



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government* – The bill provides authority for the State Board of Education to adopt rules for the implementation of the K-20 Education Performance Accountability System and the grading of alternative schools.

*Safeguard individual liberty* – The bill makes permanent the ability to use alternative assessments for the grade 10 FCAT to satisfy the assessment requirement for a standard high school diploma. Also, the bill provides for the assessment of the FCAT Science and Writing at least once at the elementary, middle, and high school levels so that students can cover sufficient subject matter in those areas before being subsequently assessed.

*Promote Personal Responsibility*- The bill requires the grading of alternative schools.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Florida Comprehensive Assessment Test**

The primary purpose of the Florida Comprehensive Assessment Test (FCAT) is to assess student achievement on the skills represented in the *Sunshine State Standards* (SSS) in Reading, Writing, Mathematics, and Science. The SSS portion of FCAT is a criterion-referenced test. A secondary purpose is to compare the performance of Florida students to the Reading and Mathematics performance of students across the nation using a norm-referenced test (NRT).<sup>1</sup>

All students in grades 3-10 take the FCAT Reading and Mathematics in the spring of each year. Beginning in 2001, FCAT Reading SSS content scores were reported for four areas: 1) *Words and Phrases in Context*; 2) *Main Ideas, Plot, and Purpose*; 3) *Comparisons and Cause/Effect*; and 4) *Reference and Research*. In 1998, 1999, and 2000, FCAT Reading SSS content scores were reported for the type of passage read (literary or informational). FCAT Mathematics SSS content scores are reported for five areas: 1) *Number Sense and Operations*; 2) *Measurement*; 3) *Geometry and Spatial Sense*; 4) *Algebraic Thinking*; 5) *Data Analysis and Probability*. The bill maintains the requirement that students in grades 3 through 10 take the FCAT Reading and Mathematics annually each year.

All students in grades 4, 8, and 10 take FCAT Writing, and FCAT Science is administered to all students in grades 5, 8, and 10. For FCAT Writing, students in Grades 4, 8, and 10 write an essay for an assigned topic (prompt). This type of writing assessment is called "demand writing." Students in Grade 4 write either an expository or narrative essay. Students in Grades 8 and 10 write either an expository or persuasive essay. FCAT Science content scores are reported for four areas: 1) *Physical and Chemical Sciences*; 2) *Earth and Space Sciences*; 3) *Life and Environmental Sciences*; and 4) *Scientific Thinking*

The bill provides that students will take FCAT Science and Writing at least once at the elementary, middle, and high school levels, rather than in grades 4/5, 8, and 10. A pilot test of FCAT Science that was administered in 2004 to a sample of grade 11 students determined that the test design is suitable for use in grade 11. Therefore, in September of 2004, the Department of Education (DOE) announced that the department would be administering the Science assessment at grade 11 rather than grade 10. The DOE based their determination upon feedback from the FCAT Science Content Advisory

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<sup>1</sup> <http://firn.edu/doe/sas/fcat.htm>

Committee, the Science Performance Review committee, the Florida Association of Science Supervisors, and the Florida Association of Science Teachers.<sup>2</sup>

Additionally, the bill provides that the Commissioner of Education is required to approve the use of alternative assessments to the grade 10 FCAT requirement for high school graduation. A student who attains a score on the SAT or the ACT which equates to a passing score on the grade 10 FCAT satisfies the assessment requirement for a standard high school diploma.

The bill provides that it is the intent of the Legislature that the DOE pursue technology and assessment innovations that allows schools to administer the FCAT as late as possible in the school year while still receiving the scores prior to the end of the school year. Also, the bill provides that it is the intent of the Legislature that the DOE make accessible copies, to the extent that sufficient items are available, of actual scored FCAT items while preserving the security and validity of the test.

### *Designation of School Grades*

The bill uniformly applied the change in the following terminology to reflect current usage:

- “as performance category” to “with a grade of”
- “performance grade category” to “school grades”

Current law provides that a school's grade is based on a school's current year performance and school's annual learning gains. A school's performance grade category designation is based on a combination of student achievement scores, student learning gains as measured by annual FCAT assessments in grades 3 through 10, and improvement of the lowest 25<sup>th</sup> percentile of students in the school in reading, math or writing on the FCAT.

The bill provides that the criteria for a school's grade are a combination of the following:

- Student achievement scores.
- Student learning gains as measured by annual FCAT assessments in grades 3 through 10.
- Improvement of the lowest 25<sup>th</sup> percentile of students in the school on the FCAT Reading.

The bill codifies current practice that the measurement of the lowest 25<sup>th</sup> percentile in the school is only in FCAT Reading.

Current law provides that school performance grade category designations and improvement ratings apply to each school's performance for the year in which performance is measured and that the designation and rating are published annually by the DOE and the school district. Also, parents are entitled to the report card of the school their child is enrolled in.

The bill requires the DOE to annually develop a school report card, including information relating to the school's grade, the school's improvement, an explanation of school performance as evaluated by federal law,<sup>3</sup> and indicators of return on investment, and that the report card be delivered to the parents through each school district and published annually on the DOE's website.

### *Grading for alternative schools*

The bill provides that the Commissioner of Education is required to prepare annual reports on the performance of alternative schools that provide dropout prevention and academic intervention services.<sup>4</sup> The annual report is required to identify whether each school's performance improved, declined, or remained the same. Based on the school improvement rating, the bill provides that the schools that improve at least one grade are eligible for school recognition awards. The bill requires the

<sup>2</sup> <http://fln.education.state.fl.us/oe/sas/pdf/fcat-update-0904.pdf> FCAT Update. Florida Department of Education September, 2004.

<sup>3</sup> As evaluated by the No Child Left Behind Act of 2001.

<sup>4</sup> As provided in s. 1003.53, F.S.

DOE to annually develop a school report card, including information relating to the school's grade, the school's improvement, an explanation of school performance as evaluated by federal law,<sup>5</sup> and indicators of return on investment.

The bill provides that such schools will receive the same school grade designation as public schools; however, such schools' grade designations will be based on the following combination of factors weighted equally:

- Aggregate student academic growth rate.<sup>6</sup>
- Aggregate student attendance above 80 percent.
- Performance on indicators related to parent involvement, community involvement, and customer satisfaction, as determined by 70% positive responses to a survey.
- Learning gains of the students in the school who are in the lowest 25<sup>th</sup> percentile of students in the state on FCAT reading.

The bill also provides the following student assessment data is used to determine the school grade:

- Aggregate scores of all eligible students who were enrolled in the school during the October and February FTE counts and who have been assessed on the FCAT, and who have FCAT comparable scores from the previous year.
- Aggregate scores of all eligible students who were enrolled in the school during the October and February FTE counts and who have been assessed on the FCAT, and who have scored at or in the lowest 25<sup>th</sup> percentile of students in the state in reading.

### *School Recognition Award*

Current law provides that all schools selected for a school recognition award receive financial awards depending on the availability of funds appropriated and specifies the number and size of schools selected to receive an award. Current statutory law provides that if school staff cannot reach an agreement by November 1, the award is equally distributed to all classroom teachers currently teaching in the school.<sup>7</sup>

However, the bill provides that in situations where the staff cannot reach an agreement by November 1, the awards are equally distributed with 50% distributed to the school staff and 50% distributed to the school advisory council to be used for the following purposes as determined by the school staff and the school advisory council:

- Nonrecurring bonuses to the faculty and staff who currently teach at the school or taught at the school during the year of improved performance;
- Nonrecurring expenditures for educational equipment, materials, or student incentives to assist in maintaining and improving student performance;
- Temporary personnel used to maintain and improve school performance.

## **Teacher Salary and Contractual Provisions**

### *Performance pay policy*

Section 1012.22, F.S., provides for the compensation and salary schedules of public school personnel. Specifically, s. 1012.22(1)(c), F.S., sets forth requirements that the district school board must abide by in the determination and the development of the salary schedule. Further, current law requires that the district school board adopt a performance-pay policy which is subject to negotiation for school administrators and instructional personnel. The Commissioner of Education is responsible for determining whether the district school board's adopted salary schedule complies with the requirement

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<sup>5</sup> As evaluated by the No Child Left Behind Act of 2001.

<sup>6</sup> Academic growth is based on a comparison of each student's development scale score on the FCAT in the preceding year and in the current year.

<sup>7</sup> s. 1008.36, F.S., Florida School Recognition Program

for performance pay. Current law provides that district's failure to comply with this requirement results in the commissioner withholding disbursements until compliance is verified.

The bill maintains current law in relation to performance pay policy; however, the bill authorizes the State Board of Education (SBE), rather than the commissioner, to withhold disbursements in the event of noncompliance on the commissioner's recommendation.

### *Differentiated pay policy*

The bill requires that in the 2005-2006 fiscal year, each school district board is required to adopt a differentiated pay policy, subject to negotiation, for school administrators and instructional personnel. The adopted salary schedule must allow school administrators and instructional personnel to receive meaningful differentiated pay based upon the following factors, including, but not limited to:

- Subject areas taught, for example, those that teach in critical shortage areas receive higher pay.
- Economic demographics of the school, for example, those in schools with a majority of students attending on free or reduced-price lunch receiving higher pay.
- Environment in a surrounding school, for example, those teaching in higher crime areas receiving higher pay.
- Responsibilities of classroom teachers as provided in BEST Florida Teaching salary career ladder program to receive higher pay. The career model for teachers is based upon the differentiated classroom teacher categories identified in s. 1012.231(1), F.S.

Additionally, the Commissioner of Education is responsible for determining whether the district school board's adopted salary schedule complies with the requirement for differentiated pay. If a district school board's salary schedule fails to comply with the differentiated-based pay requirement then the SBE is authorized to withhold the disbursement until compliance is verified, on the commissioner's recommendation.

### *Collective Bargaining*

The bill provides that it is the intent of the Legislature that district school boards have the flexibility through the collective bargaining process to assign teachers more equitably across the school districts because the Legislature finds that there is a disparity between the teachers assigned to teach in a school with a grade of "A" versus those that are assigned to teach in a school with a grade of "F." The Legislature finds that the disparity can be found in the average years of experience, median salary, and teacher performance on certification examinations. Further, current law provides that as an authority to enforce public school improvement, the SBE may recommend actions to district school boards in order to enable students in schools designated with a grade of "F" to be academically well served by the public school system.<sup>8</sup>

The bill maintains current law which already provides that school districts are prohibited from assigning a higher percentage than the school district average of first-time teachers, temporarily certified teachers, teachers in need of improvement, or out-of-field teachers to schools that are graded "D" or "F" or schools with above school district average minority and economically disadvantaged students. The bill also maintains current law providing that school districts are authorized to provide salary incentives to meet the above mentioned requirement and that district school boards are prohibited from signing a collective bargaining agreement that fails to provide sufficient incentives for teachers assigned to a school graded a "D" or "F."

The bill provides that the SBE may recommend to district school boards the transfer of high quality teachers, faculty, and staff as needed to ensure adequate educational opportunities designed to improve the performance of students in a school receiving a grade of "F".

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<sup>8</sup> s. 1008.33(2), F.S.

The bill has no impact on the rights of parties to negotiate above the minimum pay established by the bill or to negotiate other aspects of the employment relationship that are not impacted by the bill.

The bill does require that the district school boards annually provide the DOE, in the format prescribed by the DOE, the negotiated collective bargaining contract for the school district. The bill subsequently requires the DOE to post on-line the collective bargaining contracts of each school district. These provisions allows for teachers to be able to compare their benefits to those of other school districts.

## **K-20 Education Performance and Accountability**

### *Guiding Principles for Accountability System*

Currently, the SBE is required to adopt guiding principles for establishing state and sector-specific standards and measures and to maintain an accountability system measuring student progress towards goals prescribed in statute.<sup>9</sup>

The bill eliminates the requirement that the SBE adopt guiding principles, and instead outlines several guiding principles for state and sector-specific standards and measures in order to ensure that the process is:

- Focused on student success and actionable.
- High quality and efficient, measurable over time, and simple to explain and display to the public.
- Aligned with other measures and other sectors to support a coordinated K-20 system.

The bill provides that the DOE, rather than the SBE, is required to maintain an accountability system that is less prescriptive yet measures student progress toward the following goals:

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

The bill removes the performance-based funding formula provided in s. 1008.31(2), F.S., which required the SBE to provide for performance-based funding relating to Florida's K-20 education performance accountability system.

### *Education Data Quality Improvements*

Currently, school districts and public post secondary educational institutions are required to maintain information systems to provide the SBE and the Legislature with information and reports necessary to address the specifications of the accountability system.

The bill renames the "systemwide data collection" to "K-20 education data quality improvements," yet the bill maintains the requirement of school districts and public post secondary educational institutions to maintain information systems in order to provide the SBE and the Legislature with information and reports necessary to address the specifications of the accountability system. However, the bill specifically provides that in order to provide data required to implement education performance accountability measures in state and federal law, the Commissioner of Education is required to initiate and maintain strategies to improve data quality and timeliness.

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<sup>9</sup> s. 1008.31(3), F.S.

The bill also specifically provides that the Commissioner of Education determine the standards for the required data, monitor the data quality, measure improvements, and annually report the data quality indicators and ratings for all school districts and public post secondary educational institutions.

#### *State Educational Goals and Student Achievement Data*

Currently, the Commissioner of Education recommends to the SBE performance goals addressing the educational needs of the state for the K-20 education system. The bill transfers the duty from the Council for Education Policy Research and Improvement (CEPRI) to the DOE to develop a report card assigning grades to indicate Florida's progress toward meeting those goals and requires that the DOE annually submit by January 1, the report card to the Legislature, the Governor, and the public.

Additionally, the Commissioner of Education is required to conduct ongoing research and analysis of student achievement data, including monitoring trends in student achievement, identifying successful school programs, and analyzing correlates of school achievement. The bill directs the Commissioner of Education to monitor the trends in student achievement by grade level and overall student achievement.

#### *Student Achievement Report*

The bill requires that the DOE annually report to the Governor and the Legislature on the following:

- Longitudinal performance of students in mathematics and reading.
- Longitudinal performance of students by grade level in math and reading.
- Longitudinal performance regarding efforts to close the achievement gap.
- Longitudinal performance of students on the norm-referenced component of the FCAT.

Also, when available, the DOE may report any other student performance data based on national norm-referenced and criterion-referenced tests.

#### *Research Reporting Division*

Pursuant to s. 1008.51, F.S., the CEPRI is an independent office under the Office of Legislative Services which is required to perform a number of tasks that provide information to the Legislature and also perform some executive branch type functions. The bill eliminates CEPRI and transfers any necessary duties performed by CEPRI to the DOE. The bill codifies the Division of Accountability, Research, and Measurement of Education within the DOE. By reducing the number of entities performing research, the bill may increase efficiency by reducing duplicative research requirements.

#### **Revision of Class Size Amendment**

In November of 2002, the Florida voters approved a constitutional amendment to reduce class size.<sup>10</sup> Article 9 of the State Constitution provides that "[t]he legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that: (1) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students; (2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and (3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students. The class size requirements of this subsection do not apply to extracurricular classes.

Contingent upon revision of the class size amendment, the bill will do the following:

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<sup>10</sup> Article IX, § 1, Fla. Const.

- Provides that the minimum salary for full-time certified instructional personnel be no less than \$35,000 or as specified in the General Appropriations Act.
- Creates an operating categorical fund and provides that such funds are to be used to:
  - Provide for the minimum pay for all full-time certified instructional personnel.<sup>11</sup>
  - Provide for elevation funds<sup>12</sup> to increase the salary of all full-time certified instructional personnel.
  - Provides that remaining operating categorical funds are to be used to reduce the district average class size until the district average meets the state constitutional class size requirements.

### **Severability Provision**

The bill provides that the provisions of this act are severable. If any provision of the act or the application thereof is held invalid, then the invalidity of the provision does not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

#### **C. SECTION DIRECTORY:**

- Section 1. Amends s. 20.15, F.S., codifying the Division of Accountability, Research, and Measurement to the Department of Education.
- Section 2. Amends s. 1000.041, F.S., revising legislative purposes and guiding principles of BEST Florida Teaching.
- Section 3. Amends s. 1008.22, F.S., revising the intent and duties related to the administration of the FCAT; providing for grade level and subject area testing requirements; and requiring an annual report.
- Section 4. Amends s. 1008.31, F.S., revising the K-20 education performance accountability system; deleting provisions relating to performance-based funding; revising the mission, goals, and systemwide measures; and providing authority for the SBE to adopt rules for implementation.
- Section 5. Amends s. 1008.33, F.S., allowing the SBE to recommend to school districts to transfer high-quality staff to schools designated with a grade of “F.”
- Section 6. Amends s. 1008.34, F.S., providing for an annual report identifying school grades and district grades; revising the calculation and designation of school grades; and requiring an annual school report card.
- Section 7. Creates s. 1008.341, F.S., providing for grading of alternative schools; and providing authority to the SBE to adopt rules for implementation.
- Section 8. Amends s. 1008.36, F.S., modifying procedures for distribution of Florida School Recognition Program awards.
- Section 9. Creates s. 1011.6855, F.S., providing for the creation of an operating categorical fund to fund the minimum pay for instructional personnel contingent upon a constitutional amendment.
- Section 10. Amends s. 1012.21, F.S., revising the DOE’s reporting duties to include the annual reporting of collective bargaining contracts.

<sup>11</sup> Certified instructional personnel as defined in s. 1012.01(2)(a) – (d).

<sup>12</sup> The elevation funds of at least \$2,000 or higher as specified in the General Appropriations Act.

- Section 11. Amends s. 1012.22, F.S., requires each district to adopt a differentiated pay policy; requires districts to provide the DOE with its negotiated collective bargaining contract; and provides SBE with authority to withhold payment under certain circumstances.
- Section 12. Creates s. 1012.2305, F.S., establishing minimum pay for certain instructional personnel provision contingent upon a constitutional amendment.
- Section 13. Amends s. 1012.231, F.S., transferring provision related to teacher assignments; requiring SBE to develop plan for implementation of the BEST salary career ladder.
- Section 14. Creates s. 1012.2315, F.S., providing requirements for the assignment of teachers and authorizing incentives.
- Section 15. Repeals s. 1008.51, F.S., relating to the Council for Education Policy Research and Improvement.
- Section 16. Amends s. 1000.01, F.S., deleting reference to the Council for Education Policy Research and Improvement under education governance transfers.
- Section 17. Amends s. 1001.11, F.S., deleting reference to the Council for Education Policy Research and Improvement under the Commissioner of Education duties; transferring responsibility to DOE relating to reporting of progress toward performance goals.
- Section 18. Amends s. 1001.42, F.S., conforming school grade nomenclature changes within provisions relating to powers and duties of school boards.
- Section 19. Amends s. 1002.38, F.S., conforming school grade nomenclature changes within provisions relating to the Opportunity Scholarship Program; and modifying a program deadline.
- Section 20. Amends s. 1003.62, F.S., conforming school grade nomenclature changes within provisions relating to academic performance-based charter school districts.
- Section 21. Amends s. 1005.22, F.S., deleting reference to the Council for Education Policy Research and Improvement under powers and duties of commission.
- Section 22. Amends 1007.33, F.S., deleting reference to the Council for Education Policy Research and Improvement under site-determined baccalaureate degree access.
- Section 23. Amends s. 1008.345, F.S., conforming school grade nomenclature changes within provisions relating to implementation of state system of school improvement and education accountability.
- Section 24. Amends s. 1008.45, F.S., deleting reference to the Council for Education Policy Research and Improvement under community college accountability process.
- Section 25. Amends s. 1011.62, F.S., conforming school grade nomenclature changes within provisions relating to funds for operation of schools.
- Section 26. Amends s. 1011.64, F.S., conforming school grade nomenclature changes within provisions relating to school district minimum classroom expenditure requirements.
- Section 27. Provides for severability.
- Section 28. Provides for effective date; provides exception to effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

#### 2. Expenditures:

The fiscal impact will be largely determined by whether or not the class size amendment is amended and whether or not the teacher pay provisions are implemented. The estimated cost to establish a minimum salary for teachers of \$35,000 and provide elevation pay is \$500 million, but this will be offset by some reduction in spending on class size, due to maintaining the district average class size requirement.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

#### 2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

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

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

#### 2. Other:

The Florida Constitution guarantees the right of employees to bargain collectively through a labor organization. Art. 1, s. 6, Fla. Const. Chapter 447, Part II, Florida Statutes, governs the collective bargaining process for public employees in Florida. Specifically, s. 447.301(2), F.S., provides that public employees shall have the right to be represented by any employee organization of their own choosing and to negotiate collectively, through a certified bargaining agent, with their public employer in the determination of the terms and conditions of their employment. Public employees shall have the

right to be represented in the determination of grievances on all terms and conditions of their employment. Public employees shall have the right to refrain from exercising the right to be represented.

The Florida Supreme Court has held that the Legislature may not interfere with a collectively-bargained contract once that contract has been funded, on the grounds that such interference violates the constitutionally guaranteed right to collective bargaining and the right to contract. *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla 1993). However, the Legislature has no legal obligation to fund a collectively-bargained contract between public employers and public employees. *State of Florida v. Florida Police Benevolent Association, Inc.*, 613 So. 2d 415 (Fla. 1992).

However, s. 447.309(3), F.S., renders ineffective any provision of a collective bargaining agreement that conflicts with any law, ordinance, rule, or regulation over which the chief executive officer of the public employer has no amendatory power unless the Legislature amends the provision of law, etc., which is in conflict. Therefore, no collective bargaining agreement may contain terms in conflict with the bill (once enacted). It is not clear whether this will affect existing collective bargaining agreements or will be limited to those entered into in the future.

**B. RULE-MAKING AUTHORITY:**

The bill gives the SBE rulemaking authority pursuant to ss. 120.536(1) and 120.54, F.S., to adopt rules for implementing provisions of the law.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 15, 2005, the Choice and Innovation Committee adopted one amendment and reported the bill favorably as amended. The amendment allows the State Board of Education to recommend to school districts the transfer of high quality teachers, faculty, and staff as needed to ensure adequate educational opportunities designed to improve the performance of students in any low-performing school.

This analysis is drawn to the bill as amended.