

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Education Pre-K - 12 Committee

BILL: CS/SB 1226

INTRODUCER: Committee on Education Pre-K -- 12 and Senator Gaetz

SUBJECT: Merit Award Program

DATE: March 7, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	_____	_____	EA	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates a voluntary performance pay program, the Merit Award Program for Instructional Personnel and School-Based Administrators. School districts must adopt plans that would designate the outstanding performers, who would receive a merit-based pay supplement of a least five (5) percent of his or her salary. The top performing personnel must include at least 20 percent, but no more than 80 percent of the district’s instructional and school administrative personnel.

School districts would determine eligibility for the merit-based pay supplement based upon student academic proficiency and learning gains as measured by statewide standardized assessments and local district-determined assessments, as well as other district-determined factors.

The bill sets forth the components of plans, allows the participation of charter schools, provides for an annual compliance review by the Commissioner of Education, and requires status reports to the Legislature and the Governor on the implementation of pay plans.

The bill repeals the Special Teachers are Rewarded (STAR) proviso and reappropriates \$147,500,000 to the Department of Education (DOE) for FY 2006-2007 to allocate to school districts for performance pay. Districts must use the funds for the following purposes:

- To fund STAR performance pay plans;
- To fund performance pay plans adopted under s. 1012.22, F.S.; or
- To fund performance pay policies approved by the district school board under the bill.

This bill amends ss. 121.021 and 447.403 of the Florida Statutes, creates section 1012.225 of the Florida Statutes, and repeals section 1012.22(1)(c)4. of the Florida Statutes, the provisions of Specific Appropriation 91 of ch. 2006-25, L.O.F., relating to the Special Teachers Are Rewarded (STAR) voluntary performance pay plan, and section 3 of ch. 2006-26, L.O.F.

II. Present Situation:

Assessment of Personnel and Performance Pay

An assessment must be conducted for each employee at least once a year.¹ The assessment for instructional personnel and school administrators must be primarily based on the performance of students assigned to their classrooms or schools, as appropriate. The assessment must primarily use data and indicators of improvement in student performance assessed annually as specified in s. 1008.22, F.S. Student performance must be measured by state assessments and by local assessments for subjects and grade levels not measured by the state assessment program.²

Current law sets forth the district school board's responsibilities for compensation and salary schedules.³ In determining the salary schedule for instructional personnel, the board must base a portion of each employee's compensation on performance demonstrated under s. 1012.34, F.S., and must consider other factors such as professional experience. The adopted salary schedule must allow school administrators and instructional personnel who demonstrate outstanding performance, as measured under s. 1012.34, F.S., to earn a 5-percent supplement in addition to their individual, negotiated salary.⁴ The supplements must be funded from the performance-pay reserve funds adopted in the salary schedule. The Commissioner of Education must determine whether the school board's adopted policy and salary schedule comply with the requirements for performance-based pay. If a school board fails to comply with the law, the Commissioner may withhold funds and take any other measure provided by law to ensure compliance.

Beginning with the 2007-2008 school year, districts must adopt differentiated pay schedules based on district-determined factors, including, but not limited to, additional responsibilities, school demographics, critical teacher shortage areas, and job performance difficulty.⁵

Recent reviews of district performance pay plans identified restrictions that are not required in current law. For example, the Auditor General noted that one district stipulated that participation for instructional personnel is optional.⁶ Other districts appeared to limit employee participation.⁷ OPPAGA noted the following:⁸

¹ Section 1012.34(3), F.S..

² *Id.*

³ Sections 1012.22(1)(c) and 1012.27(2), F.S.

⁴ Section 1012.22(1)(c)4., F.S.

⁵ Section 1012.22(1)(c)5., F.S. The Office of Program Policy and Government Accountability (OPPAGA) found that 17 school districts offered differentiated pay policies to support staffing needs during the 2005-06 school year. These districts offered differentiated pay to help retain and recruit teachers for hard-to-staff schools or critical teacher shortage areas. OPPAGA Report No. 07-02, January 2007.

⁶ Office of the Auditor General, Reports 2005-191, 2006-013, and 2007-011.

⁷ *Ibid.*

⁸ *Restrictive District Requirements Limited Participation in Performance Pay Systems*, OPPAGA, Report No. 07-01, January 2007.

- All 67 school districts have performance pay plans; however, these systems vary substantially and relatively few instructional personnel have received these awards.
- While performance pay plans generally have included FCAT results, most districts also have included other criteria not related to student performance, such as requiring that teachers perform other duties to qualify for awards.
- As a result, only 50 districts awarded performance pay to instructional personnel for the 2005-06 school year, and only 8,747 persons received these awards, representing 4.9 percent of instructional personnel statewide.

Special Teachers Are Rewarded Performance Pay Plan (STAR)

The STAR plan was created by the Legislature in proviso in the 2006 General Appropriations Act.⁹ The STAR proviso provided for the distribution of \$147,500,000 to school districts for performance pay rewards to instructional personnel in all K-12 schools in the district, in accordance with s. 1012.22, F.S.

Each school district that chooses to participate in the STAR Plan must submit its plan to the SBE by December 31, 2006, otherwise it is ineligible for STAR funds. STAR funds are to be allocated based on each district's proportion of the state total K-12 base funding, subject to review and approval by the SBE of a district's STAR plan.¹⁰ Additionally, funds allocated for districts that fail to adopt approved STAR plans by a time certain must be redistributed to those districts with approved plans.

District STAR plans

A district's plan may include information from the district's instructional personnel assessment system. A plan must include the evaluation of instructional personnel based on the performance of their students and rewards for elementary, middle, and high school instructional personnel. The plans must also include the following components:

- Automatic eligibility for all instructional personnel who improve student achievement.
- Rewards of at least 5 percent of the base pay of the best performing 25 percent of instructional personnel. Any remaining funds must provide bonuses to additional instructional personnel or school-based leaders.
- Districts must select or develop an evaluation instrument that primarily evaluates improved student achievement. To receive a reward, instructional personnel must receive no "unsatisfactory" or "needs improvement" ratings and may receive no more than one "satisfactory" rating on the areas evaluated.
- Instructional personnel must be evaluated based on student performance and the evaluation methods must be approved by the SBE.

Districts are tasked with developing methods to evaluate improved student achievement in specialized areas. STAR proposals may include a method to reward the performance by district-

⁹ Specific Appropriation 91, ch. 2006-25, L.O.F.

¹⁰ Since the STAR funds are based on a district's proportion of the Florida Education Finance Program (FEFP) base funding, the allocations vary by district. For example, the allocation for Dade is approximately \$19.5 million, while the allocation for Pinellas is approximately \$6.1 million. See 2006-2007 FEFP, July 14, 2006, <http://www.fldoe.org/star/pdfs/STARDistrictFunding.pdf>

selected school-based leaders who supervise or directly assist the instructional personnel whose student achievement results in a STAR plan reward. Charter schools may submit plans.

According to a STAR status report in February 2007, 14 districts had fully approved plans and 34 districts met the requirements in proviso. Two districts chose not to submit a plan.¹¹ As of March 1, 2007, 46 districts qualified for STAR. The other qualified entities are the Dozier School, the Florida Virtual School, 221 charter schools, and the four lab schools (FAMU, FAU, FSU, and UF).¹²

III. Effect of Proposed Changes:

Eligible Personnel

The bill creates a voluntary performance pay program, the Merit Award Program for Instructional Personnel and School Based Administrators. Under the bill, the following personnel are eligible for merit awards:¹³

- Classroom teachers;
- Student personnel services, including guidance counselors, social workers, career specialists, and school psychologists;
- Librarians/media specialists;
- Other instructional staff, including primary specialists, learning resource specialists, instructional trainers, adjunct educators certified by the district, and similar positions; and
- School principals, school directors, assistant principals, and career center directors.

Districts may include part-time or substitute teachers in their plans.

Plan Components

To be eligible for funds, school districts must adopt plans that would designate the outstanding performers, who would receive a merit-based pay supplement of a least 5 percent of his or her salary. The top performing personnel must include at least 20 percent, but no more than 80 percent of the district's instructional and school administrative personnel.

District plans may include additional pay supplements for employees who demonstrate exemplary work attendance. Supplements must be awarded in addition to any general increase or other adjustments to salaries, which are made by the district.

Evaluation and Assessment

The plans must base a part of employee compensation on the performance of students assigned to the employee's classroom, school, or sphere of responsibility. District school boards must evaluate student performance based on student academic proficiency and learning gains, as

¹¹ *STAR Chart Update*, Cheri Pierson Yecke, Ph.D., Chancellor, K-12 Public Schools, Florida Department of Education, February 14, 2007.

¹² *Final STAR Counts*, Florida Department of Education, March 4, 2007. The following districts did not qualify: Bay, Bradford, Broward, Charlotte, Clay, Collier, Duval, Gulf, Hendry, Highlands, Holmes, Jefferson, Marion, Okaloosa, Pasco, Pinellas, St. Johns, Santa Rosa, Sarasota, Taylor, and Washington. The plan for the Florida School for the Deaf and the Blind has not yet been ratified, according to the DOE.

¹³ Section 1012.01(2)(a)-(d) and (3)(c), F.S.

measured by the Florida Comprehensive Assessment Test (FCAT). Alternatively, districts may use other valid district tests that are based on the Sunshine State Standards for subjects and grades that are not measured by the FCAT. School districts may use other performance related assessment criteria (e.g., specific knowledge and skills) to evaluate personnel. The bill does not require a specific weighting of factors that a district must use in evaluating personnel.

Co-Teaching and Team Teaching

Evaluations of personnel are based on the performance of students assigned to the person's classroom, or in the case of co-teaching or team teaching, within the person's sphere of responsibility.

Compliance Reviews of Merit Plans

Prior to implementing plans, school districts must submit their pay plans to the Commissioner of Education for review. If necessary, a district's plan must be revised and re-submitted to the Commissioner. Plans submitted for the 2007-2008 school year also apply to the 2008-2009 school year. However, subsequent plans apply to only one school year.

Districts are also tasked with annual reviews of their plans and reports to the Commissioner. The adopted plans and reports are subject to a compliance review by the Commissioner for the district's prior school year. A revision to an approved plan must be approved by the district and reviewed by the Commissioner.

The Commissioner is responsible for annual status reports to the Legislature and the Governor for district plans that fail to comply with the law or that fail to implement the requirements in s. 1012.225, F.S.

Charter Schools

The bill allows charter schools to participate in the program by following the district's plan or using a model plan approved by the DOE. These plans are subject to a compliance review by the Commissioner. Charter schools may submit a separate plan with the district's plan or independently submit a plan, if the district does not submit a plan.

DOE Responsibilities

Under the bill, the DOE must develop model plans for potential use by charter schools and must provide technical assistance to districts and charter schools. However, the technical assistance is not subject to the requirements of chapter 120, F.S.

Repeal of Laws

The bill repeals the Special Teachers are Rewarded (STAR) proviso and reappropriates \$147,500,000 to the Department of Education (DOE) for FY 2006-2007 to allocate to school districts for performance pay. Districts must use the funds for the following purposes:

- To fund STAR performance pay plans;
- To fund performance pay plans adopted under s. 1012.22, F.S.; or
- To fund performance pay policies approved by the district school board under the bill.

The bill suspends SBE rules adopted pursuant to s. 1012.22, F.S., which conflict with the provisions of the bill. The SBE has not adopted any rules for the STAR plan. According to the DOE, rules adopted by the SBE that were in conflict with the new STAR plan guidelines were suspended.¹⁴ The DOE's implementation of STAR in the absence of rules was challenged in September 2006.¹⁵ The case was placed in abeyance while the DOE pursues the adoption of rules.

Additionally, the bill repeals s. 1012.22(1)(c)4., F.S., (effective June 30, 20007) relating to the performance pay policy for school administrators and instructional personnel that must be funded from district reserve funds.

The effective date of the bill is upon becoming a 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:

The bill states that a merit plan is subject to collective bargaining pursuant to chapter 447, F.S. If, however, an impasse occurs and both parties agree, a mediator or special magistrate must be appointed. When a party does not agree, the appointment is waived and the parties must proceed directly to resolution of the impasse pursuant to s. 447.403(4)(d), F.S., which requires the district school board to take whatever action is needed to resolve disputed impasse issues. A STAR status report notes that an impasse occurred in 10 districts.¹⁶

Current law does not require that both parties agree, for the mediator to be appointed. Where no mediator is appointed, the Public Employees Relations Commission appoints a special magistrate that is agreeable to both parties.¹⁷ Also, current law specifies that when parties do not agree on a special magistrate, the commission appoints one, in its

¹⁴ Letter from Ms. Lynn Abbott, Florida Department of Education, to Mr. Brian T. Moore, Joint Administrative Procedures Committee, November 30, 2006.

¹⁵ *Florida Education Association and the Teachers Association of Lee County vs. Florida State Board of Education/ Florida Department of Education*; Case No.: 06-3317RU.

¹⁶ *STAR Chart Update*, Cheri Pierson Yecke, Ph.D., Chancellor, K-12 Public Schools, Florida Department of Education, February 14, 2007.

¹⁷ Section 447.403(2)(a), F.S.

discretion.¹⁸ Only once the parties agree in writing to waive the appointment of the special magistrate do they proceed to impasse resolution.¹⁹

It is well established that public employees have the right to collectively bargain. Part II of chapter 447, F.S., embodies this principle and details the procedure to be followed in collective bargaining.²⁰ To the extent that this bill provides for a separate, shortened process under chapter 447, F.S., only for district school board personnel, it may be challenged.²¹

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Merit-Award supplements are funded by the Legislature and from any additional funds that are designated by the district for the program. The bill rescinds, reverts, and reappropriates \$147,500,000 from the STAR program to the DOE for FY 2006-2007 to be used for performance pay. Allocations to the school district are based on each district's proportion of the state total K-12 base funding. Funds for school districts that elect to not participate in the Merit-Award program revert to the fund from which the appropriation was made. School districts must refund undisbursed funds to the DOE. If a district fails to provide the DOE with undisbursed funds, the department must withhold an equivalent amount from the district's allocation from the FEFP.

Under the bill, a merit-based supplement is considered as compensation in calculating retirement benefits;²² however, it is a non-recurring supplement that does not continue as a permanent salary adjustment in the years after it is paid. The bill does not explicitly authorize school districts to deduct contributions to the Florida Retirement System from the merit-based supplements.

VI. Technical Deficiencies:

None.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Sarasota County School District v. Sarasota Classified/Teachers Association*, 614 So.2d 1143, 1146 (Fla. 2nd DCA 1993).

²¹ Art. I, s. 6 of the State Constitution.

²² The bill amends s. 121.021, F.S., to specifically include salary supplements in s. 1012.225, F.S., as compensation, effective July 1, 2007.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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