

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1203 K-12 Personnel Evaluation Procedures and Criteria

**SPONSOR(S):** Education & Employment Committee, 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) Education & Employment Committee	13 Y, 6 N, As CS	Aaronson	Hassell

### SUMMARY ANALYSIS

To qualify for employment as a school employee in Florida, an individual must meet certain criteria relating to moral fitness, educational credentials, and licensure. This also includes completing satisfactory performance evaluations on an annual basis.

As part of determining and monitoring employment eligibility, Florida law establishes penalties for individuals who fail to accurately report sexual misconduct with a student. The Florida Department of Education must maintain a disqualification list (DQ list) including each person who has had an educator certification permanently denied or revoked, failed a background screening, or has been registered as a sex offender. All school employees must undergo a background screening, coordinated by the school district and law enforcement agency, to provide for safe school environments.

The bill improves the safety of Florida's students by establishing a criminal penalty for individuals who fail to comply with the reporting requirements impacting an educator's inclusion on the DQ list.

Currently, school districts are responsible for submitting fingerprints to the Florida Department of Law Enforcement (FDLE) for criminal background screening. The bill provides that an "employing entity," defined as a district school board, charter school, alternative school, or any other entity that requires employees to complete a background screening, rather than only a school district, is responsible for filing fingerprints to the FDLE. The bill also specifies that an employing entity is responsible for determining employment eligibility and paying annual fees for background screenings.

The bill provides that an individual who participates in a preservice field experience is not subject to rescreening by a subsequent employing entity if the individual has fingerprints retained by the FDLE, is rescreened every 5 years, and meets screening standards.

The bill revises teacher preparation program approval criteria and requirements for preservice field experiences.

The bill specifies that instructional evaluation procedures are not subject to mandatory collective bargaining.

The bill does not appear to have a fiscal impact.

Except as otherwise provided, the bill takes effect July 1, 2022.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Reporting Sexual Misconduct in Florida Public Schools**

###### Present Situation

###### *Qualifications of School District Employees*

To be eligible to work in a district school system, a person must meet the following basic specification requirements:

- be of good moral character;
- be at least 18 years of age;
- be employed in an instructional capacity;
- be eligible for employment in a school district;<sup>1</sup> and
- when required by law, hold a certificate or license issued under rules of the State Board of Education (SBE) or Department of Children and Families (DCF).<sup>2</sup>

Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students must also undergo background screening as specified in law.<sup>3</sup>

###### *Sexual Misconduct in Florida Public Schools*

Florida law prohibits the employment of specific employees in district public schools,<sup>4</sup> charter schools,<sup>5</sup> and private schools,<sup>6</sup> including persons ineligible for employment due to registration as a sex offender, being convicted or found guilty of a crime, or having been terminated or resigned in lieu of termination for sexual misconduct with a student.<sup>7</sup>

Public notices must be posted in all district school boards, charter schools, and private schools that accept scholarship students, notifying students, visitors, and employees:<sup>8</sup>

- that all employees and agents of the school have an affirmative duty to report all actual or suspected cases of child abuse, abandonment, or neglect, have immunity from liability if the report cases in good faith, and have a duty to comply with all provisions of law relating to child abuse, abandonment, and neglect;<sup>9</sup>
- of policies and procedures for reporting alleged misconduct by school district employees which affects the health, safety, or welfare of a student; the contact person for the report; and penalties for employees;<sup>10</sup> and
- that the statewide phone number of the central abuse hotline, instructions on how to call 911 for emergencies, directions for accessing the DCF website and Department of Education (DOE) website.<sup>11</sup>

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<sup>1</sup> See Section 1012.315, F.S. Eligibility requirements prohibit registered sex offenders or persons that have been convicted or found guilty of a crime.

<sup>2</sup> Section 1012.32, F.S.

<sup>3</sup> See ss. 1012.465 and 1012.56, F.S.

<sup>4</sup> Section 1012.796(1), F.S.

<sup>5</sup> Section 1002.33(12)(g), F.S.

<sup>6</sup> Section 1002.421(1)(r), F.S.

<sup>7</sup> Section 1001.42(7), F.S.

<sup>8</sup> Section 1006.061, F.S.

<sup>9</sup> Section 1006.061(1), F.S.

<sup>10</sup> Section 1006.061(2), F.S.

<sup>11</sup> Section 1006.061(4), F.S.

By law, a person who witnesses sexual misconduct must immediately report the incident to the central abuse hotline and to the appropriate local law enforcement agency. The person must also sign a report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved.<sup>12</sup>

Any person who is required to make a report, and knowingly and willingly fails to do so, or submits inaccurate, incomplete, or untruthful information regarding a report, commits a misdemeanor of the first degree.<sup>13</sup> Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report commits a felony of the third degree.<sup>14</sup>

### *Disqualification List*

The DOE must maintain a disqualification list (DQ list) to include:

- The identity of any person who has been permanently denied an educator certificate or whose certificate was permanently revoked and has been placed on the list as directed by the EPC.<sup>15</sup>
- The identity of any person who has been permanently disqualified by the Commissioner of Education as an owner or operator of a private school participating in a state scholarship program.
- The identity of any person who has been terminated, or has resigned in lieu of termination, from employment as a result of sexual misconduct with a student.
- The identity of any person who is ineligible for educator certification or employment under s. 1012.315, F.S.<sup>16</sup>

An individual on the DQ list is prohibited from serving or applying to serve as an employee or contracted personnel at any public school, charter school, or private school participating in a state scholarship program. Any individual who knowingly violates this prohibition commits a third-degree felony.<sup>17</sup>

The DOE may remove a person from the DQ list if the person demonstrates the following:

- a completed law enforcement investigation resulted in an exoneration or no finding of guilt; and a completed investigation and proceeding by the responsible education agency resulting in finding that the person did not commit the disqualifying conduct;
- the person was included on the DQ list in error; or
- the employer that submitted the person for inclusion revokes his or her request.<sup>18</sup>

Additionally, the DOE must investigate complaints or allegations made against certified educators and initiate proceedings to suspend or revoke the educator's certificate if grounds exist to do so. The law specifically references certified educators employed by traditional public schools, charter schools, and private schools participating in a state school choice scholarship programs, while omitting approved virtual instruction providers.<sup>19</sup>

In 2021, the Legislature passed House Bill 131, which requires school districts and the DOE to fully investigate allegations of sexual misconduct with students.<sup>20</sup> In addition, district school boards must adopt policies establishing standards of ethical conduct for employees including educational support personnel, instructional personnel, administrative personnel, and school officers. School district employees must complete training on ethical conduct standards, including the duty to report

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<sup>12</sup> Section 916.1075(5), F.S.

<sup>13</sup> Section 916.1075(6)(a)-(b), F.S. *See also* Sections 775.082 and 775.083, F.S.

<sup>14</sup> Section 916.1075(6)(c), F.S. *See also* Sections 775.082, 775.083, 775.084, F.S.

<sup>15</sup> *See* Section 1012.795, F.S., regarding the EPC's authority to discipline.

<sup>16</sup> Section 1012.315, F.S. (providing a list of criminal offenses that disqualify an individual from employment in a position requiring direct contact with a student at a school district, charter school, or private school receiving state scholarships).

<sup>17</sup> *See* Section 775.082 and 775.083, F.S.

<sup>18</sup> Section 1001.10(4)(c), F.S.

<sup>19</sup> Section 1012.796(1), F.S.

<sup>20</sup> Section 1, ch. 2021-138, L.O.F.

misconduct that involves engaging in or soliciting sexual, romantic, or lewd conduct with a student, including a report to law enforcement.<sup>21</sup>

The law does not impose a criminal penalty for knowingly or willfully failing to report sexual misconduct that would require an individual to be added to the DQ list.

### Effect of Proposed Changes

Reinforcing current law requiring persons who witness sexual misconduct to accurately report misconduct to law enforcement, the bill provides that it is a misdemeanor of the first degree for a person to knowingly or willingly:

- fail to make a report regarding an incident of sexual misconduct with a student that could impact an educator's inclusion on the DQ list maintained by the DOE; and
- submit inaccurate, incomplete, or untruthful information regarding a report that could impact an educator's inclusion on the DQ list maintained by the DOE.

The bill also establishes a first-degree misdemeanor offense for knowingly or willingly coercing or threatening any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct with a student that could impact an educator's including on the DQ list.

## **Background Screenings for School Employees**

### Present Situation

#### *Background Screening of Individuals at Schools*

Individuals who work in or provide services to school districts, charter schools, alternative schools, and private schools participating in state school choice scholarship programs must undergo a fingerprint-based background screening before being permitted access to school grounds.<sup>22</sup> The individuals who must undergo background screening fall under three personnel classifications: instructional and noninstructional personnel,<sup>23</sup> noninstructional school district employees and contracted personnel,<sup>24</sup> and noninstructional contractors.<sup>25</sup> Candidates for educator certification must also undergo background screening.<sup>26</sup>

The background screening requirements for each personnel classification vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students.<sup>27</sup> Because they are more likely to have direct contact with students, candidates for educator certification, instructional and noninstructional personnel, and noninstructional school district employees and contracted personnel must be screened against a distinct list of 51 disqualifying offenses applicable to employment with public schools and school districts.<sup>28</sup> In contrast, noninstructional contractors, individuals who are not school district employees and have no direct contact with students, are screened against a statutory list of 12 disqualifying offenses.<sup>29</sup>

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<sup>21</sup> Section 1001.42(6), F.S.

<sup>22</sup> Sections 1002.421, 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>23</sup> Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

<sup>24</sup> Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

<sup>25</sup> Noninstructional contractors are vendors or contractors who are not school district employees, are permitted access to school grounds when students are present, and have little or no direct contact with students. Section 1012.467(1)(a), F.S.

<sup>26</sup> Sections 1012.315, 1012.32(2)(a), and 1012.56(10)(a), F.S.

<sup>27</sup> See ss. 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>28</sup> Sections 1012.315, 1012.32, and 1012.465, F.S.

<sup>29</sup> See Section 1012.467(2)(g), F.S. The law references eight specific offenses plus crimes involving lewd and lascivious behavior in ch. 800, F.S., which include four such offenses. *Id.*

Instructional and noninstructional personnel hired or contracted in a charter school other than a school of hope, or an alternative school,<sup>30</sup> are required to undergo background screening as applicable. The school must file with the school board for the district in which it is located, or, for an alternative school the school board it is under contract with, a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.<sup>31</sup> Similarly, personnel hired or contracted with a school of hope<sup>32</sup> must file with the school a complete set of fingerprints taken by an authorized law enforcement agency, by an employee of the school of hope or school district who is trained to take fingerprints, or any other entity recognized by the FDLE to take fingerprints.<sup>33</sup>

Fingerprints taken for a background screening are submitted to the FDLE for statewide criminal and juvenile records checks and to the FBI for national criminal records checks. The cost of the background screening may be borne by the district school board, the charter school, or the individual who is subject to the screening requirements. However, a district school board may reimburse a charter school for the background screening cost if it does not notify the charter school of the eligibility of the personnel within 14 days after the results of a background screening from FDLE or within 30 days of submission of fingerprints by the personnel. Probationary persons with a criminal record who are terminated due to failing required fingerprinting have the right to appeal termination.<sup>34</sup>

FDLE enters and retains the fingerprints in the Automated Fingerprint Identification System (AFIS), and retains them in the Applicant Fingerprint Retention and Notification Program (AFRNP) database.<sup>35</sup> Any arrest fingerprints FDLE receives through the Criminal Justice Information Program<sup>36</sup> must then be searched against the fingerprints retained in the AFRNP. Any arrest record that is identified with the retained fingerprints of a person subject to the background screening must be reported to the employing or contracting school district.<sup>37</sup>

The law requires law enforcement agencies to notify the appropriate district school superintendent, charter school governing board, private school owner or administrator, president of the Florida School for the Deaf and the Blind, or university lab school director or principal, as applicable, within 48 hours after an employee is charged with any felony or misdemeanor involving the abuse of children or sale or possession of controlled substances.<sup>38</sup>

Upon notification by law enforcement, the principal must, within 24 hours, notify parents of enrolled students who had direct contact with the perpetrator of the arrest and include, at a minimum, the employee's name and the specific charges against him or her.<sup>39</sup>

The FDLE imposes an annual fee upon each school district for performing services and establishing procedures for the retention and results of personnel fingerprinting.<sup>40</sup>

In addition to fingerprint-based background screening, before employing instructional personnel or school administrators in any position that requires direct contact with students, school districts, charter schools, and private schools participating in a state school choice scholarship program must:

- conduct an employment history check of the individual's previous employer. If unable to contact a previous employer, efforts to contact the employer must be documented;

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<sup>30</sup> Section 1008.341(2), F.S. Alternative schools include schools that provide dropout prevention and academic intervention services.

<sup>31</sup> Section 1012.32(1)(b)1., F.S.

<sup>32</sup> See Section 1002.333(1)(d), F.S. Schools of hope include charter schools operated by a hope operator which services students from one of more persistently low-performing schools located in a Florida Opportunity Zone, and students who reside in a Florida Opportunity Zone.

<sup>33</sup> Section 1012.32(1)(b) and (c), F.S.

<sup>34</sup> Section 1012.32(2), F.S. (flush-left provision at end of subsection).

<sup>35</sup> Section 1012.32(3)(a), F.S.; s. 943.05(2), F.S.; rule 11C-6.010(1), F.A.C.

<sup>36</sup> Section 943.051, F.S.

<sup>37</sup> Section 1012.32(3)(b), F.S.

<sup>38</sup> Section 1012.797, F.S.

<sup>39</sup> Section 1012.797, F.S.

<sup>40</sup> Section 1012.32(3)(b), F.S.

- screen the individual through use of the DOE Professional Practices' Database of Disciplinary Actions Against Educators, Teacher Certification Database, and the DQ list;<sup>41</sup> and
- document the findings.<sup>42</sup>

### Effect of Proposed Changes

The bill defines “employing entity” to mean a district school board, charter school, alternative school, or any other entity that requires employees to complete a background screening to maintain the safety and well-being of children and the integrity of the system of public education. Under the bill, employing entities, including charter and alternative schools, rather than only school districts, are responsible for filing fingerprints to the FDLE, participating in the FDLE search process, determining a person’s employment eligibility (except if disqualified), and paying the annual fees for screenings (unless the cost is born by the person being screened). The FDLE must report any arrest record identified with fingerprints to the employing entity.

Accordingly, the bill repeals the requirement that a district school board reimburse a charter school for the cost of background screening if the district school board fails to notify the charter school of eligible personnel or board members within a specified number of days. The bill provides that an employing entity is solely responsible for determining an employee’s eligibility and repeals the right of probationary persons to appeal termination due to a criminal record.

The bill clarifies that individuals participating in a preservice field experience are not subject to rescreening if the individual has fingerprints retained by the FDLE, is rescreened every 5 years, and meets the screening standards.

## **Instructional Personnel 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.<sup>43</sup> 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.<sup>44</sup>

“School administrators” include school principals, assistant principals, school directors, and career center directors.<sup>45</sup>

Each district school superintendent must establish procedures for evaluating the job performance of all district instructional, administrative, and supervisory personnel.<sup>46</sup> Instructional personnel and school

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<sup>41</sup> See s. 1001.10(5), F.S.; see also Florida Department of Education, *Employment Screening Tools*, <http://www.fldoe.org/edstandards/esl.asp> (last visited Feb. 2, 2022) (includes links to the Professional Practices' Database of Disciplinary Actions Against Educators and the Teacher Certification Database). The Teacher Certification Database is also known as the Bureau of Educator Certification's Partnership Access and Services System (BEC-PASS). Florida Department of Education, *Technical Assistance Paper, Senate Bill 1712, No. K12: 2008-129*, at 4 (July 31, 2008), available at <http://www.fldoe.org/edstandards/pdfs/SB1712TAP.pdf>.

<sup>42</sup> Sections 1002.33(12)(g)4. (charter schools), 1002.421(4)(c) (private schools), and 1012.27(6), F.S. (school districts).

<sup>43</sup> Section 1012.01(2), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> See s. 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.*

<sup>46</sup> Section 1012.34(1)(a), F.S.

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.<sup>47</sup>

Each evaluation of instructional personnel must be performed by the employee's supervisor, who may consider input from other trained personnel.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup>

Instructional practice criteria for classroom teachers are based upon the Florida Educator Accomplished Practices (FEAPs). For nonclassroom instructional personnel who are not classroom teachers, instructional practice criteria must be based upon the FEAPs and may include specific job expectations related to student support.<sup>52</sup>

Instructional practice indicators are aligned to the FEAPs adopted in state board rule.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup>

Instructional personnel and school administrator evaluations must be based upon the performance of the students assigned to their classrooms or schools.<sup>56</sup> All personnel being evaluated must be fully informed of the criteria, data sources, methodologies, and procedures before evaluation takes place.<sup>57</sup> 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.<sup>58</sup>

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<sup>47</sup> 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.

<sup>48</sup> Section 1012.34(3)(c), F.S.

<sup>49</sup> Section 1012.34(2)(f), F.S.

<sup>50</sup> Section 1012.34(3)(a)1., 2., and 4., F.S.

<sup>51</sup> Section 1012.34(3)(a)1-3., F.S.

<sup>52</sup> 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.

<sup>53</sup> Rule 6A-5.065, F.A.C.

<sup>54</sup> Rule 6A-5.065(1)(a), F.A.C.

<sup>55</sup> Rule 6A-5.065(2), F.A.C.

<sup>56</sup> Section 1012.34(3), F.S.

<sup>57</sup> Section 1012.34(3)(a)4.b., F.S.

<sup>58</sup> Section 1012.34(4), F.S.

The district superintendent must annually report evaluation systems and evaluation results of instructional personnel and administrators to the DOE<sup>59</sup> to calculate district and statewide student performance.<sup>60</sup>

The DOE reviews and approves each school district's performance evaluation system annually. 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.<sup>61</sup>

The four levels of performance for school district performance evaluation systems include highly effective; effective; needs improvement, or for instructional personnel in their first 3 years of employment who need improvement, developing; and unsatisfactory.<sup>62</sup> Upon approval, the DOE posts a list of department-approved evaluation systems and the approval dates.<sup>63</sup>

### *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.<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup> Employees rated below effective are not eligible for a salary adjustment.<sup>68</sup>

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<sup>59</sup> Section 1012.34(1)(a), F.S.

<sup>60</sup> 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).

<sup>61</sup> 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).

<sup>62</sup> Section 1012.34(2)(e), F.S.

<sup>63</sup> Florida Department of Education, *Performance Evaluation*, <https://www.fldoe.org/teaching/performance-evaluation/> (last visited Jan. 20, 2022).

<sup>64</sup> Section 1012.22(1)(c)4. and 5., F.S.

<sup>65</sup> Section 1012.22(1)(c)4. and 5.; s. 447.309(1), F.S.

<sup>66</sup> 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.

<sup>67</sup> Section 1012.22(1)(c)5.b., F.S.

<sup>68</sup> *See* s. 1012.22(1)(c)5.b.III., F.S.



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.<sup>69</sup> An undefined portion of instructional personnel compensation must be based upon performance, as measured by annual performance evaluations. The grandfathered salary schedules for instructional personnel<sup>70</sup> 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>71</sup>

Performance evaluation ratings may also impact school assignment and eligibility for an annual or professional services contract.<sup>72</sup>

### *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.<sup>73</sup> 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 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.<sup>74</sup>

The law prohibits, as an unfair labor practice, a public employer from refusing to bargain in good faith with the certified bargaining agent on terms and conditions of employment.<sup>75</sup> 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.<sup>76</sup> In September 2021, the Public Employment Relations Commission ruled that a school district’s personnel evaluation procedures, including the criteria that it used to evaluate instructional practice and set performance ratings, were a mandatory subject of bargaining.<sup>77</sup> In other words, the school district committed an unfair labor practice by unilaterally changing instructional personnel evaluation procedures.<sup>78</sup> Based on this decision, a school district may be required to undergo collective bargaining to revise evaluation requirements, which may result in impasse and relating proceedings.<sup>79</sup>

### 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.

## **Teacher Preparation Programs**

### Present Situation

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<sup>69</sup> Section 1012.22(1)(c)4., F.S.

<sup>70</sup> 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.

<sup>71</sup> Section 1012.22(1)(c)4., F.S.

<sup>72</sup> *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.

<sup>73</sup> Art. I, s. 6, FLA. CONST.; s. 447.03, F.S.

<sup>74</sup> Section 447.203(14), F.S.

<sup>75</sup> *See* s. 447.501(1)(c), F.S.

<sup>76</sup> *See* s. 447.209, F.S.

<sup>77</sup> *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).

<sup>78</sup> *See id.* at 35.

<sup>79</sup> *See* s. 447.403, F.S.

State-approved teacher preparation programs are offered by Florida public and private postsecondary institutions, public school districts, and private providers by which candidates for educator certification can, depending on the type of program, demonstrate mastery of general knowledge, professional preparation and education competence, and/or subject area knowledge for purposes of attaining an educator certificate.<sup>80</sup>

Initial state program approval is based on standards adopted and established by the DOE. Each program approved must require students, at a minimum to:

- have a grade point average of 2.5 or higher in the general education component of undergraduate studies or have completed a bachelor's degree from an accredited college or university with a minimum 2.5 GPA;<sup>81</sup> and
- pass the General Knowledge Test of the Florida Teacher Certification Examination or, for a graduate level program, obtain a baccalaureate degree from an institution that is accredited or approved pursuant to the rules of the state board.<sup>82</sup>

There are three types of state-approved teacher preparation programs that individuals may use to receive the training needed to attain teaching credentials.<sup>83</sup>

### *Initial Teacher Preparation Programs*

Initial Teacher Preparation programs are “traditional” teacher preparation programs that require candidates to demonstrate mastery of subject area knowledge in one or more specific subject areas(s), mastery of general knowledge, and mastery of professional preparation and education competence. Program completers qualify for a professional educator certificate.<sup>84</sup>

### *Educator Preparation Institutes*

Educator Preparation Institutes are alternative certification programs offered by postsecondary institutions and qualified private providers for baccalaureate degree holders. These programs provide professional preparation for career-changers and recent college graduates who do not already possess a Professional Educator Certificate and require mastery of general knowledge, mastery of subject area knowledge and mastery of professional preparation and education competence.

### *District Professional Development Certification and Education Competency Programs*

District Professional Development Certification and Education Competency Programs are cohesive competency-based professional preparation certification programs offered by school districts, charter schools, and charter management districts by which the instructional staff can satisfy the mastery of professional preparation and education competence requirements.<sup>85</sup> In addition to completing the district program, candidates must demonstrate mastery of general knowledge and subject area knowledge.<sup>86</sup>

### *Requirements for Teacher Preparation Programs*

The state board is charged with maintaining a system for development and approval of teacher preparation programs.<sup>87</sup> The system allows postsecondary educator preparation institutions to employ

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<sup>80</sup> See Florida Department of Education, *Professional Development in Florida*, <http://www.fldoe.org/teaching/professional-dev/> (last visited Jan. 28, 2022). See also rule 6A-5.066, F.A.C.; ss. 1004.04(3)(a) and 1004.85(1), F.S.

<sup>81</sup> Section 1004.04(3)(b)1., F.S.

<sup>82</sup> Section 1004.04(3)(b)2., F.S.

<sup>83</sup> Florida Department of Education, *Educator Preparation*, <http://www.fldoe.org/teaching/preparation> (last visited Jan. 28, 2022). See also rule 6A-5.066, F.A.C.

<sup>84</sup> Rule 6A-5.066(1)(o), F.A.C.

<sup>85</sup> Section 1012.56(8)(a), F.S.

<sup>86</sup> See s. 1012.56(2)(g) and (h), F.S.

<sup>87</sup> Section 1004.04(1), F.S.

varied and innovative educator preparation techniques while being held accountable for producing graduates with the competencies and skills necessary to:

- achieve the state's education goals;
- help the state's diverse student population meet high standards for academic achievement;
- maintain safe, secure classroom learning environments; and
- sustain the state system of school improvement and education accountability.<sup>88</sup>

The DOE is responsible for approving teacher preparation programs based on evidence of a program's capacity to meet the requirements for continued program approval established in law and state board rule.<sup>89</sup>

Each candidate enrolled in a teacher preparation program must receive instruction and be assessed on the uniform core curricula in his or her area of program concentration during course work and field experiences.<sup>90</sup>

Educator preparation institutes may offer competency-based certification programs specifically designed for noneducation major baccalaureate degree holders.<sup>91</sup> The state board must establish, in rule, uniform core curricula for each state-approved teacher preparation program including, but not limited to:<sup>92</sup>

- candidate instruction and assessment in the Florida Educator Accomplished Practices across content areas;
- the use of state-adopted content standards to guide curricula and instruction;<sup>93</sup>
- scientifically researched and evidence-based reading instructional strategies that improve reading performance for all students, including explicit, systematic, and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension and multisensory intervention strategies;<sup>94</sup>
- content literacy and mathematical practices;
- strategies appropriate for instruction of English language learners;
- strategies appropriate for instruction of students with disabilities;
- strategies to differentiate instruction based on student needs;
- the use of character-based classroom management;
- strategies appropriate for the early identification of a student in crisis or experiencing a mental health challenge and the referral of such student to a mental health professional for support; and
- strategies to support the use of technology in education and distance learning.<sup>95</sup>

In addition, before program completion, each candidate must demonstrate his or her ability to positively impact student learning growth in the candidate's area(s) of program concentration during a prekindergarten through grade 12 field experience and must pass each portion of the Florida Teacher Certification Examination (FCTE) required for a professional certificate in the area(s) of program concentration.<sup>96</sup>

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<sup>88</sup> *Id.* See Florida Department of Education, *Professional Development in Florida*, <http://www.fldoe.org/teaching/professional-dev/> (last visited Jan. 28, 2022).

<sup>89</sup> See s. 1004.04(4), F.S.; rule 6A-5.066(2) and (5), F.A.C.

<sup>90</sup> Section 1004.04(2)(c), F.S.

<sup>91</sup> Section 1004.85(3), F.S.

<sup>92</sup> Section 1004.04(2)(b)1.-8., F.S.

<sup>93</sup> The State Board of Education has adopted the Next Generation Sunshine State Standards, which establish the core content of the curricula taught in the state and specify the core content knowledge and skills that K-12 public school students are expected to acquire. Rule 6A-1.09401(1), F.A.C.; s. 1003.41(1), F.S.

<sup>94</sup> The Just Read, Florida! Office must assist teacher preparation programs and educator preparation institutes with this requirement. Section 1001.215(11), F.S.

<sup>95</sup> Section 1004.85(3)(a)1., F.S.

<sup>96</sup> Section 1004.04(2)(d), F.S.

Continued approval of educator preparation institutes is determined by the Commissioner of Education based on a periodic review of these areas:<sup>97</sup>

- documentation from the program that each program completer has met the requirements established in law;
- evidence of performance in each of the following:
  - placement rate of program completers into instructional positions in Florida public schools and private schools, if available;
  - rate of retention for employed program completers in instructional positions in Florida public schools;
  - performance of students in prekindergarten through grade 12 who are assigned to in-field program completers on statewide assessments using the results of the student learning growth formula adopted by the DOE pursuant to law;
  - performance of students in prekindergarten through grade 12 who are assigned to in-field program completers aggregated by student subgroup, as defined in the ESEA<sup>98</sup> as a measure of how well the program prepares teachers to work with a diverse population of students in a variety of settings in Florida public schools;
  - results of program completers' annual evaluations under the teacher evaluation systems; and
  - production of program completers in statewide critical teacher shortage areas as identified in law.

Each approved educator preparation institute pursuant to this must submit to DOE annual performance evaluations that measure the effectiveness of the programs, including the pass rates of participants on all examinations required for teacher certification, employment rates, longitudinal retention rates, and satisfaction surveys of employers and candidates.<sup>99</sup>

### *Preservice Field Experiences*

All postsecondary instructors, school district personnel, and school sites preparing instructional personnel through preservice field experience courses and internships must meet specified requirements,<sup>100</sup> including a minimum number of at least three years teaching,<sup>101</sup> evidence of clinical educator training, and proof of successful past experience in employment.<sup>102</sup> Preservice field experience must fully prepare a future educator to manage a classroom, exposing the candidate to the area of concentration with a diverse population of students in a variety of challenging environments.<sup>103</sup>

### *Teacher Preparation Approval System and Scoring*

A January 2022 report based on an audit of Florida's teacher preparation program accountability system makes recommendations to update and improve program-approval criteria.<sup>104</sup> The audit notes that due to overly specific and restrictive measures, only 82 of 318 programs have enough performance data to receive a rating.<sup>105</sup> In addition, the use of summative ratings, rather than weighted criteria, affects the accuracy of program quality ratings.<sup>106</sup>

Some of the audit report's recommendations include: limiting consideration of teacher placements to those in Florida; eliminating teacher retention, as studies have shown little correlation between retention and program quality; eliminating subgroup performance on state assessments due to limited

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<sup>97</sup> Section 1004.85(4)(a)-(b), F.S.

<sup>98</sup> 20 U.S.C. s. 6311(b)(2)(C)(v)(II).

<sup>99</sup> Section 1004.85(5), F.S.

<sup>100</sup> Section 1004.04(5), F.S.

<sup>101</sup> Section 1004.04(5)(a), F.S.

<sup>102</sup> Section 1004.04(5)(b), F.S.

<sup>103</sup> Section 1004.04(5)(c), F.S.

<sup>104</sup> UPD Consulting, *Florida Department of Education Teacher Preparation Approval System and Scoring Audit Report* (Jan. 2022), on file with staff of the House Education and Employment Committee.

<sup>105</sup> *See id.* at 3.

<sup>106</sup> *Id.*

data; and including candidate readiness based on passage rates on the FCTE.<sup>107</sup> According to the report, fair evaluation of very small preparation programs can be facilitated by providing the DOE flexibility in determining the number of completers necessary for an evaluation.<sup>108</sup> The report also noted that the DOE could allow completion of national accreditation to satisfy state approval requirements.<sup>109</sup>

In addition to approval criteria, the report recommends that preservice teacher candidates receive additional field experience before participating in a “culminating” field experience, *i.e.*, internship or, for an educator preparation institute, becoming the teacher of record.<sup>110</sup> Citing a Florida Council of 100 report detailing the disparity between student grades and statewide, standardized assessments, the report also recommends including strategies for research-based standards-aligned assessment and grading practices in the uniform core curricula.<sup>111</sup>

### Effect of Proposed Changes

The bill incorporates multiple recommendations from the audit report by:

- revising the uniform core curricula for teacher preparation programs to include strategies that support evidence-based, standards-aligned content and grading practices;
- revising program evaluation criteria to:
  - remove subgroup performance on statewide, standardized assessments and teacher retention; and
  - add candidate readiness based on FCTE passage rates and additional weight for placement in teacher shortage areas;
- authorizing the SBE to weight certain evaluation criteria and approve programs based on national accreditation;
- requiring the SBE to adopt criteria for streamlining evaluations for small programs, including criteria for determining whether a review is necessary, whether remote review procedures may be used, and whether program data may be aggregated at the program or institution level; and
- beginning with candidates entering a program in the 2023-2024 school year, requiring that:
  - candidates in a traditional preparation program complete 60 hours of field experience before participating in a culminating field experience; and
  - candidates in an educator preparation institute complete a period of field experience as determined in state board rule before becoming the teacher of record.

#### B. SECTION DIRECTORY:

**Section 1:** Amends 800.101, F.S.; providing criminal penalties for certain actions related to specified reports.

**Section 2:** Amends s. 1004.04, F.S.; revising teacher preparation program core curricula requirements; revising criteria for continued program approval; authorizing the State Board of Education to adopt rules that include certain criteria and authorize continued program approval; requiring the State Board of Education to adopt rules that establish certain continued program approval criteria; revising specified requirements relating to field experiences.

**Section 3:** Amends s. 1004.85, F.S.; revising teacher preparation program core curricula requirements; requiring certain program candidates to complete a minimum period of field experience, as determined by the State Board of Education; revising criteria for continued program approval; authorizing the State Board of Education to adopt rules that include certain criteria and authorize continued program approval; requiring the State

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<sup>107</sup> See *id.* at 8-12.

<sup>108</sup> See *id.* at 16.

<sup>109</sup> See *id.* at 15.

<sup>110</sup> *Id.* at 18.

<sup>111</sup> *Id.* at 17.

Board of Education to adopt rules that establish certain continued program approval criteria.

**Section 4:** Amends s. 1012.32, F.S.; requiring employing entities that employ certain instructional and noninstructional personnel to submit such personnel's fingerprints to the Department of Law Enforcement; conforming provisions to changes made by the act; revising requirements for background screening; providing that an employing entity has the sole authority for determining a person's employment eligibility; providing an exception; deleting provisions authorizing certain persons to appeal specified terminations; requiring the Department of Law Enforcement to report the results from background screenings to the employing entity; defining the term "employing entity."

**Section 5:** Amends s. 1012.321, F.S.; revising an exception for specified individuals from certain background rescreening requirements.

**Section 6:** Amends s. 1012.34, F.S.; providing that certain procedures relating to a school district's instructional, administrative, and supervisory personnel set the standards of service to be offered to the public and are not subject to collective bargaining.

**Section 7:** Provides an effective date of July 1, 2022, except as otherwise provided in the bill.

## 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:

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 February 1, 2022, the Education & Employment Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute differs from the bill as originally filed by:

- Establishing a criminal penalty of a first-degree misdemeanor for individuals who knowingly fail to report sexual misconduct that could impact an educator's inclusion on the school employment disqualification list;
- Providing that an "employing entity," defined as a district school board, charter school, alternative school, or any other entity that requires employees to complete a background screening, is responsible for filing fingerprints to the FDLE, determining employment eligibility, and paying annual fees for background screenings;
- Providing that an individual who participates in a preservice field experience is not subject to rescreening by a subsequent employing entity if the individual has fingerprints retained by the FDLE, is rescreened every 5 years, and meets screening standards;
- Requiring teacher preparation programs to teach strategies supporting evidence-based grading practices;
- Streamlining criteria for continued approval of teacher preparation programs to be measured by performance on educator certification examinations, and evidence of performance of program completers;
- Authorizing the state board to weight program approval criteria;
- Requiring the state board to adopt rules to aggregate multiple programs at an institution, allow for remote reviews, and identify programs too small to receive a review; and
- Requiring preservice candidates at traditional teacher preparation programs to complete 60 hours of preservice field experience before starting the required internship.

The analysis is drafted to the committee substitute adopted by the Education & Employment Committee.