

STORAGE NAME: h559.ei
DATE: March 11, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION INNOVATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 559
RELATING TO: School District Personnel
SPONSOR(S): Representative Thrasher
STATUTE(S) AFFECTED: ss. 231.29, 231.36, and 231.3605, F.S.
COMPANION BILL(S): SB 340 (Similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION INNOVATION
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill revises the criteria that must be used to evaluate the performance of instructional personnel. Each district's instructional personnel assessment system must address continuous quality improvement of professional skills; allow parental input, where appropriate; and consider student performance data and the employee's ability to communicate with parents. Peer reviews may be considered in evaluating performance. The bill reduces from one year to 120 calendar days the time allowed for instructional personnel to correct performance deficiencies identified through performance evaluations. Procedural requirements are specified to provide due process.

The bill requires the superintendent to evaluate the effective use of assessment criteria and procedures used by individuals who are assigned the responsibility for evaluating the performance of instructional personnel.

The bill establishes a new type of employment contract for instructional personnel hired by school districts after June 30, 1997, and limits the further issuance of professional service contracts. Instructional personnel hired after June 30, 1997, may be dismissed without cause and may resign without violating their contract during the first 97 days of employment. After three years of employment under annual contract, the employee may be issued a multi-year contract not to exceed three years. Each contract is subject to review and renewal at the discretion of the school board. An employee may be dismissed during the course of a contract for failure to correct performance deficiencies or for just cause.

The bill creates a 97-day probationary period for newly hired supervisors and principals, during which the employee may be dismissed without cause or may resign without breach of contract.

The bill limits the application of s. 231.3605, F.S., relating to education support employees. These employees hired after June 30, 1997, will not be governed by this statute and will not be guaranteed continuing employment.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Performance Assessment of Instructional Personnel

Section 231.29, F.S., requires each district superintendent to establish procedures for assessing the performance of the district's instructional, administrative, and supervisory personnel. The statute specifies the criteria that must be considered in designing the district's assessment system for instructional personnel. Assessments must be completed by the employer's supervisor and must include criteria based on observable indicators of classroom management, subject matter knowledge, the ability to plan and deliver instruction, the ability to evaluate instructional needs, and any other professional competencies determined by the local school districts. Districts currently do not have to consider student performance, peer reviews, or parental input when evaluating educator's performance. This district school board must review and approve any substantial revision of this assessment system.

Section 231.29, F.S., also establishes procedural requirements that benefit the personnel being assessed, as well as, administrators and school boards that must make defensible employment decisions that ultimately affect students. All district instructional personnel must be evaluated by their supervisors at least once a year. Employees must be fully informed of assessment criteria and procedures prior to the assessment. The employee must be given a written report of the evaluation within 10 days after the assessment. The employee must be notified of the performance deficiencies in writing.

Correction of Performance Deficiencies

Superintendents must notify the Department of Education (DOE) when any instructional employee receives two consecutive unsatisfactory performance evaluations or is given written notice that their employment will be terminated. Receipt of this information triggers an investigation by the DOE to determine whether the employee's certification should be suspended or revoked due to incompetence. Performance assessments also play an important role in decisions to continue or terminate an employee's contract.

Contracts with Instructional, Supervisory, or Administrative Personnel

Section 231.36, F.S., requires each school board to provide written employment contracts to all supervisors, principals, and members of the instructional staff.

Initial contracts with supervisors and principals may not exceed three years. (s. 231.36(1)(b), F.S.) The contract is subject to annual review and renewal, but there is no probationary period. After the first three years, the contract may be renewed for another three year period.

Instructional personnel initially receive annual contracts and may qualify for professional service contracts after three years of service. Just cause is required for dismissal during the contract. Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

The following information describes the three types of contracts:

- Annual Contracts terminate at the end of the contract period. A school board may decide not to issue a new annual contract without giving a reason for non-renewal or an opportunity to challenge the appropriateness of the non-renewal.
- Professional Service Contracts are two year contracts. As a requirement for the professional service contract, the member of instructional staff must have completed three years of probationary service in the district. At the end of the first year, the contract

is automatically renewed for two more years if the teacher's annual performance evaluation is satisfactory. If the performance evaluation is unsatisfactory, the teacher is given one year to correct the performance deficiencies. The teacher may request a transfer to another appropriate position for the subsequent year of employment. After the year, if the performance deficiencies have not been corrected, the professional contract is not renewed. If the teacher contests the decision, he or she will have 15 days to demand a hearing either before the school board or the Department of Administrative Hearings (DOAH). In either case, a majority vote of the school board is required to sustain the recommendation of the superintendent or the order of the hearing officer. In order to dismiss a teacher during the term of a professional service contract, just cause is required.

- Continuing Contracts were issued to instructional personnel from 1951 until July 1, 1984, and to administrative and supervisory personnel until 1974. At the end of the school year, the school board may dismiss or return a continuing contract employee to annual contract status for three years. A majority vote of the full school board is required to take such adverse actions. A continuing contract employee may be dismissed or suspended if the charges are based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a crime involving moral turpitude.

Chapter 82-242, Laws of Florida, authorized professional service contracts, prohibited new continuing service contracts after July 1, 1984, and prohibited enactment of new local tenure or employee contract laws for school districts. Local tenure laws still govern contracts with employees of the Duval, Hillsborough, and Volusia County school boards.

Cause for Immediate Dismissal

Each person employed as a member of the instructional staff in any district school system shall have provisions for dismissal during the term of the contract only for just cause (s. 231.36(1)(a), F.S.). Any member of the district administrative or supervisory staff, including any principal, may be suspended or dismissed at any time during the term of the contract so long as the charges are based on those mentioned in the description of just cause and also including drunkenness and immorality. State Board Rule 6B-4.009 further defines the above mentioned grounds for dismissal.

State Board Rule Criteria

Incompetency is defined in State Board Rule as the inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity. Since incompetency is a relative term, an authoritative decision in an individual case may be made on the basis of testimony by members of a panel of expert witnesses appropriately appointed from the teaching profession by the Commissioner of Education. Such judgment shall be based on a preponderance of evidence showing the existence of one or more of the following:

Inefficiency:

- (1) Repeated failure to perform duties prescribed by law, which, as described in s. 231.09, F.S., include, but are not limited to, school board rules relating to teaching efficiently and faithfully, using prescribed materials and methods; recordkeeping; and fulfilling the terms of any contract, unless released from the contract by the school board;
- (2) Repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; or

(3) Repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

Incapacity:

- (1) Lack of emotional stability;
- (2) Lack of adequate physical ability;
- (3) Lack of general educational background; or
- (4) Lack of adequate command of his or her area of specialization.

Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, FAC., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., which is so serious as to impair the individual's effectiveness in the school system.

Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

Drunkenness is defined as that condition when an individual publicly is under the influence of alcoholic beverages or drugs to such an extent that normal faculties are impaired, or conviction on the charge of drunkenness by a court of law.

Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a person owes to his or her fellow person or to society in general, and the doing of the act itself.

Educational Support Employees

Section 231.3605, F.S., defines an educational support employee as any person employed by a district school system as a teacher aide, a teacher assistant, an education paraprofessional, a member of the transportation department, a member of the operations department, a member of the maintenance department, a member of food service, a secretary, or a clerical employee, or any other person who by virtue of his or her position of employment is not required to be certified by the DOE or school board.

Each educational support employee must complete a probationary period to be determined by the collective bargaining agreement or by school board rule where such agreement does not exist. After successfully completing the probationary period, the employee's status shall continue from year to year unless the superintendent terminates the employee for reasons stated in the collective bargaining agreement or reduces the number of employees on a districtwide basis for financial reasons. If the superintendent seeks termination, the employee shall receive written notice and have the opportunity to appeal, determined by the collective bargaining agreement or school board rule, where one does not exist.

B. EFFECT OF PROPOSED CHANGES:

Performance Assessment of Instructional Personnel

HB 559 revises the criteria that school districts use when evaluating the performance of instructional personnel. The Department of Education, rather than the local school board, must approve each district's instructional personnel assessment systems. This system must address the continuous quality improvement of the professional skills and give parents an opportunity to provide input into employee performance assessments, when appropriate. The evaluations must consider data and indicators of student performance and the employee's ability to communicate with parents. Districts may consider the results of peer reviews of the employee's performance. Each superintendent must develop a mechanism to evaluate the effective use of the assessment system by individuals who evaluate the performance of instructional personnel.

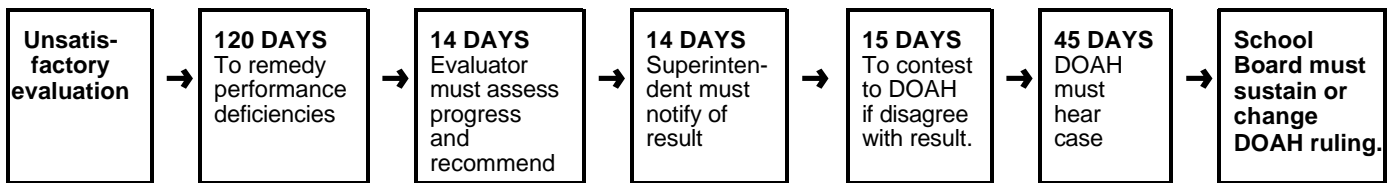
Correction of Performance Deficiencies

The bill revises the procedural requirements and time lines for correcting performance deficiencies. The supervisor who completed the performance evaluation is required to give the employee written notice of the unsatisfactory performance and related procedures and time lines. The evaluator is also required to discuss the unsatisfactory performance with the employee and must provide assistance in correcting the deficiencies.

The bill reduces the time allowed for correcting performance deficiencies. Instructional personnel must be given 120 calendar days (not including school holidays or vacation periods), rather than the subsequent contract year, to correct unsatisfactory performance. During the 120 calendar-day-period, the employee must be periodically evaluated and apprised of progress and must be provided inservice training and assistance to help correct the performance deficiencies. The employee may request a transfer to a different supervisor at any time during the 120 calendar-day-period. However, a transfer does not extend the period for correcting performance deficiencies. Within 14 days after the 120 calendar-day-period ends, the evaluator must determine whether the performance deficiencies were corrected and must forward a recommendation to the superintendent. Within 14 days after receiving the recommendation, the superintendent must notify the employee, in writing, whether performance deficiencies were corrected and whether the superintendent will recommend continued employment or termination of the contract for the subsequent year.

The bill revises the hearing options available to employees who wish to contest the superintendent's recommendation for non-renewal or termination. The option for a hearing before the school board is eliminated except for professional service contract holders. Employees may continue to request a hearing before an administrative law judge assigned by the Division of Administrative Hearings (DOAH) of the Department of Management Services (DMS). The employee must submit a written request for the DOAH hearing within 15 days after receiving the superintendent's recommendation. The hearing must be conducted within 45 days after DOAH receives the written appeal. A majority vote of the school board's membership is required to sustain or change the administrative law judge's recommended order. The school board's determination is final.

The following chart reflects the time line discussed above:



New Contracts with Instructional Staff

The bill establishes a new type of employment contract for instructional personnel hired by school districts after June 30, 1997. Instructional personnel hired after that date will receive an annual contract for the first three years of employment. The first 97 days of the initial contract is a probationary period, during which the employee may be dismissed without cause and may resign without violating the employment contract.

After the first three years of employment by a school district, the school board may issue a contract not to exceed three years. Each contract is subject to annual review and renewal at the discretion of the school board, upon recommendation of the superintendent. The performance assessment system created by s. 231.29, F.S., will be used to evaluate the employee's performance. Instructional personnel hired after June 30, 1997, may be dismissed during the course of the contract for failure to correct performance deficiencies or for just cause.

The same just cause reasons for dismissal apply to employees who hold the new contract, a professional service contract, or a multi-year contract for supervisors and principals. Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

Professional Service Contracts

The bill limits the further issuance of professional service contracts. Professional service contracts may be issued only to individuals who were employed as a member of a district's instructional staff before July 1, 1997, and who complete the prerequisites for the professional service contract on or after July 1, 1984, and before July 1, 1997.

Employees who hold a professional service contract on July 1, 1997, may retain the contract and related rights unless the employee voluntarily relinquishes the contract or exchanges it for the new contract described above. Professional service contract employees are subject to the revised performance assessments required by s. 231.29, F.S. When an existing professional service contract is renewed, the employee must correct future performance deficiencies within the same 120 calendar-day-period applicable under the new contract established by this bill.

Professional service contract employees who have unsatisfactory performance evaluations before their next contract renewal will not be subject to the 120 day-period and related procedures until current remedies have been exhausted and the contract is subsequently renewed. In that situation, the employee would have an additional year to correct the performance deficiencies and could appeal adverse decisions by requesting either a DOAH hearing or hearing before the school board. The bill does not change conditions for dismissal during the term of a professional service contract.

Contracts with Supervisors and Principals

The bill creates a probationary period for newly hired supervisors and principals. The first 97 days of their employment is a probationary period. During the probationary period, the supervisor or principal may be dismissed without cause or may resign without breach of contract.

Education Support Employees

The bill limits the application of s. 231.3605, F.S., to education support employees who are hired before July 1, 1997. An education support employee hired before that date must complete the required period of probationary employment. Upon successful completion of the probationary period, the employee retains the right for continued employment unless the employee is terminated for cause or by a reduction in force. Employees who are hired on or after July 1, 1997, will not be governed by this statute and will not be guaranteed continuing employment.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill enables the superintendent to notify an employee, after receiving the performance evaluator's recommendation, in writing as to whether the performance deficiencies have been satisfactorily corrected. The employee may contest the superintendent's recommendation and submit a written request for a hearing before an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. A majority vote of the school board members is required to sustain or change the recommended order of the administrative law judge.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

School instructional staff will no longer be entitled to be issued a continuing contract pursuant to the current provisions in s. 231.36, F.S.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Parents have an opportunity to provide input into school personnel assessments.

- (2) Who makes the decisions?

The superintendent makes recommendations regarding terminations and continuations to the school board. If the employee wishes to have a hearing, he or she must submit a written request and, after the hearing, the school board has the final determination.

(3) Are private alternatives permitted?

No.

(4) Are families required to participate in a program?

Families do not have to participate directly in the school; however, parents may provide input regarding teacher evaluations.

(5) Are families penalized for not participating in a program?

No.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Parents have more input into the performance of their children's teachers.

(2) service providers?

Schools have more control over teachers they hire and retain. They have more flexibility in hiring all school personnel.

(3) government employees/agencies?

Local school board can make final decision as to the sufficiency or insufficiency of the grounds for termination of employment.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 231.29, F.S., relating to assessment procedures and criteria, revising the criteria that must be used to evaluate the performance of instructional personnel and the procedural requirements for assessment of instructional personnel.

Section 2: Amends s. 231.36, F.S., relating to contracts with instructional staff, supervisors, and principals, establishing a new type of employment contract for instructional personnel hired by school districts after June 30, 1997, and limits the further issuance of professional service contracts.

Section 3: Amends s. 231.3605, F.S., relating to educational support employees, establishing that education support employees hired after June 30, 1997, will not be governed by this statute and will not be guaranteed continuing employment.

Section 4: Requires this act to supersede any special law or local law to the contrary.

Section 5: Provides for an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

School districts must revise their performance assessment systems for instructional personnel to reflect the new performance criteria. DOE must approve each district's system. The potential costs are indeterminate.

The bill limits appeal options available to instructional personnel. Adverse employment decisions may be appealed only through a DOAH hearing. The total cost for DOAH hearings will increase if the demand increases. Eliminating the option for a direct hearing before the school board may reduce district costs.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Instructional personnel hired by district school boards on or after July 1, 1997, are not guaranteed continuing employment. Their contracts may be renewed or not renewed at the discretion of the school board. They may be dismissed during the term of a contract for just cause or for failure to correct performance deficiencies. Education support employees hired on or after July 1, 1997, will not have a statutory guarantee of continuing employment absent cause for dismissal.

2. Direct Private Sector Benefits:

Not applicable.

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3. Effects on Competition, Private Enterprise and Employment Markets:

See above comments under 1 in this section.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

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

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

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