

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5019C      PCB PBC 07C-10      Employee Incentive Programs for Public School Personnel

**SPONSOR(S):** Policy & Budget Council and Pickens

**TIED BILLS:** \_\_\_\_\_      **IDEN./SIM. BILLS:** \_\_\_\_\_

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Policy & Budget Council	30 Y, 0 N	Eggers\Martin	Hansen
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill does the following:

- extends by one month (to October 1) the deadline for distribution of Merit Award Program awards to recipients;
- extends by one month (to November 1) the deadline for school districts to provide documentation to the Department of Education concerning the expenditure of the Merit Award Program appropriation and to refund to the Department of Education the undisbursed appropriations;
- specifies that funds for the Merit Award Program shall be appropriated in the fiscal year in which the awards are distributed, thereby allowing the Legislature to reduce the 2007-08 fiscal year appropriation of \$147.5 million to zero; and
- directs the Department of Education to prorate the Dale Hickam Excellent Teaching Program bonuses to the level of the appropriation, in the event the appropriation is not sufficient to fund the bonuses.

Except as otherwise provided, this act shall take effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Merit Award Program**

###### Background

The 1997 Legislature instructed districts to base a portion of instructional personnel compensation on performance. The 1999 Legislature required districts to implement, by June 30, 2002, performance pay plans that would award 5% bonuses to school administrators and instructional personnel who demonstrated outstanding performance. Districts were to create a reserve fund within their existing budgets to fully fund the additional 5% bonuses.<sup>1</sup> The 2006 Florida Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to examine school district performance pay plans.

The 2006 Legislature established the Special Teachers Are Rewarded (STAR) program for elementary, middle, and high school instructional personnel and school-based administrators, and appropriated \$147.5 million to the program in the 2006-2007 General Appropriations Act.<sup>2</sup> In order to receive those funds, districts were required to remove all barriers to eligibility and award 5% performance bonuses to the top performing 25% of their instructional personnel.<sup>3</sup>

Districts could choose whether to participate in STAR but all districts were required to implement approved performance pay plans<sup>4</sup> for their instructional personnel. Districts participating in STAR could use any remaining funds to provide performance rewards to additional instructional or school-based administrative personnel. Districts electing not to participate in STAR could implement approved performance pay plans under s. 1012.22(1)(c), F.S.,<sup>5</sup> for their instructional personnel and were required to pay for performance out of other funds.<sup>6</sup>

In January 2007, OPPAGA published Report No. 07-01, *Restrictive District Requirements Limited Participation in Performance Pay Systems*. This report found that, historically, most Florida district school boards have paid teachers using salary schedules that have been based on input factors such as highest degree earned, and years of experience; and that districts had responded to legislative attempts to establish performance pay by creating barriers that limited their effect and resulted in a limited number of awards.

The 2007 Legislature repealed STAR and established the Merit Award Program for instructional personnel and school-based administrators. District participation in the program is voluntary. However, districts will only receive their appropriation for merit award supplements if they choose to adopt a plan.

In order to be eligible for funding under the Merit Award Program, district plans must provide for an assessment and reward eligible employees based upon performance of assigned students as well as

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<sup>1</sup> OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems*. Report No. 07-01. January 2007.

<sup>2</sup> 2006-2007 General Appropriations Act (ch. 2006-25, L.O.F.), Specific Appropriation 91

<sup>3</sup> OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems*. Report No. 07-01. January 2007.

<sup>4</sup> s. 1012.22(1)(c), F.S.

<sup>5</sup> s. 1012.22(1)(c), F.S.

<sup>6</sup> OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems*. Report No. 07-01. January 2007.

principal or superintendent evaluations. All instructional personnel<sup>7</sup> and school-based administrators<sup>8</sup> except substitute teachers are eligible for merit award supplements without having to apply. Instructional teams such as co-teaching or team teaching may be rewarded as a team.

Individual merit award supplements are subject to collective bargaining under Ch. 447. An exception is provided relating to the requirements of s. 447.403, F.S., which allows the district and the union to move past the appointment of a mediator or special magistrate and on to resolution of the impasse where one of the parties does not wish to seek such an appointment.

Charter schools are also eligible for merit award supplements. If a charter school follows a district's salary schedule the charter school should be included within the district's plan. However, if a charter school does not follow the district's salary schedule or the district chooses not to adopt a plan, the charter school may adopt their own merit award pay plan pursuant to the requirements of the statute.

The funds for districts that choose not to participate in the program revert to the fund from which they came. All funds appropriated for the program must be disbursed to qualifying employees by September 1 of the following school year.

Each district plan must designate top performing employees and must include a supplement of at least 5 percent of the average teacher's salary for that school district, but no more than 10 percent of the average teacher's salary for that district from state appropriated funds. Districts may use their own funds to provide additional supplements. The amount of the awards may not be based upon length of service or base salary. The employee must remain employed at a Florida public school in order to receive the bonus. District plans may include a component rewarding exemplary work attendance.

By October 1<sup>st</sup>, the districts must submit documentation to the DOE regarding the expenditure of program funds. Any program funds that are not disbursed by the participating district are to be refunded to the DOE. If funds are not refunded to the DOE, the DOE shall withhold Florida Education Finance Program district lottery funds of an equivalent amount. Merit-based supplements may not adversely affect the opportunity of the recipient to receive any other compensation made available to other teachers and principals within the district.

District assessment of instructional personnel must consider the performance of students assigned to the teacher, or in the case of co-teaching or team teaching, within that teacher's sphere of responsibility. School-based administrators are evaluated according to the performance of the entire student body. Improved student performance is measured by statewide standardized tests and, for grades and courses not covered by the statewide assessment program, by district determined testing instruments that meet certain criteria. This student performance component must be weighted at no less than 60 percent of the overall evaluation. District assessment measures must also balance student performance based on academic proficiency and learning gains.

District Merit Award plans must require that each employee meet the criteria set forth by the district for its principal/superintendent appraisal. This portion of the assessment is weighted at up to 40 percent of the evaluation. The district determined factors must include, but are not limited to:

1. ability to maintain discipline,
2. outstanding knowledge of subject matter and ability to deliver high quality instruction,
3. ability to evaluate student instructional needs,
4. ability of teachers and principals to work well with parents and families of students,
5. the Florida Educator Accomplished Practices for instructional personnel and the Florida Principal Leadership Standards for school-based administrators.

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<sup>7</sup> s. 1012.01(2), F.S., provides for the definition of instructional personnel.

<sup>8</sup> s. 1012.01(3), F.S., provides for the definition of administrative personnel.

In addition to 1-5 above, the criteria for school-based administrators also includes management of human, financial and material resources to maximize such resources for direct instruction and the ability to recruit and retain high-performing teachers.

Districts must notify employees of the criteria and procedures of the district plan. The DOE provides technical assistance upon request on plan development and to collect and disseminate best practices for district-determined testing instruments. The advice and recommendations provided by DOE are not subject to ch. 120, F.S.

Districts must submit their plan to the Commissioner of Education by October 1 of each year. The commissioner shall review the plan for compliance by November 15. If a district plan fails to meet the statutory requirements, the commissioner must detail the revisions that are to be made in writing. Revised plans must be submitted by January 31. The commissioner must certify any district or charter school plans that do not comply to the Governor, President of the Senate, and Speaker of the House of Representatives by February 15.

Districts must annually review their plans for compliance and issue a report that must be sent to the commissioner by October 1 of the following school year to verify compliance the previous year. The commissioner must then submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives certifying district or charter schools that failed to implement plans in accordance with the statute. The report must be sent by the commissioner by December 1<sup>st</sup>.

Plans submitted and approved for the 2007-2008 school year apply during the 2007-2008 school year and the 2008-2009 school year. Thereafter, all plans submitted apply during the following school year. Any subsequent revisions must be reviewed by the district school board and the commissioner.

Beginning with the 2007-2008 school year, participating districts must be able to administer end-of-course exams in all grade groupings and subject areas. Statewide assessments, College Board Advanced Placement Examination, International Baccalaureate Examination, Advanced International Certificate of Education Examination, or national industry certification will satisfy this requirement.

The 2007-08 GAA appropriated \$147.5 million for this program (see FISCAL ANALYSIS section below).

The STAR proviso language from the 2006-07 GAA was codified and repealed, and the 2006-2007 appropriation was rescinded. The sum of \$147.5 million was then appropriated as a supplemental appropriation for Aid to Local Governments, Grants and Aids –Florida Education Finance Program. These funds were allocated to districts based on each district's portion of the total state K-12 base funding amount.

The STAR deadline for submission of revised district plans is pushed back from March 1, 2007 to May 1, 2007. Any district that is able to submit its plan by the May 1 deadline and have a plan approved will receive its appropriation. Any district with an existing performance pay policy pursuant to s. 1012.22(1)(c), F.S., may also be eligible for funding, but they must amend their plan to meet the new statutory criteria prior to the disbursement of funds under this section, or if they do not amend their plan to meet the statutory requirements, they may receive only the amount they disbursed under s. 1012.22(1)(c)4., F.S.

Any funds that would have been available to districts that choose not to meet any of the above requirements for the 2006-2007 school year revert to the fund from which the appropriation came. Any funds the districts do not disburse pursuant to their merit award, STAR or performance pay plan must be returned to the DOE. Any amount of such funds that are not returned shall be withheld by the DOE from the district's Florida Education Finance Program allocations. As of September 20, 2007, thirty-four school districts and three lab schools returned \$41.1 million to the Department of Education.

### Effects of Proposed Changes

The bill extends by one month, from September 1 to October 1, the deadline for distribution of the awards to recipients, allowing school districts an additional month to determine teacher eligibility and to locate eligible teachers. The bill extends by one month, from October 1 to November 1, the deadline for school districts to provide documentation to the Department of Education concerning the expenditure of the appropriation and to refund to the Department of Education the undisbursed appropriations for merit-based pay. The November 1 deadline for the Department of Education to withhold a district's Florida Education Finance Program funds in the event the district does not refund undisbursed appropriations is not revised.

Currently the 2007-08 appropriation of \$147.5 million will not be distributed until September 2008. The bill specifies that funds for the program shall be appropriated in the fiscal year in which the merit-based pay supplements are disbursed. Therefore, the bill allows that the 2007-08 fiscal year appropriation be reduced to zero. The 2007-08 award recipients will be paid in September 2008 from the appropriation made by the 2008 Legislature.

## **Dale Hickam Excellent Teaching Program**

### Background

The Dale Hickam Excellent Teaching program provides incentives for classroom teachers to seek national certification through the National Board for Professional Teaching Standards (NBPTS). The NBPTS was established in 1987 as a not-for-profit organization with the goals of setting high, rigorous, and detailed standards of what accomplished teachers should know and be able to do. These standards represent 24 certification fields. Candidates must possess a baccalaureate degree, hold a valid state teaching license, and have accomplished three years of successful teaching.

Candidates for National Board certification are subject to a portfolio review and a two-part assessment based on standards and teaching. NBPTS certification takes approximately one to three years to complete. The portfolio review includes students' work and videotapes of the classroom teacher providing classroom instruction. Candidates are measured by a peer group of classroom teachers.

The Dale Hickam Excellent Teaching program pays \$2,250 (a fee subsidy of 90% of the NBPTS \$2,500 fee) for each Florida teacher who seeks NBPTS certification. A one-time portfolio preparation fee of \$150 is also paid. Florida teachers who receive NBPTS certification are eligible to receive an annual bonus of 10% of the prior fiscal year's statewide average salary for classroom teachers, approximately \$4,270 for every year of the life of the certification (10 years), provided that they remain classroom teachers. An additional bonus equal to 10% of the prior fiscal year's statewide average salary for classroom teachers can be earned by NBPTS certified teachers who provide the equivalent of 12 work days of mentoring and related services to Florida public school teachers who do not hold NBPTS certification.<sup>9</sup>

The historical appropriations for this program are:

<u>School Year</u>	<u>Appropriation</u>
1998-1999	\$ 12.0 million
1999-2000	\$ 14.0 million
2000-2001	\$ 19.0 million
2001-2002	\$ 31.4 million
2002-2003	\$ 48.7 million
2003-2004	\$ 69.5 million
2004-2005	\$ 67.7 million
2005-2006	\$ 83.6 million

<sup>9</sup> s. 1010.72(2), F.S.

2006-2007	\$ 97.9 million
2007-2008	\$102.2 million

### Effects of Proposed Changes

In the event the appropriation is not sufficient to fund the bonuses, the bill directs the Department of Education to prorate the bonuses to the level of the appropriation. In the past three years, the appropriations have been sufficient to fully fund the bonuses and there have been reversions ranging from \$13.9 million to \$18.1 million of unused funds each year.

### **Effective Date**

The bill also provides that, except as otherwise provided, this act shall take effect upon becoming law.

### C. SECTION DIRECTORY:

**Section 1.** Amends s. 1012.225(2)(a), F.S., revising the deadline by which Merit Award Program disbursements must be made to award recipients; revising the deadline by which school districts must report disbursement information to the Department of Education; revising the date by which school districts must refund to the Department of Education undisbursed funds; specifying that the Merit Award Program appropriation be made in the fiscal year in which the funds are disbursed to award recipients.

**Section 2.** Amends s. 1012.72(2), F.S., specifying that in the event the appropriation is not sufficient to fund the bonuses, the bill directs the Department of Education to prorate the bonuses to the level of the appropriation.

**Section 3.** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The requirement that the Merit Award Program appropriation be made in the same fiscal year in which the award disbursements are made allows the Legislature to reduce the 2007-2008 fiscal year appropriation to zero. The 2007-08 award recipients will be paid in September 2008 from the appropriation made by the 2008 Legislature.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

Currently the 2007-08 appropriation of \$147.5 million will not be distributed until September 2008. The bill specifies that funds for the program shall be appropriated in the fiscal year in which the merit-based pay supplements are disbursed. Therefore, the 2007-08 fiscal year appropriation will be reduced to zero and the 2007-08 award recipients will be paid in September 2008 from the appropriation made by the 2008 Legislature.

The bill directs the Department of Education to prorate the Dale Hickam Excellent Teaching Program bonuses to the level of the appropriation, in the event the appropriation is insufficient to fully fund the bonuses. In the past three years, the appropriations have been sufficient to fully fund the bonuses and there have been reversions ranging from \$13 million to \$17 million of unused funds each year.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because: 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; and the bill does not reduce the percentage of state tax shared with counties or municipalities.

3. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**D. STATEMENT OF THE SPONSOR**

None.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**