

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1203 K-12 Personnel Evaluation Procedures and Criteria
SPONSOR(S): Early Learning & Elementary Education Subcommittee, Fetterhoff
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Early Learning & Elementary Education Subcommittee	12 Y, 5 N, As CS	Aaronson	Brink
2) Secondary Education & Career Development Subcommittee			
3) Education & Employment Committee			

SUMMARY ANALYSIS

District school superintendents are required to establish procedures to evaluate annually instructional personnel and school administrators based on student performance, instructional practice or instructional leadership, and other indicators of performance. Performance evaluation systems are approved and monitored by the Florida Department of Education.

Although district school superintendents are responsible for establishing the instructional personnel evaluation procedures, last year the Public Employment Relations Commission ruled that the procedures are a mandatory subject of collective bargaining, and may not be unilaterally revised by the school district.

The bill specifies that instructional evaluation procedures are not subject to mandatory collective bargaining, and thus may be changed unilaterally by a school district.

The bill has no fiscal impact.

The bill takes effect upon becoming a law.

FULL ANALYSIS

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

STORAGE NAME: h1203.ELE

DATE: 1/25/2022

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Instructional Personnel Evaluation in Florida District Schools

Present Situation

Florida law defines “instructional personnel” as any K-12 staff member who provides direct instructional services or direct instructional support to students in kindergarten through grade 12.¹ Instructional personnel include:

- classroom teachers;
- staff who provide student personnel services, e.g., certified school counselors, social workers, career specialists, and school psychologists;
- librarians and media specialists; and
- other instructional staff, e.g., learning resource specialists; and education paraprofessionals under the direct supervision of instructional personnel.²

“School administrators” include school principals, assistant principals, school directors, and career center directors.³

Each district school superintendent must establish procedures for evaluating the job performance of all district instructional, administrative, and supervisory personnel.⁴ Instructional personnel and school administrators must be evaluated annually, except that newly hired classroom teachers must be evaluated at least twice in their first year of teaching in the school district.⁵

Each evaluation of instructional personnel must be performed by the employee’s supervisor, who may consider input from other trained personnel.⁶ School districts must provide training to evaluators on the proper use of the evaluation criteria and procedures and must include processes for monitoring evaluator reliability and system effectiveness.⁷ Instructional personnel and school administrators are evaluated using the following criteria:

- student performance;
- instructional practice (for instructional personnel);
- instructional leadership (for school administrators); and
- other indicators of performance identified by the district school board, such as peer reviews.⁸

At least one third of an instructional personnel or school administrator evaluation must be based upon student performance and at least another one third based on instructional practice or instructional leadership.⁹

Instructional practice criteria for classroom teachers are based upon the Florida Educator Accomplished Practices (FEAPs). For nonclassroom instructional personnel who are not classroom

¹ Section 1012.01(2), F.S.

² *Id.*

³ *See* Section 1012.01(3), F.S. School administrators are a subset of K-12 administrative personnel who perform management activities such as developing and executing broad policies for the school district. Administrative personnel include district-based instructional and non-instructional administrators, as well as school administrators who perform administrative duties at the school-level. *Id.*

⁴ Section 1012.34(1)(a), F.S.

⁵ Section 1012.34(3)(a), F.S. “Newly hired classroom teachers” include first-time teachers new to the profession as well as veteran teachers new to the school district.

⁶ Section 1012.34(3)(c), F.S.

⁷ Section 1012.34(2)(f), F.S.

⁸ Section 1012.34(3)(a)1., 2., and 4., F.S.

⁹ Section 1012.34(3)(a)1-3., F.S.

teachers, instructional practice criteria must be based upon the FEAPs and may include specific job expectations related to student support.¹⁰

Instructional practice indicators are aligned to the FEAPs adopted in state board rule.¹¹ The FEAPs provide the essential competencies and skills for effective teaching and form the foundation for teacher preparation programs, certification requirements, and performance evaluation systems.¹² In district evaluation systems, instructional practice indicators measure the FEAPs regarding:

- instructional design and lesson planning;
- the learning environment, including classroom management;
- instructional delivery and facilitation;
- assessment of student progress;
- continuous professional improvement; and
- professional responsibility and ethical conduct.¹³

Instructional personnel and school administrator evaluations must also be based upon the performance of the students assigned to their classrooms or schools.¹⁴ All personnel being evaluated must be fully informed of the criteria, data sources, methodologies, and procedures before evaluation takes place.¹⁵ If an employee is not performing satisfactory work, the employee must be notified in writing. The notice must contain recommendations with respect to specific areas of unsatisfactory performance, assistance for the employee, and a notice of probation for 90 calendar days.¹⁶

The district superintendent must annually report evaluation systems and evaluation results of instructional personnel and administrators to the DOE¹⁷ to calculate district and statewide student performance.¹⁸

The DOE reviews and approves each school district's performance evaluation system and collects evaluation data annually.¹⁹ District evaluation systems must:

- be based upon sound educational principles and contemporary research in effective educational practices;
- be designed to support effective instruction and student learning growth;
- be used when developing district and school improvement plans as well as identifying professional development;
- provide appropriate instruments, procedures, timely feedback, and criteria for improving the quality of instruction;
- examine performance data from multiple sources, including opportunities for parental input;
- identify teaching fields for which special evaluation criteria are necessary;
- differentiate among four levels of performance; and
- provide for training on the use of the evaluation system.²⁰

The four levels of performance for school district performance evaluation systems are highly effective; effective; needs improvement, or for instructional personnel in their first 3 years of employment who

¹⁰ Section 1012.34(3)(a)2., 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.

¹¹ Rule 6A-5.065, F.A.C.

¹² Rule 6A-5.065(1)(a), F.A.C.

¹³ Rule 6A-5.065(2), F.A.C.

¹⁴ Section 1012.34(3), F.S.

¹⁵ Section 1012.34(3)(a)4.b., F.S.

¹⁶ Section 1012.34(4), F.S.

¹⁷ Section 1012.34(1)(a), F.S.

¹⁸ Section 1012.34(1), F.S. The most recent evaluation results for the 2018-19 school year are available on the DOE website. See Florida Department of Education, Performance Evaluation, *District Evaluation Ratings*, <https://www.fldoe.org/teaching/performance-evaluation/>. (last visited Jan. 20, 2022).

¹⁹ Section 1012.34(1)(b)-(c), F.S.

²⁰ Section 1012.34(1)(b), (2), and (3)(a), F.S. See rule 6A-5.030, F.A.C. (establishing process for submitting district evaluation system plans to the DOE for approval).

need improvement, developing; and unsatisfactory.²¹ Upon approval, the DOE posts a list of department-approved evaluation systems and the approval dates.²²

Implications of School District Personnel Evaluations

As of July 1, 2014, district school boards must have a performance salary schedule, based on performance measurements, and a grandfathered salary schedule, based on seniority and degree level, for instructional personnel and school administrators.²³ Instructional personnel retain the right to collectively bargain compensation awarded under both the performance salary schedule and the grandfathered salary schedule; however, the priorities for negotiating compensation under each salary schedule differ.²⁴ Compensation for school administrators is determined by the district school board.

Under the performance salary schedule, annual salary adjustments may be given only to employees rated highly effective or effective on annual performance evaluations.²⁵ The salary adjustment for highly effective performance must be greater than the highest annual salary adjustment available to an employee of the same classification on any 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.²⁶ Employees rated below effective are not eligible for a salary adjustment.²⁷

The grandfathered salary schedule is the salary schedule or schedules adopted by a district school board before July 1, 2014, in which compensation is generally based upon seniority and educational degree level.²⁸ An undefined portion of instructional personnel compensation must be based upon performance, as measured by annual performance evaluations. The grandfathered salary schedules for instructional personnel²⁹ 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.³⁰

Performance evaluation ratings may also impact school assignment and eligibility for an annual or professional services contract.³¹

Collective Bargaining

Employees of the state, including instructional personnel employed by a school district, have the constitutional right to collective bargaining through representatives of their choosing.³² Florida law defines “collective bargaining” as the performance of the mutual obligations of a public employer and the bargaining agent of the employee organization to meet at reasonable times, to negotiate in good faith, and to execute a written contract with respect to agreements reached concerning the terms and

²¹ Section 1012.34(2)(e), F.S.

²² Florida Department of Education, *Performance Evaluation*, <https://www.fldoe.org/teaching/performance-evaluation/> (last visited Jan. 20, 2022).

²³ Section 1012.22(1)(c)4. and 5., F.S.

²⁴ Section 1012.22(1)(c)4. and 5.; s. 447.309(1), F.S.

²⁵ Section 1012.22(1)(c)5.b., F.S. Student performance data used in a classroom teacher’s evaluation is determined by the school district pursuant to s. 1012.34(3)(a)1. and (7), F.S. It may include student learning growth calculated using a formula adopted by the Commissioner of Education. *See* s. 1012.34(7)(b), F.S.

²⁶ Section 1012.22(1)(c)5.b., F.S.

²⁷ *See* s. 1012.22(1)(c)5.b.III., F.S.

²⁸ Section 1012.22(1)(c)4., F.S.

²⁹ Unlike the definition of “instructional personnel” in s. 1012.01(2), F.S., the definition of “instructional personnel” for salary schedule purposes excludes substitute teachers and education paraprofessionals. *See* s. 1012.22(1)(c)1.c., F.S.

³⁰ Section 1012.22(1)(c)4., F.S.

³¹ *See* ss. 1012.2315(6), 1012.33(2)(a), 1012.335(2)(c)3., F.S., and rule 6A-1.099811(5)(b), F.A.C.

³² Art. I, s. 6, FLA. CONST.; s. 447.03, F.S.

conditions of employment. Neither the public employer nor the employee organization may be compelled to agree to a proposal or required to make a concession unless otherwise provided by law.³³

The law prohibits, as an unfair labor practice, a public employer from refusing to bargain in good faith with the certified bargaining agent on the terms and conditions of employment.³⁴ However, a public employer is not *per se* required to bargain matters of managerial right, including the ability to set standards of services offered to the public.³⁵ In September 2021, the Public Employment Relations Commission ruled that school district personnel evaluation procedures, including the criteria that school districts use to evaluate instructional practice and set performance ratings, are a mandatory subject of bargaining.³⁶ In other words, a school district that unilaterally changes instructional personnel evaluation procedures commits an unfair labor practice.³⁷ Based on this decision, a school district may be prohibited from revising evaluation requirements without undergoing collective bargaining, which may result in impasse and related proceedings.³⁸

Effect of Proposed Changes

The bill provides that school district evaluation procedures constitute standards of service offered to the public, within the meaning of Section 447.209, F.S., and are not subject to mandatory collective bargaining.

B. SECTION DIRECTORY:

Section 1: Amends s. 1012.34, F.S.; providing that certain procedures relating to a school district's instructional personnel and school administrator evaluation systems set the standards of service to be offered to the public and are not subject to collective bargaining.

Section 2: Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

³³ Section 447.203(14), F.S.

³⁴ See s. 447.501(1)(c), F.S.

³⁵ See s. 447.209, F.S.

³⁶ *The Orange County Classroom Teachers Association, Inc. v. School District of Orange Cnty.*, No. 21U-285, CA-2018-050 at 38 (Public Employees Relations Commission Sept. 24, 2021). (requiring the School District of Orange County to meet with representatives of the Union for purposes of collective bargaining concerning the teacher evaluation system).

³⁷ See *id.* at 35.

³⁸ See s. 447.403, F.S.

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Early Learning & Elementary Education Subcommittee adopted a proposed committee substitute as amended and reported the bill favorably as a committee substitute. The proposed committee substitute differs from the bill as originally filed by providing that the bill takes effect upon becoming a law.

The analysis is drafted to the committee substitute as amended by the Early Learning & Elementary Education Subcommittee.