demonstration of professional competence.

1003 4. For any person newly employed as a member of the
1004 instructional staff after June 30, 1997, the initial annual
1005 contract shall include a 97-day probationary period during which
1006 time the employee's contract may be terminated without cause or
1007 the employee may resign without breach of contract.

1008 (b) The professional service contract shall be effective at
1009 the beginning of the school fiscal year following the completion
1010 of all requirements therefor.

1011 (c) The period of service provided herein may be extended
1012 to 4 years when prescribed by the district school board and
1013 agreed to in writing by the employee at the time of
1014 reappointment.



248470

576-01909E-11

1015 ~~(d) A district school board may issue a continuing contract~~
1016 ~~prior to July 1, 1984, and may issue a professional service~~
1017 ~~contract subsequent to July 1, 1984, to any employee who has~~
1018 ~~previously held a professional service contract or continuing~~
1019 ~~contract in the same or another district within this state. Any~~
1020 ~~employee who holds a continuing contract may, but is not~~
1021 ~~required to, exchange such continuing contract for a~~
1022 ~~professional service contract in the same district.~~

1023 ~~(d)(e)~~ A professional service contract shall be renewed
1024 each year unless:

1025 1. The district school superintendent, after receiving the
1026 recommendations required by s. 1012.34, charges the employee
1027 with unsatisfactory performance and notifies the employee of
1028 performance deficiencies as required by s. 1012.34; or

1029 2. The employee receives two consecutive annual performance
1030 evaluation ratings of unsatisfactory under s. 1012.34, two
1031 annual performance evaluation ratings of unsatisfactory within a
1032 3-year period under s. 1012.34, or three consecutive annual
1033 performance evaluation ratings of needs improvement or a
1034 combination of needs improvement and unsatisfactory under s.
1035 1012.34. An employee who holds a professional service contract
1036 on July 1, 1997, is subject to the procedures set forth in
1037 paragraph (f) during the term of the existing professional
1038 service contract. The employee is subject to the procedures set
1039 forth in s. 1012.34(3) (d) upon the next renewal of the
1040 professional service contract; however, if the employee is
1041 notified of performance deficiencies before the next contract
1042 renewal date, the procedures of s. 1012.34(3) (d) do not apply
1043 until the procedures set forth in paragraph (f) have been



248470

576-01909E-11

1044 ~~exhausted and the professional service contract is subsequently~~
1045 ~~renewed.~~

1046 ~~(f) The district school superintendent shall notify an~~
1047 ~~employee who holds a professional service contract on July 1,~~
1048 ~~1997, in writing, no later than 6 weeks prior to the end of the~~
1049 ~~postschool conference period, of performance deficiencies which~~
1050 ~~may result in termination of employment, if not corrected during~~
1051 ~~the subsequent year of employment (which shall be granted for an~~
1052 ~~additional year in accordance with the provisions in subsection~~
1053 ~~(1)). Except as otherwise hereinafter provided, this action~~
1054 ~~shall not be subject to the provisions of chapter 120, but the~~
1055 ~~following procedures shall apply:~~

1056 ~~1. On receiving notice of unsatisfactory performance, the~~
1057 ~~employee, on request, shall be accorded an opportunity to meet~~
1058 ~~with the district school superintendent, or his or her designee,~~
1059 ~~for an informal review of the determination of unsatisfactory~~
1060 ~~performance.~~

1061 ~~2. An employee notified of unsatisfactory performance may~~
1062 ~~request an opportunity to be considered for a transfer to~~
1063 ~~another appropriate position, with a different supervising~~
1064 ~~administrator, for the subsequent year of employment. If the~~
1065 ~~request for the transfer is granted, the district school~~
1066 ~~superintendent shall annually report to the department the total~~
1067 ~~number of employees transferred pursuant to this subparagraph,~~
1068 ~~where they were transferred, and what, if any, remediation was~~
1069 ~~implemented to remediate the unsatisfactory performance.~~

1070 ~~3. During the subsequent year, the employee shall be~~
1071 ~~provided assistance and inservice training opportunities to help~~
1072 ~~correct the noted performance deficiencies. The employee shall~~



248470

576-01909E-11

1073 ~~also be evaluated periodically so that he or she will be kept~~
1074 ~~apprised of progress achieved.~~

1075 ~~4. Not later than 6 weeks prior to the close of the~~
1076 ~~postschool conference period of the subsequent year, the~~
1077 ~~district school superintendent, after receiving and reviewing~~
1078 ~~the recommendation required by s. 1012.34, shall notify the~~
1079 ~~employee, in writing, whether the performance deficiencies have~~
1080 ~~been corrected. If so, a new professional service contract shall~~
1081 ~~be issued to the employee. If the performance deficiencies have~~
1082 ~~not been corrected, the district school superintendent may~~
1083 ~~notify the district school board and the employee, in writing,~~
1084 ~~that the employee shall not be issued a new professional service~~
1085 ~~contract; however, if the recommendation of the district school~~
1086 ~~superintendent is not to issue a new professional service~~
1087 ~~contract, and if the employee wishes to contest such~~
1088 ~~recommendation, the employee will have 15 days from receipt of~~
1089 ~~the district school superintendent's recommendation to demand,~~
1090 ~~in writing, a hearing. In such hearing, the employee may raise~~
1091 ~~as an issue, among other things, the sufficiency of the district~~
1092 ~~school superintendent's charges of unsatisfactory performance.~~
1093 ~~Such hearing shall be conducted at the district school board's~~
1094 ~~election in accordance with one of the following procedures:~~

1095 ~~a. A direct hearing conducted by the district school board~~
1096 ~~within 60 days of receipt of the written appeal. The hearing~~
1097 ~~shall be conducted in accordance with the provisions of ss.~~
1098 ~~120.569 and 120.57. A majority vote of the membership of the~~
1099 ~~district school board shall be required to sustain the district~~
1100 ~~school superintendent's recommendation. The determination of the~~
1101 ~~district school board shall be final as to the sufficiency or~~



248470

576-01909E-11

1102 ~~insufficiency of the grounds for termination of employment; or~~

1103 ~~b. A hearing conducted by an administrative law judge~~
1104 ~~assigned by the Division of Administrative Hearings of the~~
1105 ~~Department of Management Services. The hearing shall be~~
1106 ~~conducted within 60 days of receipt of the written appeal in~~
1107 ~~accordance with chapter 120. The recommendation of the~~
1108 ~~administrative law judge shall be made to the district school~~
1109 ~~board. A majority vote of the membership of the district school~~
1110 ~~board shall be required to sustain or change the administrative~~
1111 ~~law judge's recommendation. The determination of the district~~
1112 ~~school board shall be final as to the sufficiency or~~
1113 ~~insufficiency of the grounds for termination of employment.~~

1114 ~~(g) Beginning July 1, 2001, for each employee who enters~~
1115 ~~into a written contract, pursuant to this section, in a school~~
1116 ~~district in which the employee was not employed as of June 30,~~
1117 ~~2001, or was employed as of June 30, 2001, but has since broken~~
1118 ~~employment with that district for 1 school year or more, for~~
1119 ~~purposes of pay, a district school board must recognize and~~
1120 ~~accept each year of full-time public school teaching service~~
1121 ~~earned in the State of Florida for which the employee received a~~
1122 ~~satisfactory performance evaluation; however, an employee may~~
1123 ~~voluntarily waive this provision. Instructional personnel~~
1124 ~~employed pursuant to s. 121.091(9)(b) and (c) are exempt from~~
1125 ~~the provisions of this paragraph.~~

1126 ~~(5) If workforce reduction is needed, a district school~~
1127 ~~board must retain employees at a school or in the school~~
1128 ~~district based upon educational program needs and the~~
1129 ~~performance evaluations of employees within the affected program~~
1130 ~~areas. Within the program areas requiring reduction, the~~



248470

576-01909E-11

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

1144 Section 14. Section 1012.52, Florida Statutes, is repealed.

1145 Section 15. Paragraph (h) of subsection (1) of section
1146 1012.795, Florida Statutes, is amended to read:

1147 1012.795 Education Practices Commission; authority to
1148 discipline.-

1149 (1) The Education Practices Commission may suspend the
1150 educator certificate of any person as defined in s. 1012.01(2)
1151 or (3) for up to 5 years, thereby denying that person the right
1152 to teach or otherwise be employed by a district school board or
1153 public school in any capacity requiring direct contact with
1154 students for that period of time, after which the holder may
1155 return to teaching as provided in subsection (4); may revoke the
1156 educator certificate of any person, thereby denying that person
1157 the right to teach or otherwise be employed by a district school
1158 board or public school in any capacity requiring direct contact
1159 with students for up to 10 years, with reinstatement subject to



248470

576-01909E-11

1160 the provisions of subsection (4); may revoke permanently the
1161 educator certificate of any person thereby denying that person
1162 the right to teach or otherwise be employed by a district school
1163 board or public school in any capacity requiring direct contact
1164 with students; may suspend the educator certificate, upon an
1165 order of the court or notice by the Department of Revenue
1166 relating to the payment of child support; or may impose any
1167 other penalty provided by law, if the person:

1168 (h) Has breached a contract, as provided in s. 1012.33(2)
1169 or s. 1012.335.

1170 Section 16. (1) Notwithstanding any other provision of this
1171 act, a school district that received an exemption under
1172 Florida's Race to the Top Memorandum of Understanding for Phase
1173 2, as provided in section (D) (2) (ii) of the memorandum, is
1174 allowed to base 40 percent, instead of 50 percent, of
1175 instructional personnel and school administrator performance
1176 evaluations upon student learning growth under s. 1012.34,
1177 Florida Statutes, as amended by this act. The school district is
1178 also exempt from the amendments to s. 1012.22(1)(c), Florida
1179 Statutes, made by this act. The exemptions described in this
1180 subsection are effective for the 2011-2012 school year and are
1181 effective for each school year thereafter if the school district
1182 receives annual approval by the State Board of Education.

1183 (2) The State Board of Education shall base its approval
1184 upon demonstration by the school district of the following:

1185 (a) The instructional personnel and school administrator
1186 evaluation systems base at least 40 percent of an employee's
1187 performance evaluation upon student performance and that student
1188 performance is the single greatest component of an employee's



248470

576-01909E-11

1189 evaluation.

1190 (b) The instructional personnel and school administrator
1191 evaluation systems adopt the Commissioner of Education's student
1192 learning growth formula for statewide assessments as provided
1193 under s. 1012.34(7), Florida Statutes.

1194 (c) The school district's instructional personnel and
1195 school administrator compensation system awards salary increases
1196 based upon sustained student performance.

1197 (d) The school district's contract system awards
1198 instructional personnel and school administrators based upon
1199 student performance and removes ineffective employees.

1200 (e) Beginning with the 2014-2015 school year and each
1201 school year thereafter, student learning growth based upon
1202 performance on statewide assessments under s. 1008.22, Florida
1203 Statutes, must have significantly improved compared to student
1204 learning growth in the district in 2011-2012 and significantly
1205 improved compared to other school districts.

1206 (3) The State Board of Education shall annually renew a
1207 school district's exemptions if the school district demonstrates
1208 that it meets the requirements of subsection (2). If the
1209 exemptions are not renewed, the school district must comply with
1210 the requirements and laws described in subsection (1) by the
1211 beginning of the next school year immediately following the loss
1212 of the exemptions.

1213 (4) The State Board of Education shall adopt rules pursuant
1214 to ss. 120.536(1) and 120.54, Florida Statutes, to establish the
1215 procedures for applying for the exemptions and the criteria for
1216 renewing the exemptions.

1217



248470

576-01909E-11

1218 This section shall be repealed August 1, 2017, unless reviewed
1219 and reenacted by the Legislature.

1220 Section 17. Chapter 2010-279, Laws of Florida, does not
1221 apply to any rulemaking required to administer this act.

1222 Section 18. The provisions of any special act or general
1223 law of local application relating to contracts for instructional
1224 personnel or school administrators in public schools or school
1225 districts in effect on or before the effective date of this act
1226 are repealed.

1227 Section 19. The amendments made by this act to s. 1012.33,
1228 Florida Statutes, apply to contracts newly entered into,
1229 extended, or readopted on or after July 1, 2011, and to all
1230 contracts entered into on or after July 1, 2014.

1231 Section 20. If any provision of this act or its application
1232 to any person or circumstance is held invalid, the invalidity
1233 does not affect other provisions or applications of the act
1234 which can be given effect without the invalid provision or
1235 application, and to this end the provisions of this act are
1236 severable.

1237 Section 21. Except as otherwise expressly provided in this
1238 act and except for this section, which shall take effect upon
1239 this act becoming a law, this act shall take effect July 1,
1240 2011.



786012

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Montford) recommended the following:

Senate Amendment

Delete lines 719 - 743

and insert:

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

(2) EMPLOYMENT-



786012

14 (a) Beginning on July 1, 1011, each individual newly hired
15 as instructional personnel by a Florida school district shall
16 receive a probationary contract.

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

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

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

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

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

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

41 b. Has been recommended by the district school
42 superintendent for further employment and approved by the



786012

43 district school board based on successful performance of duties
44 and demonstration of professional competence under s. 1012.34.

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

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

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



561138

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget (Montford) recommended the following:

Senate Amendment

Delete lines 1170 - 2226
and insert:

Section 16. (1) Any school district that receives a grant of at least \$75 million from a private foundation for the purpose of improving the effectiveness of teachers within the school district may seek an annual exemption from the State Board of Education from the requirements of the amendments made by this act to ss. 1012.22 and 1012.34, Florida Statutes.

(2) In order to receive approval from the State Board of Education for an exemption under this section, a school district must demonstrate to the State Board of Education that it is



561138

14 implementing the following:

15 (a) A teacher evaluation system that uses student
16 performance as the single greatest component of the teacher's
17 evaluation.

18 (b) A teacher compensation system that awards salary
19 increases based on sustained student performance.

20 (c) A teacher contract system that awards contracts based
21 on student performance.

22 (3) The State Board of Education shall annually renew a
23 school district's exemption if the school district provides a
24 progress report that demonstrates that the school district
25 continues to meet the requirements of subsection (2).

26 (4) The State Board of Education shall adopt rules pursuant
27 to ss. 120.536(1) and 120.54, Florida Statutes, to establish the
28 procedures for applying for an exemption under this section.

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

31 Section 18. The provisions of any special act or general
32 law of local application relating to contracts for instructional
33 personnel in public schools or school districts in effect on or
34 before the effective date of this act are repealed with the
35 exception of chapter 75-384, Laws of Florida.



666320

LEGISLATIVE ACTION

Senate

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House

The Committee on Budget (Simmons) recommended the following:

Senate Amendment

Delete lines 567 - 571

and insert:

3. Advanced degree.—A district school board may not use advanced degrees in setting a salary schedule for instructional personnel or school administrators hired on or after July 1, 2011, unless the salary schedule provides that it is only a salary supplement and the advanced degree:

a. Is held in the individual's area of certification;

b. Is in an area that is substantially similar to the individual's area of certification; or

c. Is in the area of exceptional student education.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1012

INTRODUCER: Budget Subcommittee on Criminal & Civil Justice Appropriations

SUBJECT: State Attorneys Revenue Trust Fund/Justice Administrative Commission

DATE: February 11, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the State Attorneys Revenue Trust Fund within the Justice Administrative Commission without modification, and repeals the provisions that would have terminated the trust fund. This bill repeals s. 27.367(2), Florida Statutes. The bill would become effective July 1, 2011.

II. Present Situation:

Currently, the State Attorneys Revenue Trust Fund within the Justice Administrative Commission is scheduled to be terminated on July 1, 2012. Article III, Section 19(f) of the Florida Constitution requires the termination of all state trust funds within four years of their initial creation, unless exempt by the Constitution or operation of law. Funds credited to this trust fund consist of fees paid through traffic fines and from fees associated with the cost of prosecution assessed on persons found guilty of criminal violations. For the current year, the legislature has appropriated \$33.2 million from this trust fund.

III. Effect of Proposed Changes:

This bill re-creates the trust fund without modification.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1014

INTRODUCER: Budget Subcommittee on Criminal & Civil Justice Appropriations

SUBJECT: Public Defenders Revenue Trust Fund/Justice Administrative Commission

DATE: February 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Public Defenders Revenue Trust Fund within the Justice Administrative Commission without modification, and repeals the provisions that would have terminated the trust fund. This bill repeals s. 27.61(2), Florida Statutes. The bill would become effective July 1, 2011.

II. Present Situation:

Currently, the Public Defenders Revenue Trust Fund within the Justice Administrative Commission is scheduled to be terminated on July 1, 2012. Article III, Section 19(f) of the Florida Constitution requires the termination of all state trust funds within four years of their initial creation, unless exempt by the Constitution or operation of law. Funds credited to this trust fund consist of fees from traffic tickets and from cost of defense judgments for persons receiving the services of a public defender. For the current year, the legislature has appropriated \$4.8 million from this trust fund.

III. Effect of Proposed Changes:

This bill re-creates the trust fund without modification.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1016

INTRODUCER: Budget Subcommittee on Criminal & Civil Justice Appropriations

SUBJECT: Indigent Civil Defense Trust Fund/Justice Administrative Commission

DATE: February 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Indigent Civil Defense Trust Fund within the Justice Administrative Commission without modification, and repeals the provisions that would have terminated the trust fund. This bill repeals s. 27.5111(2), Florida Statutes. The bill would become effective July 1, 2011.

II. Present Situation:

Currently, the Indigent Civil Defense Trust Fund within the Justice Administrative Commission is scheduled to be terminated on July 1, 2012. Article III, Section 19(f) of the Florida Constitution requires the termination of all state trust funds within four years of their initial creation, unless exempt by the Constitution or operation of law. Funds credited to this trust fund consist of fees paid for services provided by the regional conflict counsel for representation of indigent parents in dependency proceedings. For the current year, the legislature has appropriated \$871,975 from this trust fund.

III. Effect of Proposed Changes:

This bill re-creates the trust fund without modification.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1018

INTRODUCER: Budget Subcommittee on Criminal & Civil Justice Appropriations

SUBJECT: State Courts Revenue Trust Fund/State Courts System

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the State Courts Revenue Trust Fund within the State Courts System without modification, and repeals the provisions that would have terminated the trust fund. This bill repeals s. 29.22(2), Florida Statutes. The bill would become effective July 1, 2011.

II. Present Situation:

Currently, the State Courts Revenue Trust Fund within the State Courts System is scheduled to be terminated on July 1, 2012. Article III, Section 19(f) of the Florida Constitution requires the termination of all state trust funds within four years of their initial creation, unless exempt by the Constitution or operation of law. Funds credited to this trust fund consist of court filing fees are used to support the operations of the state court system. For the current year, the legislature has appropriated \$370 million from this trust fund.

III. Effect of Proposed Changes:

This bill re-creates the trust fund without modification.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1020

INTRODUCER: Budget Subcommittee on Criminal & Civil Justice Appropriations

SUBJECT: Federal Grants Trust Fund/Department of Legal Affairs

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sneed	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Federal Grants Trust Fund within the Department of Legal Affairs without modification, and repeals the provisions that would have terminated the trust fund. This bill repeals s. 20.112(3), Florida Statutes. The bill would become effective July 1, 2011.

II. Present Situation:

Currently, the Federal Grants Trust Fund within the Department of Legal Affairs is scheduled to be terminated on July 1, 2012. Article III, Section 19(f) of the Florida Constitution requires the termination of all state trust funds within four years of their initial creation, unless exempt by the Constitution or operation of law. This trust fund was created for use as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources. Funds credited to this trust fund consist of grants and funding from the federal government, and cash advances from other trust funds. For the current year, the legislature has appropriated \$52.6 million from this trust fund.

III. Effect of Proposed Changes:

This bill re-creates the trust fund without modification.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1022

INTRODUCER: Budget Subcommittee on Criminal & Civil Justice Appropriations

SUBJECT: Operating Trust Fund/Department of Legal Affairs

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sneed	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Operating Trust Fund within the Department of Legal Affairs without modification, and repeals the provisions that would have terminated the trust fund. This bill repeals s. 20.111(3), Florida Statutes. The bill would become effective July 1, 2011.

II. Present Situation:

Currently, the Operating Trust Fund within the Department of Legal Affairs is scheduled to be terminated on July 1, 2012. Article III, Section 19(f) of the Florida Constitution requires the termination of all state trust funds within four years of their initial creation, unless exempt by the Constitution or operation of law. This trust fund was created for use as a depository for funds to be used for program operations funded by program revenues. Trust fund receipts primarily consist of fines, forfeitures, and judgments in actions involving violations of state laws. The funds are used to support the program activities of the Office of Statewide Prosecution and the Medicaid Fraud Control Unit. For the current year, the legislature has appropriated \$5.7 million from this trust fund.

III. Effect of Proposed Changes:

This bill re-creates the trust fund without modification.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1024

INTRODUCER: Budget Subcommittee on Criminal & Civil Justice Appropriations

SUBJECT: Federal Grants Trust Fund/Department of Juvenile Justice

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sadberry	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Federal Grants Trust Fund within the Department of Juvenile Justice without modification, and repeals the provisions that would have terminated the trust fund. This bill amends s. 20.3161, Florida Statutes. The bill would become effective July 1, 2011.

II. Present Situation:

Article III, Section 19(f) of the Florida Constitution requires the termination of all state trust funds within four years of their initial creation, unless exempt by the Constitution or operation of law. The Federal Grants Trust Fund within the Department of Juvenile Justice will terminate on July 1, 2012.

The Federal Grants Trust Fund was created to allow the Department of Juvenile Justice to receive federal grants and other grants awarded for specifically identified purposes. Funds that are credited to the trust fund shall consist of grants and funding from the Federal Government, interest earnings, and cash advances from other trusts funds.

III. Effect of Proposed Changes:

This bill re-creates the trust fund without modification.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local government as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1026

INTRODUCER: Budget Subcommittee on Education Pre-K-12 Appropriations

SUBJECT: Operating Trust Fund/Department of Education

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hamon	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Operating Trust Fund, FLAIR number 48-2-510, within the Department of Education.

This bill repeals the following subsection of the Florida Statutes: 1001.281 (4).

II. Present Situation:

In accordance with Section 19(f)(2), Article III of the State Constitution, the Operating Trust Fund shall, unless terminated sooner, be terminated on July 1, 2012. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206 (1) and (2), Florida Statutes.

The Operating Trust Fund is used as a depository for funds to be used for program operations funded by program revenues. Moneys to be credited to the trust fund include, but are not limited to, revenues received from fees for General Equivalency Diploma (GED) testing and the leasing of available time for the state's satellite transponder resources. The revenue for this fund for the 2010-11 fiscal year is \$1,538,201.

III. Effect of Proposed Changes:

The effect of this bill is to re-create the Operating Trust Fund effective July 1, 2011, based on a review as required in Section 215.3206 (1) and (2), Florida Statutes, to be used as provided in Section 1001.281, Florida Statutes.

Other Potential Implications:**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:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1028

INTRODUCER: Budget Subcommittee on Education Pre-K-12 Appropriations

SUBJECT: Administrative Trust Fund/Department of Education

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hamon	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Administrative Trust Fund, FLAIR number 48-2-021, within the Department of Education.

This bill repeals the following subsection of the Florida Statutes: 1001.282 (4).

II. Present Situation:

In accordance with Section 19(f)(2), Article III of the State Constitution, the Administrative Trust Fund shall, unless terminated sooner, be terminated on July 1, 2012. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206 (1) and (2), Florida Statutes.

The Administrative Trust Fund is used as a depository for funds to be used for management activities that are department-wide in nature and funded by indirect cost earnings or assessments against trust funds. Moneys to be credited to the trust fund include indirect cost reimbursements from grantors, administrative assessments against trust funds, interest earnings, and other appropriate administrative fees. The revenue for the 2010-2011 fiscal year for this fund is \$10,912,479.

III. Effect of Proposed Changes:

The effect of this bill is to re-create the Administrative Trust Fund effective July 1, 2011, based on a review as required in Section 215.3206 (1) and (2), Florida Statutes, to be used as provided in Section 1001.282, Florida Statutes.

Other Potential Implications:**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:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1030

INTRODUCER: Budget Subcommittee on General Government Appropriations

SUBJECT: Trust Fund/Department of Financial Services

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Frederick	Meyer, C.	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Section 215.3206, Florida Statutes, requires a legislative review of each of the trust funds in an agency subject to the four year review cycle. This bill provides for termination of the State Treasury Escrow Trust Fund and the Employee Refund Clearing Trust Fund within the Department of Financial Services.

This bill takes effect on July 1, 2011.

This bill does not substantially amend, create, or repeal any of the Florida Statutes.

II. Present Situation:

Review of trust funds is required by s. 215.3208, F.S., and s. 19(f), Art.III of the State Constitution. The Legislature, through the legislative budget instructions, has placed agencies on a review cycle to facilitate the review and recreation of trust funds. An analysis of the trust funds under the jurisdiction of the General Government Appropriations Subcommittee resulted in the following findings.

The State Treasury Escrow Trust Fund, FLAIR number 43-2-194, was historically used to hold escrow monies related to the transactions of state agencies. The trust fund provided accounts for assets held by the state in a trustee capacity as agent or fiduciary, thereby eliminating the need for costly private escrow accounts. The department has not used this trust fund in recent years. Currently, the Treasury Cash Deposit Trust Fund is being utilized to provide this service.

The Employee Refund Clearing Trust Fund, FLAIR number 43-2-194, was originally used as a clearing account for the deposit of salary overpayment refunds received from state employees until these funds could be transferred back to the fund of its original disbursement. The need for the Employee Refund Clearing Trust Fund was eliminated more than ten years ago as a result of the implementation of new processes for salary refunds. State agencies currently utilize the Bureau of State Payrolls on-line system for processing salary refunds.

The State Treasury Escrow Trust Fund and the Employee Clearing Trust Fund are currently inactive, and the department has requested termination of these trust funds.

III. Effect of Proposed Changes:

This bill terminates the State Treasury Escrow Trust Fund, FLAIR number 43-2-622, and the Employee Refund Clearing Trust Fund, FLAIR number 43-2-194, within the Department of Financial Services, which are obsolete.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The termination of the State Treasury Escrow Trust Fund and the Employee Refund Clearing Trust Fund will not affect state operations. By eliminating obsolete trust funds, these changes will provide more consistency across state agencies and improve compliance with the Governmental Accounting Standards Board Statement 34.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1032

INTRODUCER: Budget Subcommittee on General Government Appropriations

SUBJECT: Federal Grants Trust Fund/Department of Environmental Protection

DATE: February 14, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pigott	Meyer, C.	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill re-creates the Federal Grants Trust Fund, FLAIR number 37-2-261, within the Department of Environmental Protection without modification. The trust fund serves as a repository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources. The re-creation of this fund is effective beginning July 1, 2011.

This bill repeals section 20.25501(3), Florida Statutes.

II. Present Situation:

Section 19(f)(2), Article III of the State Constitution requires the termination of all state trust funds no later than four years after their initial creation unless re-created or exempted from termination by the State Constitution or operation of law. Section 20.25501, F.S., creates the Federal Grants Trust Fund within the Department of Environmental Protection. The revenue sources for this trust fund are grants and funding from the federal government, interest earnings, and cash advances from other trust funds.

The Federal Grants Trust Fund will terminate on July 1, 2012, if no action is taken by the legislature to re-create the fund. Re-creation requires a three-fifths vote of the membership of each house of the legislature.

III. Effect of Proposed Changes:

The bill re-creates the Federal Grants Trust Fund within the Department of Environmental Protection without modification, effective July 1, 2011.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Pursuant to s. 19(f)(1), Article III of the Florida Constitution, re-creation of the Federal Grants Trust Fund must pass by a three-fifths vote of the membership of each house of the Legislature.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1034

INTRODUCER: Budget Subcommittee on General Government Appropriations

SUBJECT: Federal Grants Trust Fund/Department of Revenue

DATE: February 14, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Blizzard	Meyer, C.	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Federal Grants Trust Fund, FLAIR number 73-2-261, within the Department of Revenue without modification. The trust fund was established to be used for allowable grant activities funded by restricted program revenues. Funds credited to the Federal Grants Trust Fund consist of grants and funding from the federal government, interest earnings, and cash advances from other trust funds. The re-creation of this fund is effective beginning July 1, 2011.

This bill repeals section 215.197(3), Florida Statutes.

II. Present Situation:

Section 19(f), Art. III of the State Constitution requires the termination of all state trust funds no later than four years after their initial creation unless re-created or exempted from termination by the State Constitution or operation of law. Section 215.197, F.S., creates the Federal Grants Trust Fund within the Department of Revenue. The Federal Grants Trust Fund serves as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources. Funds credited to the Federal Grants Trust Fund consist of grants and funding from the federal government, interest earnings, and cash advances from other trust funds.

The Federal Grants Trust Fund will terminate on July 1, 2012, if no action is taken by the legislature to re-create the fund. Re-creation requires a three-fifths vote of the membership of each house of the legislature.

III. Effect of Proposed Changes:

This bill re-creates the Federal Grants Trust Fund within the Department of Revenue without modification prior to the scheduled termination date of July 1, 2012.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Pursuant to s. 19(f)(1), Article III of the Florida Constitution, re-creation of the Federal Grants Trust Fund must pass by a three-fifths vote of the membership of each house of the Legislature.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole, or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1036

INTRODUCER: Budget Subcommittee on General Government Appropriations

SUBJECT: Operations Trust Fund/Department of Revenue

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Blizzard	Meyer, C.	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates and renames the Operations Trust Fund, FLAIR number 73-2-510, within the Department of Revenue. The Operations Trust Fund is renamed the Operating Trust Fund. This trust fund serves as a depository for funds to be used for program operations funded by program revenues. The re-creation and renaming of this fund is effective beginning July 1, 2011.

This bill repeals section 215.198, Florida Statutes.

II. Present Situation:

Section 19(f), Art. III of the State Constitution requires the termination of all state trust funds no later than four years after their initial creation unless re-created or exempted from termination by the State Constitution or operation of law. Section 215.198, F.S., creates the Operations Trust Fund within the Department of Revenue. The Operations Trust Fund serves as a depository for funds to be used for program operations funded by program revenues.

The Operations Trust Fund will terminate on July 1, 2012, if no action is taken by the legislature to re-create. Re-creation requires a three-fifths vote of the membership of each house of the legislature.

III. Effect of Proposed Changes:

The Operations Trust Fund within the Department of Revenue will be re-created and renamed the Operating Trust Fund prior to the scheduled termination date of July 1, 2012. This bill re-

creates and renames the trust fund to reflect the fund name in the legislative budgeting system. The purpose of the fund is not modified.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Pursuant to s. 19(f), Article III of the Florida Constitution, re-creation of the Operations Trust Fund must pass by a three-fifths vote of the membership of each house of the Legislature.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates and renames an existing state trust fund and continues the current use of the fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1038

INTRODUCER: Budget Subcommittee on General Government Appropriations

SUBJECT: Federal Grants Trust Fund/Department of Financial Services

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Frederick	Meyer, C.	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the Federal Grants Trust Fund within the Department of Financial Services, effective July 1, 2011. This trust fund is established to be used for allowable grant activities funded by restricted program revenues. Funds that will be credited to the Federal Grants Trust Fund will consist of grants and funding from the federal government, interest earnings, and cash advances from other trust funds.

This bill creates section 17.67, Florida Statutes.

II. Present Situation:

Section 19(f), Art. III of the State Constitution requires that every trust fund be created by a three-fifths vote of the membership in each house of the legislature in a separate bill for the sole purpose of creating that trust fund. The constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless re-created.

In order to meet accounting standards established by the Government Accounting Standards Board, s. 215.32, F.S., requires that agencies have trust funds for day-to-day operations. One of the required trust funds is a federal grants trust fund. The department currently does not have a federal grants trust fund. Currently, federal funds are deposited into the Administrative Trust Fund. The creation of this trust fund complies with s. 215.32, F.S.

III. Effect of Proposed Changes:

The creation of this trust fund will allow the department to separately account for funds from grants and funding from the federal government, interest earnings, and cash advances from other trust funds. The department will use this trust fund as a repository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources.

The creation of this trust fund will align agency account with the requirements of s. 215.32, F.S.

The trust fund will terminate in four years, on July 1, 2015, pursuant to s. 19(f)(2), Art. III of the State Constitution, unless terminated sooner or re-created by the Legislature.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

This bill, creating a new trust fund, must pass by a three-fifths vote of the membership of each house of the legislature to become law pursuant to s. 19(f)(2), Art. III of the State Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:**C. Government Sector Impact:**

Creation of the Federal Grants Trust Fund within the department will allow for improved segregation of funds and accounting records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1040

INTRODUCER: Budget Subcommittee on General Government Appropriations

SUBJECT: Florida Drug, Device, and Cosmetic Trust Fund/Department of Business and Professional Regulation

DATE: February 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Frederick	Meyer, C.	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the Florida Drug, Device, and Cosmetic Trust Fund within the Department of Business and Professional Regulation. This trust fund is established to be used for activities relating to the regulation and administration of the Florida Drug and Cosmetic Act as authorized by section 499.002, F.S. Funds to be credited to the Florida Drug, Device, and Cosmetic Trust Fund will consist of funds collected for licenses, fees, interest earnings, and permits.

This bill substantially amends section 455.116, Florida Statutes.

This bill creates section 499.0031, Florida Statutes.

II. Present Situation:

Section 19 (f), Art.III of the State Constitution requires that every trust fund be created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless re-created.

Chapter 499, F.S., known as the Florida Drug and Cosmetic Act, was enacted in 1982. Section 499.057, F.S., authorized the creation of the Florida Drug, Device, and Cosmetic Trust Fund. Section 499.79, F.S., provided that all fees collected for licenses and permits required under the act be deposited into the trust fund for administration of the act. Since 2006, the Division of Medical Quality Assurance within the Department of Health has been responsible for administering the provisions of the act.

Section 27 of ch. 210-161, L.O.F., transferred the administration of ch. 499, F.S., from the Department of Health to the Department of Business and Professional Regulation, effective October 1, 2011.

III. Effect of Proposed Changes:

This bill creates the Florida Drug, Device, and Cosmetic Trust Fund within the Department of Business and Professional Regulation. This trust fund is established to be used for activities relating to the regulation and administration of the Florida Drug and Cosmetic Act as authorized by section 499.002, F.S. Funds to be credited to the Florida Drug, Device, and Cosmetic Trust Fund will consist of funds collected for licenses, fees, interest earnings, and permits.

The trust fund will terminate in four years, on July 1, 2015, pursuant to s. 19 (f)(2), Art. III of the State Constitution, unless terminated sooner or re-created by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

This bill, creating a new trust fund, must pass by a three-fifths vote of the membership of each house of the legislature to become law pursuant to s. 19(f)(2), Art. III of the State Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Creation of the Florida Drug, Device, and Cosmetic Trust Fund within the department will allow the department to administer funds to be used for activities relating to the regulation and administration of the Florida Drug and Cosmetic Act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1042

INTRODUCER: Budget Subcommittee on Transportation, Tourism, and Economic Development

SUBJECT: Federal Grants Trust Fund/Highway Safety and Motor Vehicles

DATE: February 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carey	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-creates the Federal Grants Trust Fund, FLAIR number 76-2-261, within the Department of Highway Safety and Motor Vehicles. This trust fund serves as a repository of grants and funding from the Federal Government, interest earnings, and cash advances from other trust funds. Re-creation is effective beginning July 1, 2011 prior to the scheduled termination date of July 1, 2012.

This bill repeals the section 20.241(3) of the Florida Statutes.

II. Present Situation:

Article III, section 19(f) of the Florida Constitution requires the termination of all state trust funds no later than four years after their initial creation unless re-created or exempted from termination by the Florida Constitution or operation of law. Section 20.241, F.S., creates the Federal Grants Trust Fund within the Department of Highway Safety and Motor Vehicles. The Federal Grants Trust Fund serves as a repository of grants and funding from the Federal Government, interest earnings, and cash advances from other trust funds.

The Federal Grants Trust Fund will terminate on July 1, 2012, if no action is taken by the legislature to re-create. Re-creation requires a three-fifths vote of the membership of each house of the legislature.

III. Effect of Proposed Changes:

The Federal Grants Trust Fund within the Department of Highway Safety and Motor Vehicles will be re-created prior to the scheduled termination date of July 1, 2012. This bill re-creates the trust fund without modification.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Pursuant to s. 19(f), Article III of the Florida Constitution, re-creation of the Federal Grants Trust must pass by a three-fifths vote of the membership of each house of the legislature.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no fiscal impact

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1044

INTRODUCER: Budget Subcommittee on Transportation, Tourism, and Economic Development
Appropriations

SUBJECT: Internal Registration Clearing Trust Fund/Highway Safety and Motor Vehicles

DATE: February 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carey	Meyer	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill terminates the International Registration Clearing Trust Fund, FLAIR number 76-2-410 within the Department of Highway Safety and Motor Vehicles effective July 1, 2011. Remaining balances in, and all revenues of, the trust fund shall be transferred to the General Revenue Fund.

This bill repeals chapter 2004-235, section 2(4)(a), Laws of Florida.

II. Present Situation:

The International Registration Clearing Trust Fund within the Department of Highway Safety and Motor Vehicles is exempt from termination pursuant to Article III, Section 19(f)(3) of the Florida Constitution. The Department of Highway Safety and Motor Vehicles currently deposits revenue from vehicle registration fees in the Motor Vehicle License Clearing Trust and recommends the termination of the International Registration Clearing Trust Fund.

III. Effect of Proposed Changes:

The International Registration Clearing Trust Fund within the Department of Highway Safety and Motor Vehicles will be terminated effective July 1, 2011. Any remaining balances in, and all revenues of, the trust fund shall be transferred to the General Revenue Fund.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There will be no fiscal impact resulting from the termination of the International Registration Clearing Trust Fund. There is no fund balance and apportioned vehicle registration fees are currently deposited in the Motor Vehicle License Clearing Trust Fund for distribution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:


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

None.

B. Amendments:

None.

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



Creating Jobs by Matching the Strengths
of Florida's Universities with the Needs
of an Innovation Economy

New Florida Initiative

STATE UNIVERSITY SYSTEM of FLORIDA

Building Florida's Knowledge Economy



- ***Focusing SUS Resources on Florida's Economic Transformation***
 - Double degree granting capacity
 - Utilize SUS teaching & research strengths
 - Build a workforce pipeline through applied research programs
 - Build entrepreneurial environment through incubation



STATE UNIVERSITY SYSTEM of FLORIDA
Board of Governors

The New Florida Initiative: Address Critical State Needs

- ***Doubling Capacity***
 - Develop a pool of graduates with degrees needed for regional and statewide development
 - Science, Technology, Engineering and Math (STEM)
 - Health & Life Sciences, Education, Business and More
- ***Capital Improvements***
 - Enhance labs, classrooms and office space
- ***Attracting & Retaining***
 - World-class faculty
 - Top students



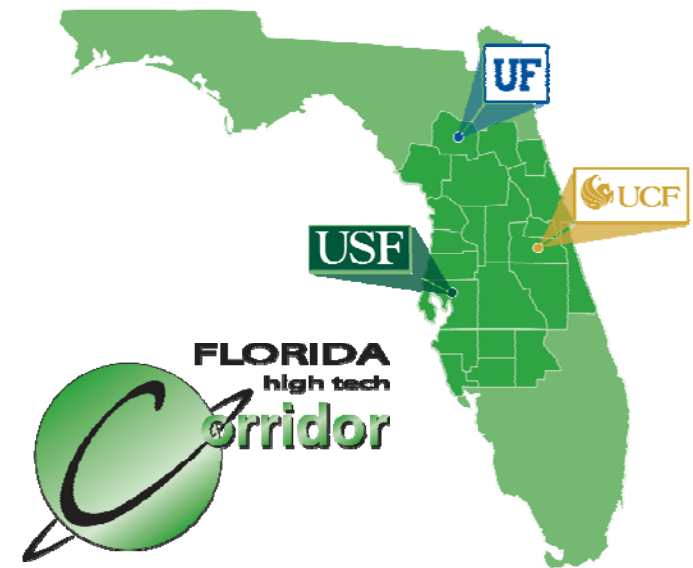
The New Florida Initiative: Leverage University Strengths

- ***Advance Cluster Development***
 - Create a strategic research agenda built on the strengths of each institution
 - Encourage collaboration among SUS Centers of Excellence
- ***Create a Statewide Matching Grants Research Program***
 - Modeled after Florida High Tech Corridor Council's program
 - Engage SUS faculty and industry partners in applied research
 - FHTCC MGRP Results Since 1996:
 - 1,150 projects
 - 330 companies, 2,200 students and 275 professors
 - Contributed to 127 patents



Creating a New Florida Economy: Downstream Impact from FHTCC's Program

- **\$54 Million** in FHTCC Funds
- **\$880 Million** in Company Match and Downstream Value to Companies and Universities
- **\$34 Million** in State and Local Tax Receipts
- **\$1.3 Billion** in Combined Economic Impact
- **3,200+ Jobs**



Creating a New Florida Economy: Matching Grants Research Program

Program Funding Model:

- *Up to \$50 million recurring per year for statewide university-based Matching Grants Research Program*
- *Utilize experienced FHTCC team to share program with remaining universities as a template to creating Matching Grant Research Programs*



Creating a New Florida Economy: Matching Grants Research Program

Implementation and Outcomes:

- ***Competitive Program***
 - Technology sectors match university research strengths
 - Require 2:1 match from industry partner
- ***Job Creation Estimate:***
 - Conservative modeling demonstrates the potential for 3,000 jobs per year
 - Five-year potential of **15,000+ jobs**



Creating a New Florida Economy: University-based Incubation Programs

Fostering Start-Up Business Growth:

- Accelerates the successful development and increases the success of entrepreneurial companies
- Utilizes targeted business support resources and services
- Develops and recruits talent and opportunities for SUS graduates
- Enables a robust innovation-based economy from research to innovation to commercial success



Creating a New Florida Economy: University-based Incubation Programs

Business Incubation Works!

- ***Increase Chances of Success***
 - 87% of incubator graduates still in business after 5 years
- ***Home-Grown Companies***
 - 84% of graduates stay in the community (NBIA survey)
- ***Good Investment of Public Funds***
 - Generates more tax revenue than it costs
 - Technology incubators lead to cluster creation
- ***Florida Ranked 47th in Number of Incubators per 10,000 Business Establishments (Milken Institute Report)***



Creating a New Florida Economy: University-based Incubation Programs

Demonstrated Incubation Success:

- *UCF Business Incubator*
 - Created **1,650 jobs** in 2009
 - Generated \$70 million in earnings and \$200 million in total annual economic output
- *In 2009 UCF's Program Created:*
 - \$4.5 million in revenues for local government
 - ROI of \$5.25 for every \$1.00 invested by local governments
- *UF Sid Martin Biotech Incubator*
 - 40 companies admitted
 - 75% success rate
 - More than **550 jobs**
 - Cluster creation
- *Client Companies Attracted:*
 - \$330 million investment
 - \$150 million grant & contracts
 - 40+ Investment funds



Creating a New Florida Economy: University-based Incubation Programs

Funding Model for Statewide Incubation:

- ***Build Incubation Facilities (\$50 MM per Year)***
 - State-of-the-art facilities to foster Innovative companies
 - Attract seed and other funds to enhance existing facilities
 - Prototyping labs, test beds, wet labs
 - Up to \$5 million per project
- ***Enhance Operational Capabilities (\$12 MM per Year)***
 - Incubate new incubators to develop effective high performing programs, capitalizing on FHTCC team experience
 - Enhance existing programs to reach next level
 - Provide up to \$600,000 per year for up to 20 incubators



Creating a New Florida Economy: University-based Incubation Programs

Implementation and Outcomes:

- ***Competitive Program***

- Require 1:1 match from local government or private sector
- Target high-impact or high-technology ventures
- Sound plan required, not limited to universities

- ***Job Creation Estimate:***

- Year one: 2,500
- Year two: 3,500
- Year three: 4,500
- Year four: 5,500
- Year five: 6,500
- Total: **22,500**



The New Florida Initiative: Funding

2011-12 Recurring Funding Request:

- *SUS Capacity Enhancement - \$150 million**
- *Matching Grants Research Programs - \$50 million*
- *Statewide University-based Incubator Network - \$62 million*

* Goal is to double SUS funding over 5-7 years



The New Florida Initiative: Return On Investment

- *Increase Annual Degree Production by 15,000 each year*
- *\$500 Million in New Corporate/Federal Funding*
- *Increase Annual Patent Awards by 100*



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The New Florida Initiative: Total Job Creation

*Total Job Creation: **40,000+***

- 2,500 from University Enhancements (faculty)
- 15,000 from Matching Grants Research Programs
- 22,500 from Statewide Incubation Network



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The New Florida Initiative

Florida Becomes ...

- *More attractive for **high-tech, high-wage industry***
- *More likely to increase **entrepreneurial startups***
- *More valuable to industry by **retaining SUS graduates** to build a world-class workforce*
- *More inviting to **investors and venture capitalists***



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Talent and Technology: The Polytechnic Idea

02.23.11

Marshall Goodman, Ph.D.
Regional Chancellor

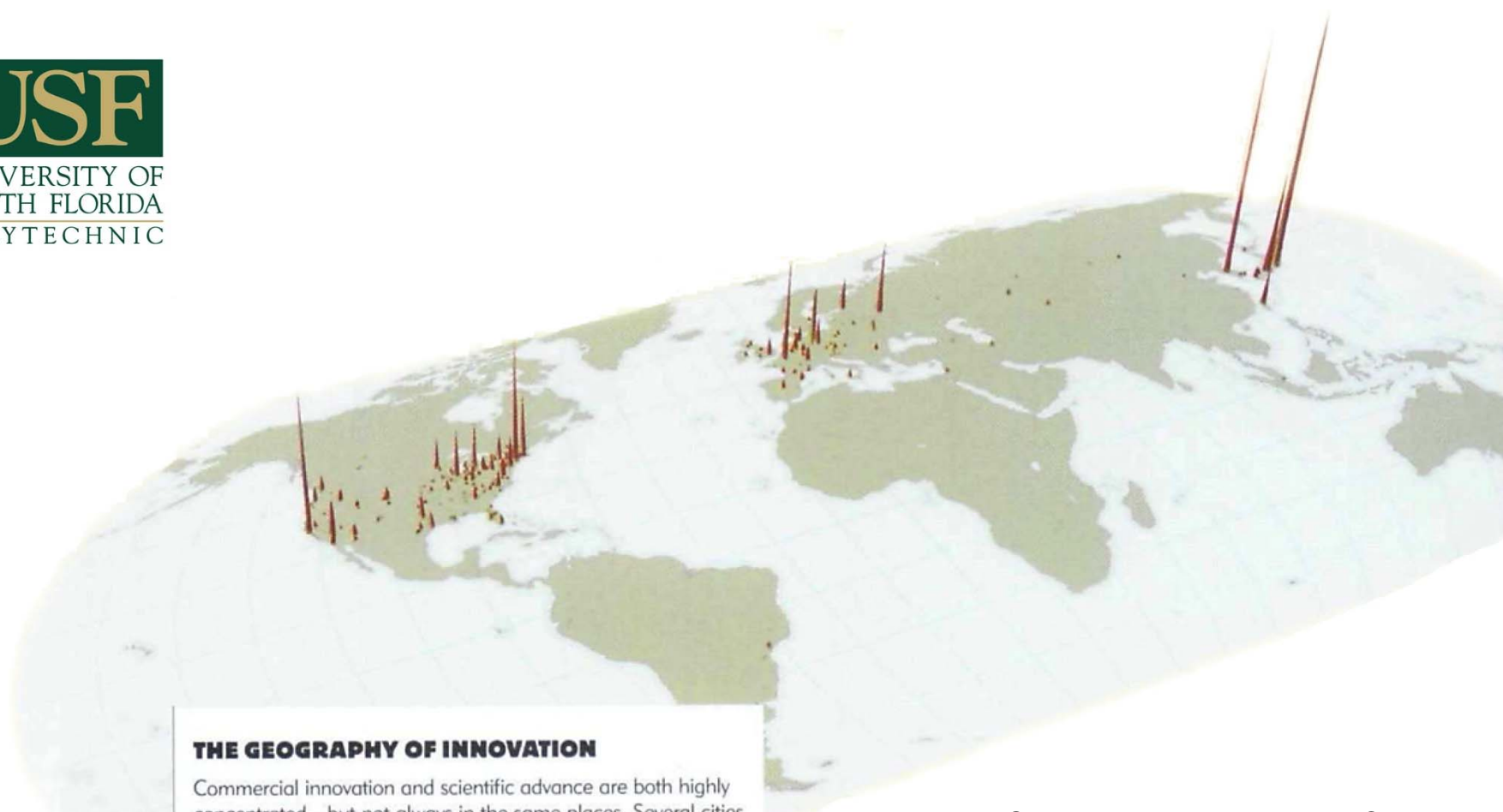


The Geography of Innovation: Critical Mass and Concentration

- **Thomas Friedman:**
 - *The Lexus and the Olive Tree*
 - *The World is Flat*
 - *Hot, Flat and Crowded*
- **Richard Florida:**
 - *The Rise of the Creative Class: And How it's Transforming Work, Leisure and Everyday Life*
 - *Cities and the Creative Class*
 - *The Flight of the Creative Class: The New Global Competition for Talent*
- **Joseph Stiglitz:** *Making Globalization Work*
- **Richard McCormick:** *Manufacturing a Better Future for America*
- **Fareed Zakaria:** *The Post-American World*



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THE GEOGRAPHY OF INNOVATION

Commercial innovation and scientific advance are both highly concentrated—but not always in the same places. Several cities in East Asia—particularly in Japan—are home to prolific business innovation but still depend disproportionately on scientific breakthroughs made elsewhere. Likewise, some cities excel in scientific research but not in commercial adaptation. The few places that do both well are very strongly positioned in the global economy. These regions have little to fear, and much to gain, from continuing globalization.

Source: The Atlanta Monthly, Oct. 2005
“The World is Spiky”
World Intellectual Property Organization
US Patent and Trademark Office

the POLYTECHNIC IDEA

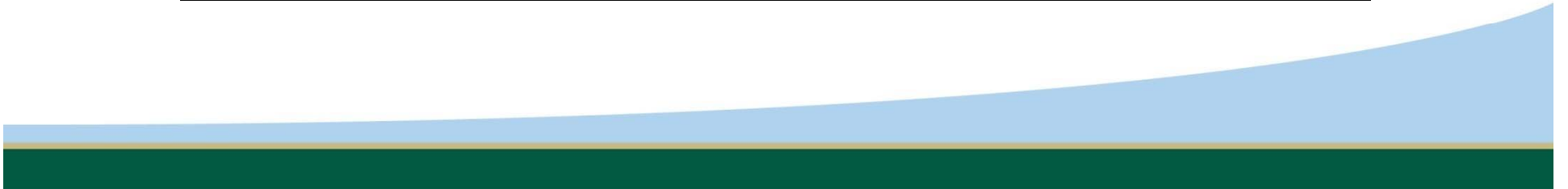
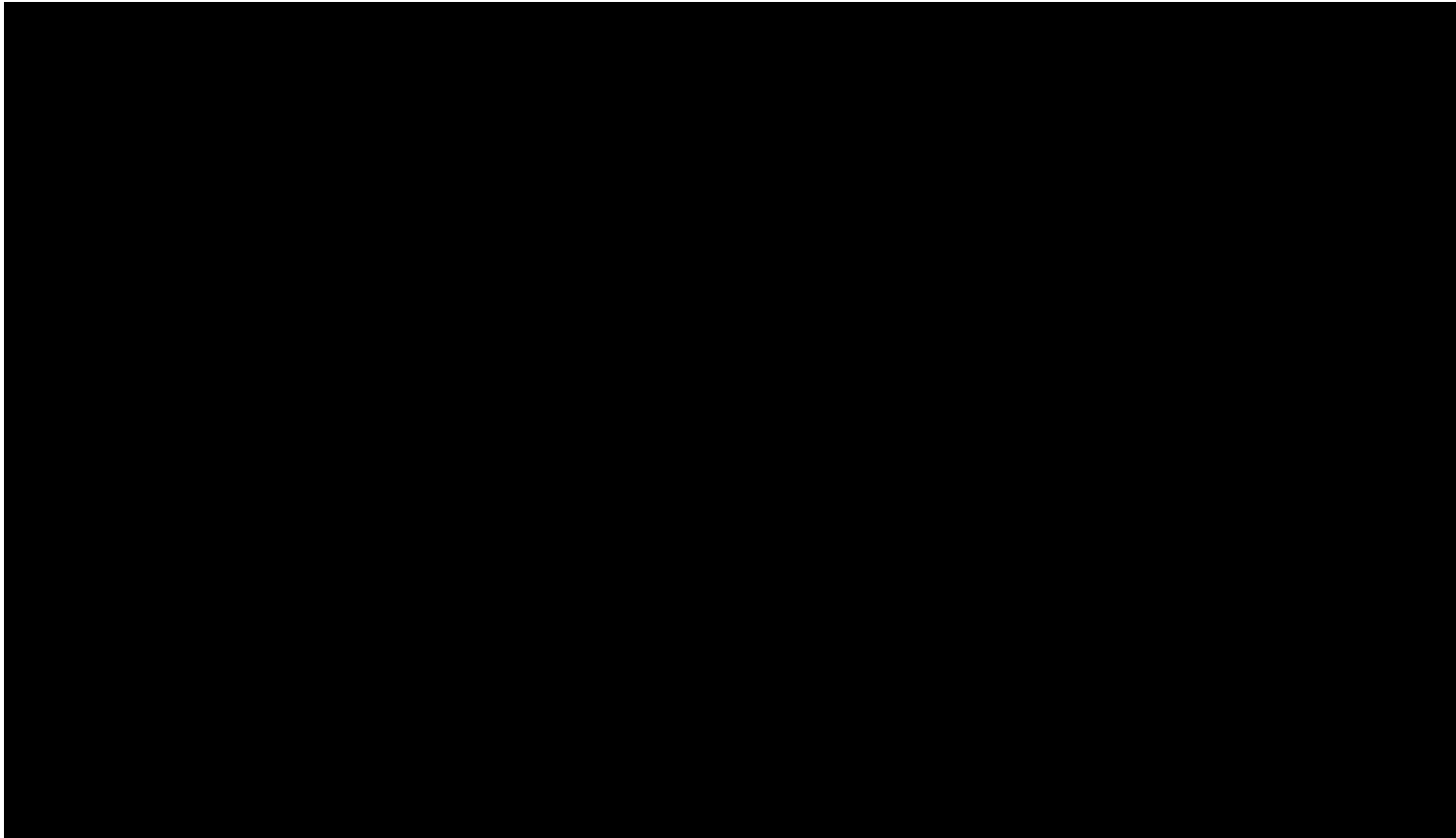
The Talent Dividend

“Increasing the four-year college attainment rate in each of the nation’s 51 largest metropolitan areas by **one percentage point** would be associated with a **\$124 billion increase** in aggregate **annual personal income.**”

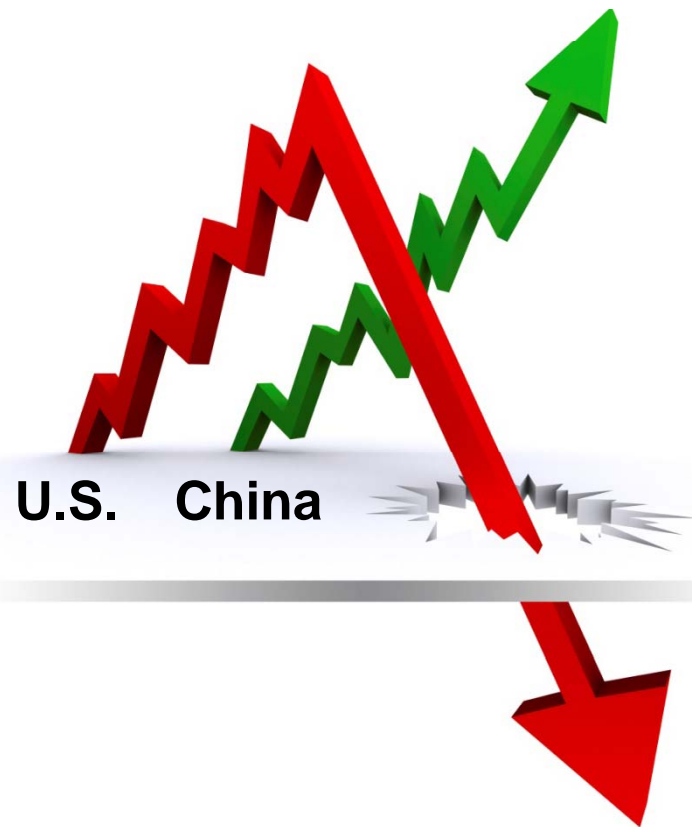
City Dividends:
Gains from Improving Metropolitan Performance
CEOs for Cities



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Did you know?



Each year, the U.S. falls more than 1 decade behind China in producing engineers.

Relevant Degrees



“Our universities need to be graduating people in the majors where there are jobs.”

Governor Rick Scott
12.08.10

The Polytechnic Idea: We Put Students to Work

- Talent Management vs. Career
- New Pedagogy
 - Guide on the Side
 - Active Learning
- No More Mine Shafts
 - Collaboration/
Interdisciplinary are Central



The Polytechnic Idea

- Collaborative, unique learning environments
- University as Innovation Hub:

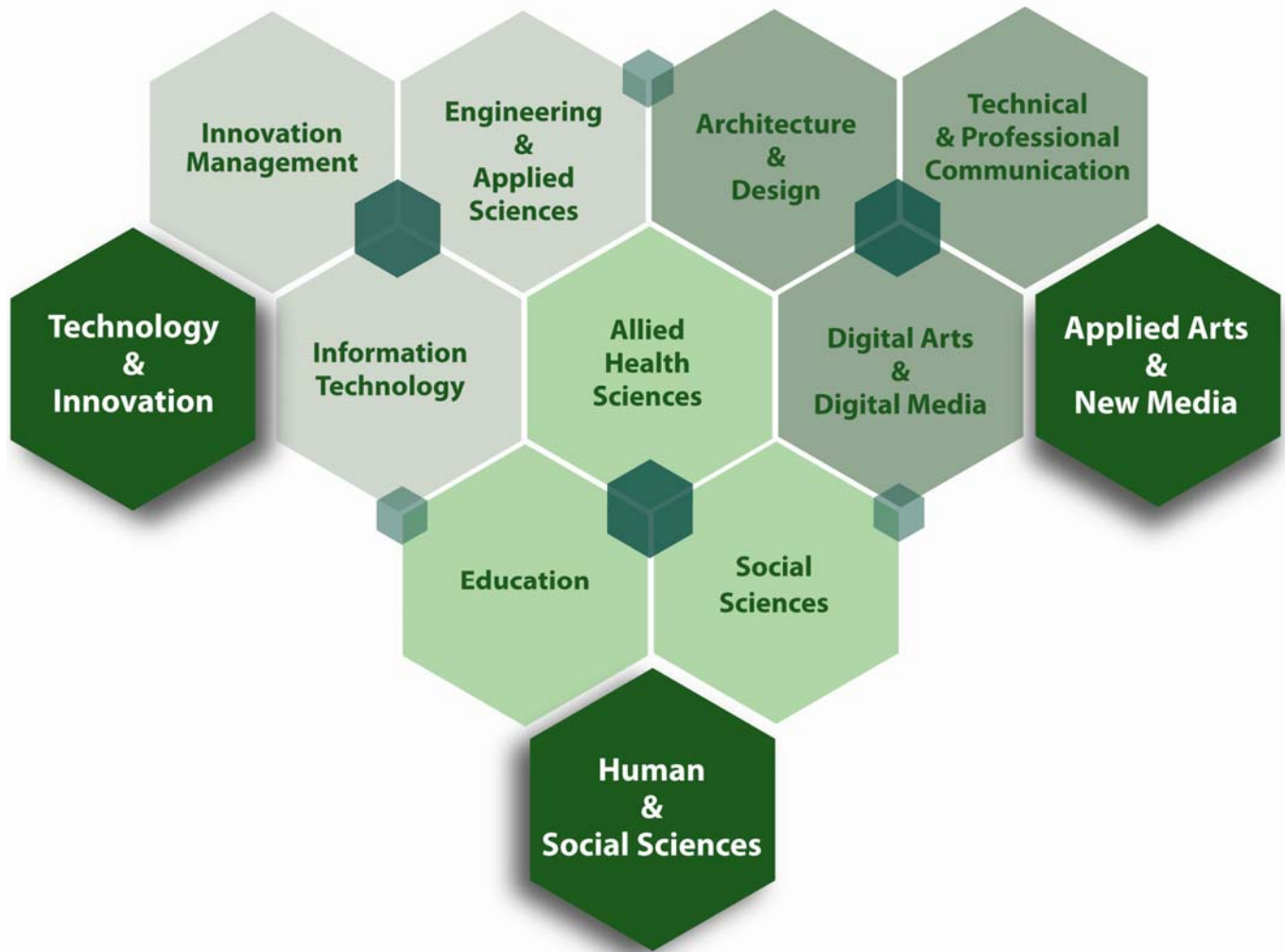
We invent, create entrepreneurs!





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Applied Learning, Applied Research & Applied Technology



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An Economic Engine

Total Annual Economic Impact

Total Estimated Impact on Economic Output	\$3.2 billion
Total Estimated Impact on Earnings	\$1.3 billion
Total Estimated Impact on Jobs	36,610

Economic Impact Analysis 1/2011
Gordon Kettle, Independent Economist

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An Economic Engine

Construction Impact

Total Estimated Impact on Economic Output	\$535 million
Total Estimated Impact on Earnings	\$163 million
Total Estimated Impact on Jobs	6,600

Economic Impact Analysis 1/2011
Gordon Kettle, Independent Economist

An Economic Engine

Annual Property Taxes Increase: \$83 million

Property / Tangible Taxes			
Project Name	School	County	Total
Research Park	\$37 million	\$34 million	\$71 million
Retail Development	\$7 million	\$6 million	\$13 million

Economic Impact Analysis 1/2011
 Gordon Kettle, Independent Economist

Current Investment

\$200 million of private, federal, state and local investment in infrastructure

- *East West Road*
- *Interchange with Polk Parkway*
- *Construction road and site manager*
- *“De-mucking” of main site*
- *Ring Road*





“The more we invest in our education system, like **USF Polytechnic** and all the technical degrees that come out of that, it will play a **significant role** in our **diversification** here and **benefit Polk County** and the **central Florida area.**”

2011 Economic Forecast Breakfast
J. Antonio “Tony” Villamil, Ph.D.
Board Member, Enterprise Florida
Senior Research Fellow, Florida TaxWatch
Dean, School of Business, St. Thomas University

the POLYTECHNIC IDEA



References

CAL POLY

Mayor: (805) 783-7752

Governor: (916) 445-2841



Rensselaer

Mayor: (518) 279-7130

Governor: (518) 474-8390



TEXAS TECH UNIVERSITY.

Mayor: (806) 775-2010

Governor: (512) 463-2000

Georgia Tech



Mayor: (404) 330-6100

Governor: (404) 651-1151

SOUTHERN POLYTECHNIC

STATE UNIVERSITY

Mayor: (770) 794-5501

Governor: (404) 651-1151



VirginiaTech

Mayor: (540) 853-2444

Governor: (804) 786-2211



Thank you!

