

## FINAL BILL ANALYSIS

**BILL #:** CS/CS/SB 736

**FINAL HOUSE FLOOR ACTION:**

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**SPONSOR:** Sen. Wise (Rep. Fresen)

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** CS/HB 7019

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## **SUMMARY ANALYSIS**

CS/CS/SB 736 passed the House on March 16, 2011, and passed the Senate on March 10, 2011. The bill was approved by the Governor on March 24, 2011, chapter 2011-1, Laws of Florida, and becomes effective July 1, 2011. In August 2010, Florida was awarded a \$700 million federal Race to the Top grant. Grant funds will be used to develop performance evaluation systems that are at least 50 percent based upon student learning growth; assist districts in acquiring assessments for subjects and grades not tested on statewide assessments; develop value-added student learning growth formulas for subjects tested by statewide assessments and growth models for assessing subjects and grades not tested by statewide assessments. Evaluations must differentiate among multiple performance levels and must be used for employment decisions. Districts must also develop educator compensation systems that tie the most significant increases in salary to performance. Sixty-two school districts, 224 charter schools in 29 districts, and three university lab schools have signed formal commitments with the Florida Department of Education to implement these reforms. The grant ends after the 2013-14 school year.

The bill codifies the Race to the Top performance evaluation and educator compensation reforms into law so that, after the end of the grant period, school districts and charter schools must sustain implemented reforms. School districts and charter schools must adopt instructional personnel and school administrator performance evaluation systems that rank employees as highly effective, effective, needs improvement/developing, or unsatisfactory. At least 50 percent of an evaluation must be based upon student learning growth. Student learning growth must be measured by statewide assessments, and for subjects and grades not tested on statewide assessments, assessments selected by the district or charter school. Student learning growth formulas will compare prior student performance with learning achieved while assigned to the educator. Factors such as disability, attendance, and English proficiency will also be considered. Performance evaluation results, rather than seniority, must be used for employment decisions and workforce reductions.

School districts and charter schools must adopt a performance salary schedule for instructional personnel and school administrators by July 1, 2014. Districts must negotiate this salary schedule within the parameters set by the bill. Any increases to base salary must be based upon "effective" or "highly effective" performance, rather than seniority or advanced degrees. If provided, salary supplements must reward employees who are assigned to hard-to-staff schools and subject areas. Initially, the performance salary schedule applies to employees hired on or after July 1, 2014, and instructional personnel on annual contracts as of July 1, 2014. Instructional personnel on continuing or professional service contracts are "grandfathered" into the existing salary schedule, or, at anytime, may opt into the performance salary schedule. Employees who opt in must relinquish their continuing or professional service contract for an annual contract. The bill also limits the application of pay increases for seniority, advanced degrees, and cost-of-living adjustments.

The bill discontinues the award of new professional service contracts as of July 1, 2011; only annual contracts may be awarded to instructional personnel thereafter. The bill specifies performance-based criteria for annual contract award and just cause grounds for suspension or dismissal.

See Fiscal Comments.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

## I. SUBSTANTIVE INFORMATION

### EFFECT OF CHANGES:

#### Florida Law

Florida law provides general requirements for contracts, compensation, and performance evaluation of instructional personnel and school administrators.<sup>1</sup> Instructional personnel are classroom teachers, guidance counselors, social workers, career specialists, school psychologists, librarians and media specialists, learning resource specialists, instructional trainers, adjunct educators, and education paraprofessionals.<sup>2</sup> School administrators are school principals, school directors, career center directors, and assistant principals.<sup>3</sup>

*Performance Evaluations.* The job performance of instructional personnel and school administrators is evaluated annually.<sup>4</sup> Since 1999, the performance evaluation has been statutorily required to be primarily based upon student performance, as measured by statewide assessments and, for subjects and grades not tested by statewide assessments, local assessments. The term “primarily based” is not defined.<sup>5</sup> The design features of school district performance evaluation systems are often established through collective bargaining.<sup>6</sup> The correlation between performance evaluations and student performance is questionable when comparing 2008-09 performance evaluation results and student learning gains in reading and math. That year, 99.97 percent of classroom teachers received satisfactory performance evaluations, while less than 70 percent of reading and mathematics teachers had at least 50 percent of their students make learning gains on statewide assessments.<sup>7</sup>

*Contracts.* Currently, a professional service contract is granted to instructional personnel who complete a period of probationary employment on annual contracts. Professional service contract employees are entitled to automatically renewing contracts and may only be dismissed for specified reasons after statutorily required due process.<sup>8</sup> Because of automatic contract renewal, a professional service contract is often referred to as tenure.<sup>9</sup>

*Compensation.* Instructional personnel salary schedules are collectively bargained, resulting in heavy reliance on seniority and advanced degrees to set compensation. A typical school district salary schedule sets forth an escalating salary scale based upon “steps.” Each step represents the

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<sup>1</sup> Sections 1012.22, 1012.33, and 1012.34, F.S.

<sup>2</sup> Section 1012.01(2)(a)-(e), F.S. Instructional personnel provide direct instructional services or direct instructional support to students in grades K-12. Section 1012.01(2), F.S.

<sup>3</sup> Section 1012.01(3)(a), F.S. School administrators serve as school-level managers. Section 1012.01(3), F.S. (introductory paragraph at beginning of subsection).

<sup>4</sup> Section 1012.34(1), F.S.

<sup>5</sup> Section 58, ch. 99-398, L.O.F., *codified at* s.1012.34(3), F.S.

<sup>6</sup> *See, e.g.,* Miami-Dade Public Schools and United Teachers of Dade, *Collective Bargaining Agreement*, at 190 (2006), available at [http://www.dadeschools.net/employees/labor\\_union/UTD/entire.pdf](http://www.dadeschools.net/employees/labor_union/UTD/entire.pdf) [hereinafter *Miami-Dade Master Contract*](a successor contract extends this agreement with some changes).

<sup>7</sup> U.S. Department of Education, *Florida's Race to the Top Application for Initial Funding*, at 144 (June 1, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/florida.pdf> [hereinafter *Race to the Top Application*].

<sup>8</sup> Section 1012.33(3)(a) and (e) and (6), F.S. Forty-nine states and the District of Columbia have laws providing some form of tenure. Education Commission of the States, *Teacher Tenure/Continuing Contract Laws*,

<http://www.ecs.org/clearinghouse/75/64/7564.htm> (last visited Feb. 9, 2011). In Wisconsin, tenure is determined locally. *Id.*

<sup>9</sup> Section 1012.33(3)(a), F.S.; *see also* 67B Am. Jur. 2d Schools s. 195 (defining tenure). Instructional personnel hired before July 1, 1984, were issued continuing contracts. Legislation enacted in 1981 phased out continuing contracts in favor of professional service contracts. Section 15, ch. 82-242, L.O.F.

employee's years of experience. Instructional personnel receive automatic annual salary increases based upon these steps. Additional automatic increases are provided to those with advanced degrees.<sup>10</sup>

## Research

Research indicates that classroom teacher effectiveness is the most important school-level variable influencing student learning. Students who are taught by ineffective teachers perform at much lower levels than students demonstrating comparable ability taught by high-performing teachers. Students taught by an ineffective teacher for even one year experience long-term negative impacts on achievement.<sup>11</sup>

Despite the impact teacher effectiveness has on student achievement, few states link employment decisions to annual performance evaluations.<sup>12</sup> Insufficient use of student performance to evaluate teachers impedes rewarding effective teachers, identifying ineffective teachers, and remediating those who need additional support. Tenure protections make removing chronically ineffective teachers difficult and costly.<sup>13</sup> Research suggests that states should make student performance the centerpiece of performance evaluations, tie employment decisions to evaluations, and provide a system that enables dismissal of chronically ineffective teachers.<sup>14</sup> In 2010, 13 states enacted legislation placing increased emphasis upon student learning when evaluating teacher performance.<sup>15</sup> Eight of these states also reformed teacher tenure, hiring practices, or both.<sup>16</sup>

Research also questions the heavy emphasis that traditional teacher compensation systems place upon seniority and educational degree level because no statistically significant evidence exists that

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<sup>10</sup> See s. 1012.22(1)(c), F.S.; see, e.g., Hillsborough County Public Schools, *Salary Schedules 2009-2010*, at 8-10 (2009), available at [http://www.sdhc.k12.fl.us/HumanResources/PDFs/SALARY/HCPS\\_SalarySchedule\\_Entire.PDF](http://www.sdhc.k12.fl.us/HumanResources/PDFs/SALARY/HCPS_SalarySchedule_Entire.PDF) [hereinafter *Hillsborough Salary Schedule*]; see, e.g., Glades County School District and Glades County Teacher's Association, *Instructional Personnel Master Contract*, at 16 (Jan. 14, 2010) [hereinafter *Glades Teacher Contract*] (copy on file with committee).

<sup>11</sup> Sanders and Rivers, *Cumulative and Residual Effects of Teachers on Future Student Achievement*, at 6-8 (Nov. 1996), available at <http://www.mccsc.edu/~curriculum/cumulative%20and%20residual%20effects%20of%20teachers.pdf>. Sanders and Rivers found that standardized mathematics assessment scores for students who were taught by a low-performing teacher for three consecutive years were 53 percentile points lower than those of students who were taught by a high-performing teacher for three consecutive years. *Id.* at 3.

<sup>12</sup> See, e.g., Center for American Progress, *Ring the Bell for K-12 Teacher Tenure Reform*, at 7 (Feb. 2010), available at [http://www.americanprogress.org/issues/2010/02/pdf/teacher\\_tenure.pdf](http://www.americanprogress.org/issues/2010/02/pdf/teacher_tenure.pdf) [hereinafter *Ring the Bell*]; see, e.g., National Council on Teacher Quality, *2009 State Teacher Policy Yearbook: Florida*, at 78-80 (2009), available at [http://www.nctq.org/stpy09/reports/stpy\\_florida.pdf](http://www.nctq.org/stpy09/reports/stpy_florida.pdf) [hereinafter *NCTQ 2009 State Report*]; see, e.g., The New Teacher Project, *The Widget Effect, Our Failure to Acknowledge and Act on Differences in Teacher Effectiveness*, at 24 (2009), available at <http://widgeteffect.org/downloads/TheWidgetEffect.pdf> [hereinafter *The Widget Effect*].

<sup>13</sup> Center for American Progress, *Removing Chronically Ineffective Teachers, Barriers and Opportunities*, at 9-11, 16 (March 2010), available at [http://www.americanprogress.org/issues/2010/03/pdf/teacher\\_dismissal.pdf](http://www.americanprogress.org/issues/2010/03/pdf/teacher_dismissal.pdf); The Brookings Institution, *Identifying Effective Teachers Using Performance on the Job*, at 12-15 (April 2006), available at [http://www.brookings.edu/views/papers/200604hamilton\\_1.pdf](http://www.brookings.edu/views/papers/200604hamilton_1.pdf) [hereinafter *Brookings Report*].

<sup>14</sup> Ringing the Bell, *supra* note 12, at 7-8, 24; *NCTQ 2009 State Report*, *supra* note 12, at 70-73, 78-80, and 125-133; *The Widget Effect*, *supra* note 12, at 27-30; *Brookings Report*, *supra* note 13, at 13-15.

<sup>15</sup> National Council for State Legislatures, *Educators (Teachers/Principals) 2010 Enacted Evaluation Legislation*, <http://www.ncsl.org/default.aspx?tabid=21155> (last visited Feb. 10, 2011) (Arizona, California, Colorado, Connecticut, Illinois, Louisiana, Maine, Maryland, Michigan, Nevada, New York, Oklahoma, and Tennessee).

<sup>16</sup> *Id.* (Arizona, Colorado, Connecticut, Maryland, Michigan, New York, Oklahoma, and Tennessee).

either factor is a strong predictor of teacher effectiveness.<sup>17</sup> Regarding seniority, some studies show that teachers become more effective after gaining some experience; however, gains in effectiveness are not sustained over time.<sup>18</sup> Instead, the most significant gains in teacher effectiveness occur early in a teacher's career and peak after a certain number of years, with little or no measurable increase thereafter.<sup>19</sup> According to DOE, 164,501 classroom teachers were paid approximately \$7.4 billion in the 2009-10 school year. Of this amount, an estimated \$1.3 billion in base salary increases were paid based upon seniority. In addition, 59,232 classroom teachers were paid approximately \$186 million for advanced degrees. Compensation provided for advanced degrees averaged approximately \$2,800 for a master's degree, \$6,600 for a specialist, and \$6,600 for a doctorate degree.<sup>20</sup>

## Race to the Top

In August 2010, Florida was one of 11 states and the District of Columbia awarded federal Race to the Top grant funds.<sup>21</sup> Florida will receive \$700 million to implement various education reforms. At least \$69 million will be used to reform performance evaluation, compensation, and employment policies.<sup>22</sup> Sixty-two of 67 school districts, 224 charter schools in 29 of these districts, and three university lab schools

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<sup>17</sup> See National Council on Teacher Quality, *Increasing the Odds: How Good Policies Can Yield Better Teachers*, at 2-3 (Oct. 2004), available at [http://www.nctq.org/nctq/images/nctq\\_io.pdf](http://www.nctq.org/nctq/images/nctq_io.pdf) [hereinafter *NCTQ Research Review*]; Center for Educator Compensation Reform, *Research Synthesis: General Compensation Questions*, at 3 (2010), available at [http://cecr.ed.gov/researchSyntheses/Research%20Synthesis\\_Q%20A2.pdf](http://cecr.ed.gov/researchSyntheses/Research%20Synthesis_Q%20A2.pdf) [hereinafter *CECR Research Review*]; see, e.g., Aaronson, Barrow, and Sander, *Teachers and Student Achievement in the Chicago Public High Schools*, Federal Reserve Bank of Chicago, at 28-30 (Feb. 2003); see, e.g., Hanushek, *The Economics of Schooling: Production and Efficiency in Public Schools*, *Journal of Economic Literature*, Vol. 24, Issue 3, at 1162 (Sept. 1986); compare Goldhaber and Brewer, *Evaluating the Effect of Teacher Degree Level on Educational Performance*, in *Developments in School Finance 1996*, U.S. Department of Education, Nation Center for Education Statistics, at 208 (1997)(finding that teachers with advanced mathematics degrees produced slightly higher student mathematics test scores than those teaching out-of-field or without an advanced mathematics degree) with Rowan, Correnti, and Miller, *What Large Scale, Survey Research Tells Us About Student Achievement: Insights from the Prospects Study of Elementary Schools*, Consortium for Policy Research in Education, University of Pennsylvania, at 13-14 (2002)(Finding that teachers with advanced mathematics degrees produced lower student mathematics test scores than those without any mathematics degree); see also Clotfelder, Ladd, and Vigdor, *How and Why Teacher Credentials Matter for Student Achievement?*, Urban Institute, Working Paper 2, at 33 (March 2007)(finding that elementary teachers who earned an advanced degree within five years of entering teaching were no more effective than those without advanced degrees and elementary teachers with advanced degrees earned after five years in teaching were less effective than those without advanced degrees).

<sup>18</sup> *NCTQ Research Review*, *supra* note 17, at 3; *CECR Research Review*, *supra* note 17, at 2-3.

<sup>19</sup> *Id.*; see, e.g., *Brookings Report*, *supra* note 13, at 27 (finding significant gains in teacher effectiveness during the first two years in teaching, with little measurable increase after four years); see, e.g., Hanushek, Kain, O'Brien, and Rivkin, *The Market for Teacher Quality*, National Bureau of Economic Research, Working Paper 11154, at 29 (Feb. 2005), available at <http://edpro.stanford.edu/hanushek/admin/pages/files/uploads/w11154.pdf> (finding that the largest gains in teacher effectiveness occur during the first year in teaching).

<sup>20</sup> Email, Florida Department of Education (Dec. 6, 2010).

<sup>21</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009); Press Release, U.S. Department of Education, *Nine States and the District of Columbia Win Second Round Race to the Top Grants* (Aug. 24, 2010), <http://www.ed.gov/news/press-releases/nine-states-and-district-columbia-win-second-round-race-top-grants> (last visited Feb. 10, 2011). Delaware and Tennessee were selected to receive Race to the Top grant funds in Phase 1 of the competition. The District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island were selected in Phase 2. The winners were selected from a field of 46 states. *Id.*

<sup>22</sup> U.S. Department of Education, *Race to the Top Funding Status*, <http://www2.ed.gov/programs/racetothetop/funding.html> (last visited Feb. 14, 2011); Florida Department of Education, *Florida's Race to the Top: hearing before the House Education Comm.* (Jan. 13, 2011); Email from Florida Department of Education (Feb. 14, 2011).

have signed formal commitments with the Florida Department of Education.<sup>23</sup> Fifty local teachers unions have agreed to collaborate with their school districts in implementing these reforms.<sup>24</sup>

## **Performance Evaluations**

### **Current Law**

Florida law requires each district school superintendent to establish procedures to assess the job performance of instructional personnel and school administrators.<sup>25</sup> A performance evaluation must be conducted at least once per year for these employees.<sup>26</sup> Some school districts require additional evaluations for beginning classroom teachers or those on annual contract.<sup>27</sup> State Board of Education rule requires each school district to identify the factors and evidence to be used to designate, document, and differentiate unsatisfactory, satisfactory, and outstanding performance. However, use of a specific set of performance levels is not required.<sup>28</sup> The design features of school district performance evaluation systems are often established through collective bargaining.<sup>29</sup> The Department of Education (DOE) must approve each school district's performance evaluation system.<sup>30</sup>

Each performance evaluation must measure the employee's subject area knowledge and ability to maintain classroom discipline; plan and deliver instruction; use technology in the classroom; evaluate instructional needs; and collaborate with parents to increase student achievement. Additional performance criteria may be established by the state board and district school boards.<sup>31</sup>

Since 1999, the law has required that performance evaluations be primarily based upon student performance and that districts use statewide assessments and, for subjects and grades not tested by

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<sup>23</sup> Florida Department of Education, *LEA Approval Status List*, <http://www.fldoe.org/arra/Racetothetop.asp> (last visited Feb. 4, 2011). Participating lab schools are the Florida Atlantic University, Florida A & M University, and University of Florida lab schools. The Baker, Dixie, Hamilton, Palm Beach, and Suwannee County school districts are not participating in the grant. *Id.*

<sup>24</sup> Florida Department of Education, *Florida's Race to the Top Memorandum of Understanding: hearing before the House K-20 Competitiveness Subcomm.* (Feb. 23, 2011).

<sup>25</sup> Section 1012.34(1), F.S.

<sup>26</sup> Section 1012.34(3), F.S.

<sup>27</sup> See, e.g., Orange County Public Schools, *Instructional Personnel Performance Assessment Procedures Manual*, at 3 (2009), available at [https://www.ocps.net/es/hr/PDS/assessment/Documents/2009-10\\_Assessment\\_Manual\\_all.pdf](https://www.ocps.net/es/hr/PDS/assessment/Documents/2009-10_Assessment_Manual_all.pdf) [hereinafter *Orange County Performance Assessment*].

<sup>28</sup> Rule 6B-4.010(1)(c)2., F.A.C. The performance levels used by school districts vary. For example, Miami-Dade School District uses four performance levels – exemplary, proficient, developing/needs improvement, and unsatisfactory. Miami-Dade County School District, *Instructional Performance Evaluation and Growth System*, at 26 (2009), available at <http://ipegs.dadeschools.net/pdfs/Teacher%20Handbook%20FINAL%208-4-09.pdf> [hereinafter *Miami-Dade Performance Assessment*]. In contrast, Sumter School District uses three performance levels – satisfactory, needs improvement, and unsatisfactory. Sumter County Schools, *Instructional Performance Assessment System*, at II-11 (1999), available at <http://www.fldoe.org/profdev/pdf/pa/Sumter.pdf> [hereinafter *Sumter County Performance Assessment*].

<sup>29</sup> See, e.g., *Miami-Dade Master Contract*, *supra* note 6, at 245-247.

<sup>30</sup> Section 1012.34(1), F.S. Approved school district performance evaluations may be viewed on the DOE website. See Florida Department of Education, *District Performance Appraisal Systems*, <http://www.fldoe.org/profdev/pa.asp> (last visited Feb. 4, 2011).

<sup>31</sup> Section 1012.34(3)(a), F.S. The Educator Accomplished Practices are adopted in rule and include several competencies and skills that are essential to effective teaching. Rule 6A-5.065, F.A.C. Likewise, the Florida Principal Leadership Standards provide the standards by which school administrators must demonstrate competency to be considered effective. Rule 6A-5.080, F.A.C.

statewide assessments, local assessments, for determining student performance.<sup>32</sup> The term “primarily based” is not defined, resulting in inconsistent weighting of student performance and use of student assessment data in district performance evaluation systems.<sup>33</sup>

Currently, there is no express requirement that performance be considered when making employee transfers and promotions. These actions are based upon district school superintendent recommendation and school board approval. When transferring a classroom teacher from one school to another, the superintendent must consult with the school principal and allow him or her to review the teacher’s record and interview the teacher. If the school principal determines that the placement is not in the best interests of students, he or she may request an alternative placement.<sup>34</sup> The law does not grant school principals the right to refuse such placements.<sup>35</sup>

### *Race to the Top*

Race to the Top funds will be used to hire consultants to assist school districts in developing new instructional personnel and school administrator performance evaluations that are at least 50 percent based upon student learning growth. Each school district must use a comprehensive range of performance ratings that include “effective” and “highly effective.” Additionally, each school district must conduct multiple evaluations for each first-year classroom teacher. Participating districts must use the performance evaluation to make employment decisions.<sup>36</sup>

School districts participating in Race to the Top must measure student learning growth based upon statewide assessments and, for subjects and grades not tested by statewide assessments, district-developed or selected assessments aligned to state standards.<sup>37</sup> Currently, statewide assessments include the Florida Comprehensive Assessment Test (FCAT) and statewide standardized end-of-course assessments (EOC). The FCAT assesses reading (grades 3-10), mathematics (grades 3-8), science (grades 5 and 8), and writing (grades 4, 8, and 10). Statewide standardized EOCs for high school students include Algebra I (administration begins in 2010-11) and Biology I and Geometry (administration begins in 2011-12). Middle school students will begin taking an EOC in Civics beginning in the 2012-13 school year.<sup>38</sup>

Race to the Top funds will be used to hire consultants to assist DOE in developing a value-added student learning growth formula for statewide assessments and model formulas for subjects and grades not tested on statewide assessments. These formulas will be used to measure student learning growth over time, unlike student achievement,<sup>39</sup> which measures knowledge held at a particular point-in time. Student learning growth formulas will be used to measure instructional personnel and school administrator performance, using multiple years of student data. Other factors that may influence

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<sup>32</sup> Section 58, ch. 99-398, L.O.F., *codified at* s. 1012.34(3), F.S.

<sup>33</sup> *Race to the Top Application*, *supra* note 7, at 144.

<sup>34</sup> Section 1012.27(1), F.S.

<sup>35</sup> *See* s. 1012.28, F.S.

<sup>36</sup> Florida Department of Education, *Florida’s Race to the Top Memorandum of Understanding for Phase 2*, at 10-13 (May 3, 2010), available at <http://www.fldoe.org/arra/pdf/phase2mou.pdf> [hereinafter *Race to the Top MOU*]; Florida Department of Education, *American Recovery and Reinvestment Act, Procurements*, <http://www.fldoe.org/arra/procurements.asp> (last visited Feb. 13, 2011)[hereinafter *Race to the Top Procurement*] (Improvement of Educator Evaluation Systems).

<sup>37</sup> *Race to the Top MOU*, *supra* note 36, at 10-13.

<sup>38</sup> Section 1008.22(3)(c), F.S.

<sup>39</sup> School districts may use a student achievement measure instead of a student learning growth measure for courses in which achievement is a more appropriate measure. *Race to the Top MOU*, *supra* note 36, at 10-13.

student learning will be considered during formula development, such as attendance, disability, and English proficiency.<sup>40</sup>

## Effect of Bill

The bill more closely aligns state law governing instructional personnel and school administrator performance evaluation systems with the reforms proposed by Race to the Top. These reforms will clearly focus evaluations on student learning, provide uniform standards for system design, and facilitate more consistent and reliable statewide evaluation of employee performance. This, in turn, will enhance the utility of the evaluation in rewarding effective employees, identifying ineffective employees, and assisting those who need additional support. Performance evaluation results must be used as a basis for professional development, compensation, retention, transfers, and promotions, thereby facilitating maximization of personnel resources. The bill authorizes a school principal to refuse the placement or transfer of instructional personnel who are not rated effective or higher.

Currently, a uniform set of performance levels is not required. The terminology used to describe each performance level, standards for measuring each level, and number of levels varies statewide. This makes it difficult to compare effective performance from one school district to another. To provide consistent statewide indicators of performance, the bill requires performance evaluation systems to differentiate among four consistent and clearly defined levels of performance:

- Highly effective;
- Effective;
- Needs improvement, or for instructional personnel in their first three years of employment who need improvement, developing; and
- Unsatisfactory.

The state board must adopt rules establishing uniform standards for each performance level. The Commissioner of Education must consult with experts, instructional personnel, school administrators, and education stakeholders in developing the criteria for the performance levels.

Newly hired classroom teachers must be evaluated at least twice in their first year of teaching in the school district. “Newly hired classroom teachers” include first-time teachers new to the profession as well as veteran teachers new to the school district. This will enable districts to provide additional feedback and support to these teachers. All other employees must be evaluated annually. Performance evaluation systems must include processes for monitoring evaluator reliability and system effectiveness. Evaluators may consider input from other trained personnel.

The bill reorganizes the existing performance criteria into three distinct categories: student performance; instructional practice; and instructional leadership. All employees will be evaluated based upon student performance. Instructional practice criteria for instructional personnel are based upon the Florida Educator Accomplished Practices.<sup>41</sup> Instructional leadership criteria for school administrators are based upon the Florida Principal Leadership Standards.<sup>42</sup> School administrators will also be evaluated based upon recruitment and retention of effective or highly effective classroom teachers,

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<sup>40</sup> *Race to the Top MOU*, *supra* note 36, at 10-13; *Race to the Top Procurement*, *supra* note 36 (Value Added Model); *see also* Office of Program Policy Analysis and Government Accountability, *Overview of Value-Added Analysis*, at 1 (2011).

<sup>41</sup> The Educator Accomplished Practices are adopted in rule and include include several competencies and skills that are essential to effective teaching. Rule 6A-5.065, F.A.C.

<sup>42</sup> The Florida Principal Leadership Standards provide the essential competencies and skills for school administrators. Rule 6A-5.080, F.A.C.

school-level improvements in the percentage of such teachers, and execution of evaluation duties. The state board and school boards may adopt additional performance criteria based upon employee job responsibilities.

Current law does not clearly define the exact proportion of the performance evaluation that must be based upon student performance. Consequently, the weight assigned to student performance varies among school districts. The bill replaces the requirement that performance evaluations be “primarily based” upon student performance with a clear and specific requirement that student learning growth comprise at least 50 percent of instructional personnel and school administrator evaluations. Measurement of student learning growth must be based upon students assigned to the employee over three school years. If less than three years of data is available, the school district must include available data and may reduce the weight attributed to student learning growth to not less than 40 percent for classroom teachers and school administrators and not less than 20 percent for other instructional personnel. Using three years of data enables evaluators to examine how students assigned to the employee have performed in the past and determine performance trends. This also enables evaluators to examine drastic changes to established trends, and determine if the change is an anomaly.

Standards for measuring student learning growth vary by personnel classification, as follows:

- Student learning growth for students assigned to classroom teachers will be measured by statewide assessments or, for subjects and grades not tested by statewide assessments, school district-selected assessments.
- Student learning growth for students assigned to other instructional personnel will be measured by statewide assessments; however, a combination of growth data and measurable student outcomes unique to the personnel assignment may be used, provided that growth data accounts for at least 30 percent of the evaluation.
- Student learning growth for a school administrator’s evaluation will be measured by learning growth data for students assigned to the school.

Since 1999, school districts have been required to measure student performance using statewide assessments, and for subjects and grades not tested on statewide assessments, local assessments. Currently, the extent that school districts use existing statewide assessments to measure student performance is unclear. Likewise, not all school districts have local assessments to measure subjects and grades not tested by statewide assessments. Beginning with the 2014-15 school year, each school district must adopt a rigorous student assessment for each course it offers. School districts may use statewide assessments, other standardized assessments, industry certification examinations, and district-developed or -selected assessments. The commissioner must identify methods to support school districts in the development or acquisition of assessments. Such methods include developing test item banks, facilitating the sharing of assessments among districts, acquiring assessments from state and national curriculum-area organizations, and technical assistance. DOE and most school districts will already be undertaking most of these activities as part of Race to the Top implementation.

By June 1, 2011, the commissioner must approve a student learning growth formula for the FCAT. Additional formulas for other statewide assessments must be selected as these assessments are implemented. The state board must adopt formulas for statewide assessments into rule. Formulas must consider each student’s prior performance and learning growth over time. Factors such as student attendance, disability, or English proficiency must be considered in formula development. The formula will recognize each student’s unique starting point. A student’s prior performance will be compared to performance in the year assigned to the employee. Different expectations will not be established for students based upon gender, race, ethnicity, or socioeconomic status.



Beginning with the 2011-12 school year, each school district must use the commissioner-approved formula for courses associated with the FCAT. Formulas for additional statewide assessments must be implemented as they become available. Beginning with the 2014-15 school year, each district must measure student learning growth using an equally appropriate formula for assessments of subjects and grades not tested by statewide assessments. DOE must provide student learning growth models which school districts may adopt for this purpose. Much of this work will be accomplished during Race to the Top implementation.

The bill authorizes school districts to request DOE-approval to use a student achievement measure or a combination of student learning growth and achievement when such measures are appropriate. This enables districts to use student achievement when point-in-time knowledge more accurately reflects student performance in a course. Such courses may include industry certification, art, or music courses, in which mastering a job skill, painting a picture, or playing a song may be the goal of the course. Likewise, school districts may request approval to determine appropriate measures of student performance based upon course characteristics and personnel assignments. This gives districts flexibility in evaluating instructional personnel who teach in hard-to-measure subject areas or whose job responsibilities do not involve direct classroom instruction.

Until July 1, 2015, if a district has not implemented an assessment or formula for a course, two alternative growth measures may be used for a classroom teacher of the course – student learning growth on statewide assessments or measurable learning targets in the school improvement plan. Additionally, a district school superintendent may assign student learning growth on statewide assessments to an instructional team. This provides flexibility to evaluate employees who teach courses in which appropriate assessments or student learning growth formulas have not yet been adopted.

The bill adds a requirement that school districts report to DOE school administrators who receive two consecutive unsatisfactory evaluations and those who are given written notice of intent to terminate or not renew their employment. Currently, reporting of this information is limited to instructional personnel. This will enable DOE to monitor the extent to which school districts are removing chronically ineffective instructional personnel and school administrators. Additionally, districts must annually report to parents the fact that their child is assigned to a classroom teacher or school administrator who has two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations in a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. Thus, parents will know that their child is assigned to a chronically ineffective classroom teacher or school administrator.

School districts must annually report to DOE instructional personnel and school administrator performance evaluation ratings. Beginning July 1, 2012, DOE must post on its website the percentage of classroom teachers, other instructional personnel, and school administrators receiving each performance rating by school district and school. By December 1, 2012, and annually thereafter, DOE must report evaluation ratings to the Governor and the Legislature. The initial report must also address district implementation of evaluation systems, and subsequent annual reports must include any changes in such systems. The state board must adopt a process for monitoring school district implementation of evaluation systems. Annual reporting will enable the public to compare the performance of instructional personnel and school administrators across the state. Parents will be able to see which schools in their district have the best teachers and principals.

## **Salary Schedules**

### **Current Law**

Florida law requires district school boards to adopt and use a salary schedule in setting the compensation for district employees. An undefined portion of instructional personnel compensation must be based upon performance, as measured by annual performance evaluations.<sup>43</sup> Salary schedules for instructional personnel and school administrators must include differentiated pay based upon district-determined factors, including additional responsibilities, school demographics, critical teacher shortage areas, and level of job performance difficulties.<sup>44</sup>

District school boards bargain collectively with the certified bargaining agent (union) that represents the district's employees to set the salary schedule.<sup>45</sup> The district and union negotiate wages, hours, and terms and conditions of employment, which are included in the collective bargaining agreement.<sup>46</sup> Annual salary increases are largely based upon seniority and advanced degrees. Typically, instructional personnel receive nominal increases in pay earlier in their careers, with larger increases occurring as they acquire seniority or an advanced degree.<sup>47</sup> Because collectively bargained salary schedules rely heavily on seniority and advanced degrees to set compensation, differentiated pay incentives for assignment to high-need schools and subject areas have not been consistently implemented.<sup>48</sup>

Critical teacher shortage areas are adopted by the state board. District school boards may submit additional critical teacher shortage areas for state board approval. A critical teacher shortage area is a subject area, grade-level, or high-priority location area in which teachers are in short supply. A high-priority location area is a low socio-economic status urban or rural school with high levels of faculty attrition, economically disadvantaged students, and students receiving free lunches. Additional shortage areas may be based upon teacher demographic characteristics.<sup>49</sup> For the 2010-11 school year, the state board identified as critical teacher shortage areas middle and high school level mathematics, science, and English/language arts; reading; exceptional student education; English for speakers of other Languages; foreign languages; and technology education/industrial arts.<sup>50</sup> State law establishes several tuition reimbursement and student loan forgiveness programs to attract teachers to critical teacher shortage areas.<sup>51</sup> However, these programs were not funded in fiscal year 2010, after

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<sup>43</sup> Sections 1011.60(4), 1012.22(1)(c)1. and 2., and 1012.27(2), F.S. A district must also consider prior professional experience in the field of education gained in positions in addition to district level instructional and administrative positions. Section 1012.22(1)(c)2., F.S.

<sup>44</sup> Section 1012.22(1)(c)4., F.S.

<sup>45</sup> Sections 447.203(2), 447.309(1), and 1012.22(1)(c)4., F.S. The only school district whose instructional personnel are not represented by a union is Calhoun County. Telephone interview with Calhoun County School District, Assistant Superintendent (Oct. 5, 2010).

<sup>46</sup> Section 447.309(1), F.S.

<sup>47</sup> See s. 1012.22(1)(c), F.S.; see, e.g., *Hillsborough Salary Schedule*, supra note 10, at 8-10; see, e.g., *Glades Teacher Contract*, supra note 10, at 16.

<sup>48</sup> *Race to the Top Application*, supra note 7, at 165.

<sup>49</sup> Section 1012.07(1), F.S.

<sup>50</sup> Florida Department of Education, *Critical Teacher Shortage Areas 2010-2011*, 1 (Nov. 2009), available at <http://www.fldoe.org/evaluation/teachdata.asp>; see Rule 6A-20.0131, F.A.C.

<sup>51</sup> Section 1009.54, F.S. (Critical Teacher Shortage Program); s. 1009.57, F.S. (Florida Teacher Scholarship and Forgivable Loan Program); s. 1009.58, F.S. (Critical Teacher Shortage Tuition Reimbursement Program); and 1009.59, F.S. (Critical Teacher Shortage Loan Forgiveness Program).

minimal participation in 2009.<sup>52</sup> The link between critical teacher shortage areas and differentiated pay is not clearly established in law. Districts have discretion to award or not award differentiated pay for teaching in a critical teacher shortage area.<sup>53</sup>

### *Race to the Top*

School districts participating in the Race to the Top grant must develop compensation systems for instructional personnel and school administrators that tie the most significant salary increases to effectiveness, as demonstrated by annual performance evaluations. Participants must also provide differentiated pay based upon the factors in current law. These reforms must be implemented by the 2013-14 school year.<sup>54</sup>

### **Effect of Bill**

Currently, instructional personnel compensation is based largely upon seniority and advanced degrees. As a result, these employees do not begin earning significant pay increases until they acquire seniority or an advanced degree, regardless of how effective they are. The bill focuses compensation on employee performance, rather than seniority and advanced degrees.

Similar to Race to the Top, each district school board must adopt a performance salary schedule for instructional personnel and school administrators by July 1, 2014. Annual salary adjustments may only be given to employees rated effective and highly effective on annual performance evaluations. The adjustments become part of the employee's permanent base salary and are considered compensation under the Florida Retirement System. The salary adjustment for highly effective performance must be greater than the highest annual salary adjustment available to the employee through any other salary schedule adopted by the school district. The salary adjustment for effective performance must be between 50 and 75 percent of the adjustment provided to a highly effective employee. Employees rated below effective are not eligible for a salary adjustment. Salary adjustments will enable effective and highly effective instructional personnel to earn greater pay increases earlier in their careers. This will increase the likelihood that these employees remain in teaching, rather than leaving the profession for higher-paying fields.

The bill defines a supplement as an annual addition to base salary for the term of the negotiated supplement as long as the employee continues his or her employment for the purpose of the supplement. A supplement does not become part of permanent base salary; however, a supplement is considered compensation under the Florida Retirement System. Similar to differentiated pay under current law, salary supplements must reward instructional personnel and school administrators who are assigned to Title I<sup>55</sup> or chronically low-performing schools, certified and teaching in a critical teacher shortage area, or assigned additional academic responsibilities. Existing critical teacher shortage area tuition incentives and differentiated pay have not fulfilled the personnel needs of high-need schools and

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<sup>52</sup> See Office of Economic and Demographic Research, *Student Financial Aid Enrollment Conference Results, Executive Summary*, at 1 (Nov. 12, 2010), available at <http://edr.state.fl.us/Content/conferences/financialaid/sfaexecsummary.pdf>. In November 2009, 4,716 educators were participating in these programs. See Office of Economic and Demographic Research, *Student Financial Aid Enrollment Conference Results, Executive Summary*, at 1 (Nov. 20, 2009), available at <http://edr.state.fl.us/Content/conferences/financialaid/archives/091120financialaid.pdf>.

<sup>53</sup> Section 1012.22(1)(c)4., F.S.

<sup>54</sup> *Race to the Top MOU*, *supra* note 36, at 15-16.

<sup>55</sup> Typically, a Title I school is an urban or rural school serving a high proportion of economically disadvantaged students. See Pub. L. No. 89-10, 79 Stat. 27 (April 11, 1965).

subject areas. Salary supplements will help attract high-performing instructional personnel and school administrators to work in such schools and subject areas.

To more closely align critical teacher shortage areas to the criteria for awarding salary supplements, the bill redefines critical teacher shortage areas as high-need content areas and high-priority location areas, e.g., low socio-economic status and chronically low-performing schools. The State Board of Education and district school boards must consider current and emerging educational requirements and workforce demands when identifying critical teacher shortage areas.

Initially, the performance salary schedule applies to instructional personnel and school administrators hired on or after July 1, 2014, and instructional personnel on annual contracts as of July 1, 2014. Instructional personnel on continuing or professional service contracts are grandfathered into the salary schedule adopted under current law, or, at anytime, may opt into the performance salary schedule. Employees who opt in must relinquish their continuing or professional service contract for an annual contract. Such employees may not return to continuing or professional service contract status or the grandfathered salary schedule.

Consistent with research showing that holding an advanced degree has little bearing on a teacher's effectiveness, the bill prohibits the use of advanced degrees in setting base salary for instructional personnel and school administrators hired on or after July 1, 2011. School districts may provide a salary supplement for advanced degrees to instructional personnel and school administrators if the degree is in the individual's area of certification. School districts may provide annual cost of living adjustments, subject to certain requirements. If budget constraints limit a school board's ability to fully fund all adopted salary schedules, the bill prohibits the board from disproportionately reducing the performance salary schedule. This increases the likelihood that, during budgetary shortfalls, limited personnel resources will be allocated based upon results.

## **Contracts for Instructional Personnel**

### **Current Law**

Three types of contracts are used to employ instructional personnel in Florida – annual contracts, professional service contracts, and continuing contracts. The eligibility and renewal requirements for each type of contract differ.<sup>56</sup> Holding a continuing contract or professional service contract is often referred to as tenure.<sup>57</sup> There is no requirement that performance evaluation results be considered in awarding any of these contracts.<sup>58</sup>

An annual contract expires at the end of its term.<sup>59</sup> An employee's first annual contract includes a 97-day period during which the employee's contract may be terminated without cause or the employee may resign without breach of contract.<sup>60</sup>

Florida law specifically states that instructional personnel hired on or after July 1, 1984, are "entitled to and must receive" a professional service contract after three years of probationary service on annual contracts if fully certified, recommended for a professional service contract by the superintendent, and

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<sup>56</sup> Section 1012.33(3), F.S.; *see also* s. 231.36, F.S. (1981).

<sup>57</sup> Section 1012.33(3)(e), F.S.

<sup>58</sup> Section 1012.33(3)(a)1.-4., F.S.; *see also* s. 231.36, F.S. (1981).

<sup>59</sup> Section 1012.33(3), F.S.

<sup>60</sup> Section 1012.33(3)(a)4., F.S. This 97-day period applies to instructional personnel employed after June 30, 1997. *Id.*

reappointed by the school board.<sup>61</sup> A professional service contract must be renewed each year, unless the employee is charged with unsatisfactory performance.<sup>62</sup> In such cases, the school board must follow the due process procedures set forth in s. 1012.34(3), F.S., before dismissing the employee.<sup>63</sup> Because of automatic contract renewal, a professional service contract is often referred to as tenure.<sup>64</sup>

Legislation enacted in 1982 discontinued continuing contracts for instructional personnel hired on or after July 1, 1984.<sup>65</sup> The eligibility requirements for a continuing contract were similar to a professional service contract.<sup>66</sup> Unlike a professional service contract, instructional personnel who were granted continuing contracts are entitled to continued employment without the necessity of annual renewal.<sup>67</sup>

Continuing contract employees may exchange such contract for a professional service contract. District school boards have discretion to award a continuing or professional service contract to newly hired instructional personnel who previously earned such contract in the same or another school district in the state. Thus, the portability of such contracts is not guaranteed by law.<sup>68</sup>

All instructional personnel may be suspended or dismissed during the term of their contract for just cause.<sup>69</sup> Just cause includes incompetency, immorality, misconduct in office, gross insubordination, willful neglect of duty, and being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.<sup>70</sup> Due process must be provided as required under s. 1012.33(6)(a), F.S.<sup>71</sup> The due process requirements for “just cause” suspension or dismissal under s. 1012.33(6)(a), F.S., are significantly different from the due process requirements for non-renewal of a professional service contract under s. 1012.34 (3)(d), F.S.

District-wide reductions to instructional positions caused by declining enrollment or budgetary conditions are known as “reductions-in-force.”<sup>72</sup> In such situations, Florida law requires district school boards to establish policies, through collective bargaining or by rule, for determining which employees are retained during a reduction-in-force.<sup>73</sup> When making reductions-in-force, the school district must determine which schools, grade-levels, and subject areas will be affected and make reductions

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<sup>61</sup> Section 1012.33(3)(a)1.-3., F.S. Probationary employment must be completed in the same school district during a period not to exceed five successive years, except for leave duly authorized and granted. *Id.* Probationary employment may be extended to four years if agreed upon in writing by the district school board and the employee. Section 1012.33(3)(c), F.S.

<sup>62</sup> Sections 1012.33(3)(e) and 1012.34(3)(c)-(d), F.S.

<sup>63</sup> Section 1012.34(3)(d), F.S.

<sup>64</sup> Section 1012.33(3)(a), F.S.; *see also* 67B Am. Jur. 2d Schools s. 195 (defining tenure). Instructional personnel hired before July 1, 1984, were issued continuing contracts. Legislation enacted in 1981 phased out continuing contracts in favor of professional service contracts. Section 15, ch. 82-242, L.O.F.

<sup>65</sup> Section 15, ch. 82-242, L.O.F.

<sup>66</sup> Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

<sup>67</sup> Section 231.36(3)(e), F.S. (1981). A continuing contract employee may be dismissed upon discontinuation of the position, resignation, dismissal, or return to annual contract. *Id.*

<sup>68</sup> Section 1012.33(3)(d), F.S.

<sup>69</sup> Section 1012.33(1)(a), (4)(c), and (6)(a), F.S. School administrators may also be suspended or dismissed on just cause grounds. Section 1012.33(4)(c) and (6)(b), F.S.

<sup>70</sup> Section 1012.33(1)(a), F.S.; rule 6B-4.009, F.A.C. The just cause grounds for dismissal are further defined in state board rule. *See* rule 6B-4.006(1)-(6), F.A.C.

<sup>71</sup> Section 1012.33(6)(a), F.S.; *see* s. 120.68(1) and (2), F.S.

<sup>72</sup> National Council on Teacher Quality, *Teacher Layoffs: Rethinking “Last Hired, First Fired” Policies*, at 3 (Feb. 2010), available at [http://www.nctq.org/p/docs/nctq\\_dc\\_layoffs.pdf](http://www.nctq.org/p/docs/nctq_dc_layoffs.pdf) [hereinafter *Rethinking “Last Hired, First Fired”*].

<sup>73</sup> Section 1012.33(5), F.S. Calhoun County does not have a collective bargaining agreement because its instructional personnel are not unionized. Telephone interview with Calhoun County School District, Assistant Superintendent (Oct. 5, 2010).

according to priorities established in the collective bargaining agreement.<sup>74</sup> In most Florida school districts, the primary factor considered when making reductions-in-force is seniority, tenure, or both.<sup>75</sup> This practice is known as “last hired, first fired.”<sup>76</sup>

## Effect of Bill

The bill discontinues professional service contracts for instructional personnel on annual contract as of July 1, 2011, and those hired thereafter. Unlike automatically renewing professional service contracts, these employees will be employed on an annual basis. This reform shifts the focus of Florida’s instructional personnel contracting system away from entitled employment to employment based upon performance.

The first annual contract for newly hired instructional personnel is a one-year probationary contract, which may be terminated without cause or the employee may resign without breach of contract. “Newly hired instructional personnel” include employees new to the profession or employees with experience who are new to the school district. This extends the current probationary period in the first annual contract from 97 days to one year.

Upon successful completion of the one-year probationary contract, district school boards may award subsequent annual contracts if the employee is certified, recommended by the superintendent based upon his or her performance evaluation, and approved by the district school board. Annual contracts may not be awarded to instructional personnel who have two consecutive unsatisfactory evaluations, two unsatisfactory evaluations within a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. This increases the likelihood that all students will have effective or highly effective classroom teachers.

Effective July 1, 2011, the bill repeals all special laws or general laws of local application relating to contracts for public school instructional personnel and school administrators to achieve statewide consistency regarding such contracts. District school board authorization to award a continuing or professional service contract to newly hired instructional personnel who previously earned such contract in the same or another school district in the state is also repealed as are provisions allowing a continuing contract to be exchanged for a professional service contract. Continuing contract employees have had since July 1, 1984, to exchange their contract. The bill also repeals the requirement that a school district must recognize and accept each year of employment when a new employee arrives in the district.

All contracts for instructional personnel will allow suspension or dismissal at any time during the term of the contract based upon the same just cause grounds currently in law. For professional service contracts, the bill expands “just cause” to authorize suspension or dismissal for two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations within a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. Similarly, a school district is not required to renew a professional service contract if the

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<sup>74</sup> See, e.g., Hillsborough County School District and Hillsborough Classroom Teachers Association, Inc., *Teacher Contract 2007-2010*, at 79-84 (2007), available at [http://www.sdhc.k12.fl.us/HumanResources/PDFs/CONTRACT/bargaining\\_agreement.pdf](http://www.sdhc.k12.fl.us/HumanResources/PDFs/CONTRACT/bargaining_agreement.pdf); see, e.g., *Miami-Dade Master Contract*, *supra* note 6, at 245-247.

<sup>75</sup> *Id.*; see, e.g., Collier County School District and Collier County Education Association, *Instructional Personnel Collective Bargaining Agreement*, at 9.01, (2009), available at [http://www.ccea-ocap.org/index.php?option=com\\_content&view=article&id=17&Itemid=70](http://www.ccea-ocap.org/index.php?option=com_content&view=article&id=17&Itemid=70).

<sup>76</sup> *Rethinking “Last Hired, First Fired,” supra* note 72, at 1.

employee has two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations within a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory. This will allow chronically ineffective professional service contract employees to be removed from the classroom.

The bill effectively ends the practice of “last hired, first fired” in Florida. District school boards, when making reductions-in-force, must prioritize retention of instructional personnel and school administrators upon educational program needs and performance evaluation results. Specifically, employees with the lowest performance evaluation ratings must be released before higher-rated employees. Unlike current practice, school boards may not prioritize retention of employees based upon seniority.

## **Applicability of Exemptions**

### **Current Law**

Academically high-performing school districts are generally exempt from the Florida K-20 Education Code (chs. 1000-1013, F.S.), with several exceptions. These school districts are statutorily required to comply with provisions governing instructional personnel and school administrator salary schedules, professional service contracts, and performance evaluations.<sup>77</sup>

Charter schools are generally exempt from the Florida K-20 Education Code (Chapters 1000-1013, F.S.), except statutes directly applicable to charter schools and statutes for which compliance is specifically required. Charter schools are currently exempt from statutory provisions pertaining to instructional personnel and school administrator performance appraisals, salary schedules, and contracts.<sup>78</sup> The 224 charter schools participating in Race to the Top will be implementing reforms to performance evaluations and compensation systems.<sup>79</sup>

On November 19, 2009, the Hillsborough County School District received a \$100 million grant award from the Bill and Melinda Gates Foundation. Funds from this grant will be used to implement several instructional personnel and school administrator quality reforms, including:

- Development of a performance evaluation system that is at least 40 percent based upon student performance.
- Use of a value-added student learning growth formula.
- Consideration of performance before instructional personnel tenure is awarded.
- Implementation of performance pay linked to performance evaluations.
- Granting greater authority to school principals to recruit and dismiss instructional personnel based upon performance.<sup>80</sup>

Hillsborough County is also participating in Race to the Top. Florida’s *Race to the Top Memorandum of Understanding for Phase 2* contains an exemption allowing the district to develop a performance evaluation system that is 40 percent based upon student performance, rather than the 50 percent

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<sup>77</sup> Section 1003.621(1)(b) and (2), F.S.

<sup>78</sup> Section 1002.33(16), F.S.

<sup>79</sup> Email, Florida Department of Education (Feb. 15, 2011).

<sup>80</sup> Bill and Melinda Gates Foundation, *Intensive Partnership Fact Sheet: Hillsborough County Public Schools*, <http://www.gatesfoundation.org/united-states/Pages/hillsborough-county-public-schools-fact-sheet.aspx> (last visited Feb. 15, 2011).

required by Race to the Top. This enables the district to implement the performance evaluation it proposed in obtaining the Gates grant.<sup>81</sup>

### **Effect of Bill**

To ensure consistent statewide implementation of the reforms made by the bill, academically high performing school districts are subjected to provisions governing contracts for instructional personnel on annual contract as of July 1, 2011, and those hired thereafter.

Similarly, the bill requires charter schools to comply with provisions governing salary schedules; reductions-in-force; contracts for instructional personnel on annual contract as of July 1, 2014, or hired thereafter; and instructional personnel and school administrator performance evaluations.

Beginning with the 2011-12 school year, Hillsborough County School District is exempt from the bill's requirement that 50 percent of its performance evaluation be based upon student performance. In accordance with the Gates grant, student learning growth may comprise 40 percent of its evaluation. The school district is also exempt from the bill's performance pay provisions. The exemptions may be extended annually with state board approval. To receive such approval, the district must:

- Maintain a performance evaluation system that is at least 40 percent based upon student performance.
- Maintain an instructional personnel and school administrator compensation system that awards employee salary increases based upon sustained student performance.
- Use the student learning growth formula for statewide assessments approved by the commissioner pursuant to the bill.
- Contract with instructional personnel and school administrators based upon student performance and demonstrate that ineffective employees are dismissed.
- Demonstrate improvements in student learning growth on statewide assessments beginning with the 2014-15 school year, and annually thereafter, above 2011-12 school year levels.

If the state board denies the exemption, the school district must comply with the bill's performance evaluation, contracting, and compensation reforms by the beginning of the next school year immediately following loss of the exemption. The state board must adopt rules establishing a procedure for obtaining the exemption. The exemption sunsets on August 1, 2017, unless reviewed and reenacted by the Legislature.

The exemption enables Hillsborough County to continue implementing the Gates grant, while holding it accountable for improving student performance. Statewide use of the same student learning growth formula will allow for an accurate comparison of the Gates grant reforms and those made by the bill and Race to the Top.

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<sup>81</sup> *Race to the Top MOU, supra* note 36, at 11.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

**1. Revenues:**

The bill does not have a fiscal impact on state revenues.

**2. Expenditures:**

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

**1. Revenues:**

The bill does not have a fiscal impact on local revenues.

**2. Expenditures:**

See Fiscal Comments.

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

The bill does not have a direct economic impact on the private sector.

### D. FISCAL COMMENTS:

Florida's \$700 million Race to the Top grant is funding implementation of most bill requirements. DOE will allocate at least \$69 million in grant funds to improve teacher and principal effectiveness.<sup>82</sup> Grant funds will be used to assist school districts in the development of new educator performance evaluations; test item banks; student learning growth formulas for subjects tested on statewide assessments; and growth models for district-developed assessments. DOE will provide assistance to school districts in developing or acquiring assessments for subjects and grades not tested on statewide assessments, including:

- Resources for districts to develop test items for "hard to measure" content areas, such as physical education, fine arts, and foreign language.
- Test items for core content areas such as math, social studies, science, and language arts for subjects and grades not tested on statewide assessments; and
- A technology platform to provide districts with secure access to high-quality test items and tools for the creation and administration of student assessments.

Additional resources may be necessary to maintain a test item bank or platform at the conclusion of the grant period, which is the end of the 2013-14 school year.<sup>83</sup>

Since 1999, school districts have been required to measure student performance on educator performance evaluations using statewide assessments and, for subjects and grades not tested on

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<sup>82</sup> Florida Department of Education, *Florida's Race to the Top: hearing before the House Education Comm.* (Jan. 13, 2011); Email, Florida Department of Education (Feb. 14, 2011).

<sup>83</sup> Florida Department of Education, *Legislative Bill Analysis for CS/SB 736* (2011); Staff of the Florida Senate, *Legislative Bill Analysis for CS/SB 736* (2011).

statewide assessments, local assessments. During the next three years, the grant will provide funding for the development of assessments in most subjects.

The bill establishes new priorities that must be met by school districts when determining educator compensation; however, it does not require school districts to expend any new funds on adjustments and supplements if funds are not available to do so.