

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7021    PCB SLC 07-01    Performance-based Pay Bonuses  
**SPONSOR(S):** Schools & Learning Council and Pickens  
**TIED BILLS:** \_\_\_\_\_    **IDEN./SIM. BILLS:** \_\_\_\_\_

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council	11 Y, 3 N	Kooi	Cobb
1) Policy & Budget Council	30 Y, 0 N, As CS	Martin	Hansen
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill establishes the Merit Award Program for instructional personnel and school-based administrators. District participation in the program is voluntary, but districts will only receive their appropriation if they choose to adopt a plan under this section. The funds for districts that do not choose to participate in the program revert to the fund from which they came.

In order to be eligible for funding under this program, district plans must provide for an assessment and reward eligible employees based upon performance of assigned students (weighted at 60%) as well as principal or superintendent evaluations (weighted at 40%). Student performance is to be measured by statewide standardized tests and, for grades and courses not covered by the statewide assessment program, by district determined testing instruments that meet certain criteria.

The plans are subject to collective bargaining under Ch. 447, F.S. Each district plan must designate top performing employees and must include a supplement of at least 5 percent of the average teacher's salary for that school district, but no more than 10 percent of the average teacher's salary for that district from state appropriated funds. Districts may use their own funds to provide any additional supplements. The amount of the awards may not be based upon length of service or base salary. Funds disbursed to districts for the merit award program must be distributed to qualifying employees who remain employed at a Florida public school no later than September 1 of the following school year.

Merit Award Program plans are to be reviewed by the Commissioner of Education prior to implementation. The implementation of the plans is also to be reviewed by the commissioner the following year for compliance with statutory requirements.

Funding for this program is subject to the legislative appropriation in the 2007-08 GAA (see FISCAL ANALYSIS section below).

Special Teachers Are Rewarded (STAR) proviso language from Specific Appropriation 91 of the 2006-2007 General Appropriations Act (GAA) is codified and repealed. STAR implementation deadlines are pushed back from March 1, 2007 to May 1, 2007 for revisions, and from April 1, 2007 to June 30, 2007 for approval. Funds appropriated for STAR in 2006-2007 are reverted and reappropriated with the new provisions, and with provision for the undisbursed balance of the funds to be refunded to the Department of Education (DOE) by September 1, 2007.

Districts may be eligible for funding if they have a performance pay plan under s. 1012.22(1)(c)4., F.S., but they must either amend their plan to meet the new statutory criteria prior to the disbursement of funds under this section or receive only the amount they disbursed under s. 1012.22(1)(c)4., F.S.

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

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

**STORAGE NAME:** h7021b.PBC.doc  
**DATE:** 3/16/2007

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Personal Responsibility and Individual Freedom*- The bill allows individual instructional personnel and school-based administrators to be evaluated and rewarded for the academic proficiency or learning gains of students under their instruction. These rewards are determined solely by individual merit rather than through collectively bargained salary structures.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Florida Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to examine school district performance pay plans. In January 2007, OPPAGA published Report No. 07-01, *Restrictive District Requirements Limited Participation in Performance Pay Systems*. This report found that, historically, most Florida district school boards have paid teachers using salary schedules that have been based on input factors such as highest degree earned, and years of experience.

The 1997 Legislature instructed districts to base a portion of instructional personnel compensation on performance. The 1999 Legislature required districts to implement, by June 30, 2002, performance pay plans that would award 5% bonuses to school administrators and instructional personnel who demonstrated outstanding performance. Districts were to create a reserve fund within their existing budgets to fully fund the additional 5% bonuses.<sup>1</sup>

In implementing performance pay plans, districts are to evaluate instructional personnel primarily on the performance of students assigned to their classrooms or schools, as appropriate. Where applicable, districts must measure student performance by using the Florida Comprehensive Assessment Test (FCAT), the designated state assessment test. In subjects and grade levels that are not covered by the FCAT, districts may use local assessments of student performance.<sup>2</sup>

Districts have the flexibility in assessing the performance of instructional personnel; however, current law sets forth the specific skill-based criteria that districts must include in their evaluation of instructional personnel for performance pay.<sup>3</sup> These criteria are the ability to maintain appropriate discipline; knowledge of subject matter; ability to plan and deliver instruction; the use of technology in the classroom; ability to evaluate instructional needs; and ability to establish and maintain a positive relationship with students' families.<sup>4</sup>

The 2006 Legislature established the Special Teachers Are Rewarded (STAR) program for elementary, middle, and high school instructional personnel and school-based administrators and appropriated \$147.5 million to the program in the 2006-2007 General Appropriations Act.<sup>5</sup> In order to receive those funds, districts were required to remove all barriers to eligibility and award 5% performance bonuses to the top performing 25% of their instructional personnel.<sup>6</sup>

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

<sup>2</sup> Id.

<sup>3</sup> s. 1012.34(3)(a), F.S.

<sup>4</sup> OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems*. Report No. 07-01. January 2007.

<sup>5</sup> 2006-2007 General Appropriations Act (ch. 2006-25, L.O.F.), Specific Appropriation 91

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

Districts may choose whether to participate in STAR but all districts must implement approved performance pay plans<sup>7</sup> for their instructional personnel. Districts participating in STAR may use any remaining funds to provide performance rewards to additional instructional or school-based administrative personnel. Districts electing not to participate in STAR still must implement approved performance pay plans<sup>8</sup> for their instructional personnel and are required to pay for performance pay out of other funds.<sup>9</sup>

### Effects of Proposed Changes

The bill establishes the Merit Award Program for instructional personnel and school-based administrators and sets forth findings and intent. District participation in the program is voluntary. However, districts will only receive their appropriation for merit award supplements if they choose to adopt a plan under this section.

In order to be eligible for funding under this program, district plans must provide for an assessment and reward eligible employees based upon performance of assigned students as well as principal or superintendent evaluations. All instructional personnel<sup>10</sup> and school-based administrators<sup>11</sup> are eligible for merit award supplements without having to apply. Substitute teachers are not included. Instructional teams such as those in co-teaching or team teaching situations may be rewarded as a team as well.

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

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

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

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

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

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<sup>7</sup> s. 1012.22(1)(c), F.S.

<sup>8</sup> s. 1012.22(1)(c), F.S.

<sup>9</sup> OPPAGA: *Restrictive District Requirements Limited Participation in Performance Pay Systems*. Report No. 07-01. January 2007.

<sup>10</sup> s. 1012.01(2), F.S., provides for the definition of instructional personnel.

<sup>11</sup> s. 1012.01(3), F.S., provides for the definition of administrative personnel.

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

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

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

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

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

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

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

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

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

Funding for this program is subject to legislative appropriation in the 2007-08 GAA (see FISCAL ANALYSIS section below).

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

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

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

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

#### C. SECTION DIRECTORY:

**Section 1.** Creates s. 1012.225, F.S., establishing the Merit Award Program a voluntary program to reward the performance of instructional personnel and school-based administrators; providing for the reversion of undistributed funds from entities that do not adopt a plan; providing for an assessment and a merit award based on the student's performance; subjecting each plan to collective bargaining; providing for a formula for the disbursement of merit-based pay supplements; requiring the documentation of each district's expenditures under its plan; requiring undisbursed funds to be returned to the DOE; providing that the supplements are in addition to other salary adjustments; providing assessment requirements; requiring district school boards to inform employees of the evaluation criteria; requiring the DOE to provide technical assistance; requiring plans to be submitted to the Commissioner of Education; requiring the Commissioner to identify required revisions and review such revisions; requiring school boards to document compliance; requiring a report to the Governor and Legislature; and authorizing the State Board to adopt rules.

**Section 2.** Creates an unnumbered section of law; requiring school districts to be able administer end-of-course examinations with certain exemptions.

**Section 3.** Amends s. 447.403, F.S., providing procedure for resolving an impasse with respect to a dispute involving a Merit Award pay plan.

**Section 4.** Codifies the proviso language for the STAR program in the 2006-2007 General Appropriations Act; requires that a specified portion of general revenue funds revert to the General Revenue Fund; repealing a specified portion of proviso following Specific Appropriation 91 in s. 2, ch. 2006-25, L.O.F.

**Section 5.** Creates an unnumbered section of law; providing an appropriation and specifying purposes.

**Section 6.** Repeals s. 3, ch. 2006-26, L.O.F.; relating to an implementing provision for the STAR performance pay plan.

**Section 7.** Repeals s. 1012.22(1)(c)4., F.S.; relating to a performance-pay policy for school administrators and instructional personnel; suspending rules adopted by the State Board that are in conflict with the provisions.

**Section 8.** Provides that except as otherwise provided, act shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

Under the STAR Program, funds allocated in 2006-07 for districts that fail to adopt approved STAR plans were to be redistributed to districts with approved STAR plans. Under this bill, funds available to districts that choose not to meet any STAR requirements or performance pay requirements enumerated in this bill must be remitted back to DOE by September 1, 2007 (and will then revert to the funds from which they were appropriated). It is possible that some districts will choose not to participate in a 2006-07 performance pay plan and, therefore, an indeterminate amount of funds could remain unallocated and revert.

Funds for the new Merit Award Program created by this bill are to be appropriated in the 2007-08 GAA.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

District school boards are free to provide whatever additional funding they may choose to add to provide bonuses to more eligible employees. There may also be some district costs to administer the program.

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

None.

### D. FISCAL COMMENTS:

The 2006 Legislature appropriated \$147.5 million in the 2006-07 General Appropriations Act, Specific Appropriation 91. This appropriation is rescinded and \$147.5 million is appropriated as a supplemental appropriation for Aid to Local Governments, Grants and Aids – Florida Education Finance Program for the 2006-2007 fiscal year. The funding for the Merit Award Program is subject to the 2007 Legislative appropriation in the 2007-2008 General Appropriations Act.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the State Board of Education for the administration of the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 16, 2007, the Policy and Budget Council adopted two amendments to the bill that revised the reversion and reappropriation of the \$147.5 million STAR funding to reflect the appropriate fund sources from which the original 2006-07 appropriation was made.