

Committee Substitute for
Committee Substitute for Senate Bill No. 1226

An act relating to a merit award program for district school board employees; creating s. 1012.225, F.S.; establishing the Merit Award Program for instructional personnel and school-based administrators; requiring that a district school board adopt a Merit Award Program plan in order to receive funding under the program; authorizing charter schools to participate in the program or adopt an alternative plan; providing for the plan to be subject to ch. 447, F.S., relating to collective bargaining; providing for the reversion of funds that are not distributed when a district or charter school chooses not to adopt a plan; providing a formula for disbursing merit-based pay supplements to high-performing employees; requiring each school district to document to the Department of Education the district's expenditures under its plan; requiring that undisbursed funds be remitted to the department; providing that the merit-based pay supplements are in addition to other salary adjustments; providing requirements for assessing instructional personnel and school-based administrators which include evaluating student performance; requiring district school boards to inform employees of the criteria for evaluations under the plan; requiring the department to provide technical assistance to school districts in developing program plans and to disseminate best practices; requiring each participating district school board to submit its plan to the Commissioner of Education for review; requiring the commissioner to identify required revisions in a district's plan; requiring that any revision made to a plan be reviewed by the commissioner; requiring each school board to annually document its compliance to the Commissioner of Education; requiring a report to the Governor and the Legislature; authorizing the State Board of Education to adopt rules; requiring school districts to be able to administer end-of-course examinations with certain exceptions; amending s. 447.403, F.S.; providing a procedure for resolving an impasse with respect to a dispute involving a Merit Award Program Plan; requiring that a specified portion of general revenue funds revert to the General Revenue Fund; repealing a specified portion of Specific Appropriation 91 in s. 2, ch. 2006-25, Laws of Florida; providing an appropriation and specifying purposes; repealing s. 3, ch. 2006-26, Laws of Florida, relating to an implementing provision for the Special Teachers Are Rewarded performance pay plan (STAR Plan); repealing 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 of Education which are in conflict with such provisions; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1012.225, Florida Statutes, is created to read:

1012.225 Merit Award Program for Instructional Personnel and School-Based Administrators.—

(1) ELIGIBILITY.—In order to be eligible for funding under this section, a district school board must adopt a Merit Award Program plan that provides for an assessment and a merit award based on the performance of students assigned to the employee's classroom or school pursuant to paragraph (3)(a) or paragraph (3)(b). Charter schools may participate in the program by using the district's Merit Award Program plan or may adopt an alternative Merit Award Program plan as provided in paragraph (5)(b). All instructional personnel, as defined in s. 1012.01(2)(a)-(d), and school-based administrators, as defined in s. 1012.01(3)(c), are eligible as individuals or as instructional teams to receive merit awards, with the exception of substitute teachers. In order to receive a merit award as an instructional team under this section, team members must be assessed on the performance of students assigned to the team members' classrooms or within the members' academic sphere of responsibility. The district school board may not require instructional personnel or school-based administrators to apply for an award, or make any presentation, in order to be assessed for or receive a merit award. A plan is subject to negotiation as provided in chapter 447. The Department of Education may not distribute any portion of pro rata funding to a district, or to a district for a charter school within the district, if the district or charter school chooses not to adopt a Merit Award Program plan under this section. Undistributed funds shall be considered unobligated and shall revert to the fund from which the appropriation was made in accordance with s. 216.301.

(2) PAY SUPPLEMENTS STRUCTURE.—Merit Award Program plans shall provide for the annual disbursement of merit-based pay supplements to high-performing employees in the manner described in this subsection.

(a) Each Merit Award Program plan must designate the top instructional personnel and school-based administrators to be outstanding performers and pay to each such employee who remains employed by a Florida public school, by September 1 of the following school year, a merit-based pay supplement of at least 5 percent of the average teacher's salary for that school district not to exceed 10 percent of the average teacher's salary for that school district. The amount of a merit award may not be based on length of service or base salary. Pay supplements shall be funded from moneys appropriated by the Legislature under this section and from any additional funds that are designated by the district for the Merit Award Program. School districts are not required to implement this section unless the program is specifically funded by the Legislature. By October 1 of each year, each school district shall provide documentation to the Department of Education concerning the expenditure of legislative appropriations for merit-based pay, and shall refund undisbursed appropriations to the department. If such undisbursed funds are not remitted to the department by November 1, the department shall withhold an equivalent amount from the district's allocation of appropriations made under s. 1011.62.

(b) A Merit Award Program plan may include additional pay supplements under this section for employees who manifest exemplary work attendance.

(c) Merit-based pay supplements shall be awarded in addition to any general increase or other adjustments to salaries which are made by a school district. An employee's eligibility for or receipt of merit-based pay supplements shall not adversely affect that employee's opportunity to qualify for or to receive any other compensation that is made generally available to other similarly situated district school board employees.

(3) ASSESSMENT.—

(a) The school district's assessment of an instructional personnel staff member must consider the performance of students assigned to his or her classroom or, in the case of co-teaching or team teaching, within his or her academic sphere of responsibility.

(b) The assessment of a school-based administrator must consider the performance of students assigned to his or her school.

(c) A district school board must evaluate student performance for purposes of this section based upon student academic proficiency or gains in learning or both, as measured by statewide standardized tests, or, for subjects and grades that are not measured by the statewide assessment program, by national, state, or district-determined testing instruments that measure the Sunshine State Standards, curriculum frameworks, or course descriptions for the content area assigned and grade level taught. This portion of the employee assessment shall be weighted at not less than 60 percent of the overall evaluation.

(d) For purposes of this section, measures adopted by the district school board to assess instructional personnel and school-based administrators must balance student performance based on academic proficiency and gains in learning so that top-performing eligible employees have an opportunity to receive an award under this section.

(e) Using assessment criteria adopted by the district school board, a professional practices component for the assessment of instructional personnel must be based on the principal's assessment of the instructional personnel and the assessment of school-based administrators must be based on the district superintendent's assessment of the administrator. This portion of the employee assessment shall be weighted at up to 40 percent of the overall evaluation. Performance-related assessment criteria adopted by the district school board for personnel assessments by principals and superintendents shall include:

1. The ability to maintain appropriate discipline.
2. The outstanding knowledge of subject matter, with the ability to plan and deliver high-quality instruction and the high-quality use of technology in the classroom.
3. The ability to use diagnostic and assessment data and design and to implement differentiated instructional strategies in order to meet individual student needs for remediation or acceleration.

4. The ability to establish and maintain a positive collaborative relationship with students' families for the purpose of increasing student achievement.

5. The Florida Educator Accomplished Practices and any other professional competencies, responsibilities, and requirements, as established by rules of the State Board of Education and policies of the district school board.

6. For school-based administrators, in addition to subparagraphs 1.-5.:

a. The ability to manage human, financial, and material resources so as to maximize the share of resources used for direct instruction, as opposed to overhead or other purposes; and

b. The ability to recruit and retain high-performing teachers.

7. Other appropriate factors identified by the district school board.

(4) DUTIES.—

(a) Each district school board shall inform its employees of the criteria and procedures associated with the school district's Merit Award Program plan.

(b)1. Upon request, the department shall provide technical assistance to school districts for the purpose of aiding the development of Merit Award Program plans. The advice and recommendations offered by the department under this paragraph are not subject to the requirements of chapter 120.

2. The department shall collect and disseminate best practices for district-determined testing instruments and Merit Award Program plans.

(5) REVIEW OF PERFORMANCE-BASED PAY PLANS.—

(a) Each participating district school board must submit its Merit Award Program plan to the Commissioner of Education for review by October 1 of each year. The plan must include the negotiated, district-adopted plan or charter school adopted plan if the district does not submit a plan intended for use in the following year. The commissioner shall complete a review of each plan submitted and determine compliance with the requirements of this section by November 15 of each year. If a submitted plan fails to meet the requirements of this section, the commissioner must identify in writing the specific revisions that are required. Revised plans must be finalized and resubmitted by a school district, or by a charter school if the district does not submit a plan, for the commissioner's review by January 31 of each year. The commissioner shall certify those school district or charter school plans that do not comply with this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15 of each year.

(b) Any charter school that does not follow the school district's salary schedule may adopt its own performance-based plan in accordance with this section. Charter school proposals shall be included with the school district

plans or may be submitted independently if the district does not submit a plan.

(c) Each district school board shall establish a procedure to annually review both the assessment and compensation components of its plan in order to determine compliance with this section. After this review and by October 1 of each year, the district school board shall submit a report to the Commissioner of Education, along with supporting documentation that will enable the commissioner to verify the district's compliance with this section during the prior school year. The commissioner shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives certifying those school district or charter school plans that do not comply with this section or whose plans were not implemented in accordance with this section by December 1 of each year.

(d) For purposes of the 2007-2008 school year, the plan submitted as required in paragraph (a) applies to the 2007-2008 school year as well as the 2008-2009 school year. Thereafter, all plans submitted and approved within the timelines set forth in paragraph (a) apply to the following school year.

(6) SUBSEQUENT REVISIONS OF APPROVED PLANS.—Any revision to an approved Merit Award Program plan must be approved by the district school board and reviewed by the commissioner to determine compliance with this section.

(7) RULEMAKING.—The State Board of Education shall adopt rules relating to the calculation of average teacher salaries per district, reporting formats, and the review of plan procedures pursuant to ss. 120.536(1) and 120.54 for purposes of administering this section. The State Board of Education must initiate the rulemaking process within 30 days after this act becomes law.

Section 2. Beginning with the 2007-2008 school year, school districts that participate in the Merit Award Program under s. 1012.225, Florida Statutes, must be able to administer end-of-course examinations based on the Sunshine State Standards in order to measure a student's understanding and mastery of the entire course in all grade groupings and subjects for any year in which the districts participate in the program. The statewide standardized assessment, College Board Advanced Placement Examination, International Baccalaureate examination, Advanced International Certificate of Education examination, or examinations resulting in national industry certification recognized by the Agency for Workforce Innovation satisfy the requirements of this section for the respective grade groupings and subjects assessed by these examinations and assessments.

Section 3. Paragraph (c) is added to subsection (2) of section 447.403, Florida Statutes, to read:

447.403 Resolution of impasses.—

(2)

(c) If the district school board is the public employer and an impasse is declared under subsection (1) involving a dispute of a Merit Award Program

Plan under s. 1012.225, the dispute is subject to an expedited impasse hearing. Notwithstanding subsections (3), (4), and (5), and the rules adopted by the commission, the following procedures shall apply:

1.a. The commission shall furnish the names of seven special magistrates within 5 days after receiving notice of impasse. If the parties are unable to agree upon a special magistrate within 5 days after the date of the letter transmitting the list of choices, the commission shall immediately appoint a special magistrate. The special magistrate shall set the hearing, which shall be held no later than 15 days after the date of appointment of the special magistrate. Within 5 days after the date of appointment of a special magistrate, each party shall serve upon the special magistrate and upon each other party a written list of issues at impasse.

b. At the close of the hearing, the parties shall summarize their arguments and may provide a written memorandum in support of their positions.

c. Within 10 days after the close of the hearing, the special magistrate shall transmit a recommended decision to the commission and the parties.

d. The recommended decision of the special magistrate shall be deemed accepted by the parties, except as to those recommendations that a party specifically rejects, by filing a written notice with the commission and serving a copy on the other party within 5 days after the date of the recommended decision.

2. If a party rejects any part of the recommended decision of the special magistrate, the parties shall proceed directly to resolution of the impasse by the district school board pursuant to paragraph (4)(d).

Section 4. From the general revenue funds appropriated pursuant to Specific Appropriation 91 in section 2 of chapter 2006-25, Laws of Florida, the sum of \$147,500,000 is rescinded and \$130,517,222 shall revert unallocated to the General Revenue Fund and \$16,982,778 shall revert unallocated to the Principal State School Trust Fund on the effective date of this section, and the following proviso language following Specific Appropriation 91 in section 2 of chapter 2006-25, Laws of Florida, is repealed:

From the funds in Specific Appropriation 91, \$147,500,000 is provided for the Special Teachers are Rewarded performance pay plan (STAR plan). Funds shall be distributed to school districts for performance pay rewards to instructional personnel as defined in section 1012.01(2) (a)-(d), Florida Statutes, in all K-12 schools in the district, in accordance with the requirements of section 1012.22, Florida Statutes. STAR Plan funds shall be allocated based on each district's proportion of the state total K-12 base funding, subject to review and approval by the State Board of Education of the district's STAR plan. The district's STAR plan may include information from the district's instructional personnel assessment system, and shall include instructional personnel evaluation based on the performance of their students. The Department of Education shall develop model methodologies that ensure fairness and equity for all instructional personnel, and shall provide technical assistance upon request.

Each school district that chooses to participate in the STAR Plan shall submit its comprehensive STAR plan, which shall include rewards for elementary, middle, and high school instructional personnel, to the State Board of Education by December 31, 2006. Any charter school that does not follow the district's salary schedule may submit a separate proposal with the district's plan. Charter school proposals shall be included with the district plans or may be submitted independently if the district does not submit a plan. Districts that do not submit a plan by December 31, 2006, shall not be eligible to receive STAR Plan funds. The State Board shall review each district's STAR Plan within 45 days of receipt and shall approve the plan or request revisions. If requesting revisions, the State Board must identify the specific area(s) of the proposed plan needing revision. Districts must submit their revised plan by March 1, 2007. The State Board shall review the revised plan and may either approve the revised plan or deny the district eligibility to receive STAR Plan funds for the 2006-2007 fiscal year. STAR Plan funds shall not be recalculated during the fiscal year except that funds allocated for districts that fail to adopt approved STAR Plans by April 1, 2007, shall be redistributed to those districts that have approved plans in place by the required date. The redistribution calculation shall be verified by the Florida Education Finance Program Appropriation Allocation Conference.

District STAR Plans must meet the following guidelines:

1. Eligibility - All instructional personnel are automatically eligible to receive rewards for improved student achievement without having to apply.
2. Determination of number of rewards - The district plan shall utilize funds received under this program for rewards of at least 5 percent of the base pay of the best performing 25 percent of instructional personnel. Districts shall use any remaining funds to provide bonuses to additional instructional personnel or school-based leaders pursuant to their plans. District school boards are encouraged to provide additional rewards to instructional personnel they determine to be outstanding. District school boards shall distribute funds for State Board approved charter school plans to charter schools based on each charter school's proportion of the district's total K-12 base funding.
3. Evaluation instrument - Each district school board shall select or develop an evaluation instrument. The instrument's primary determining factor shall be the evaluation of improved student achievement. The instrument's factors shall be scored using the following categories, or categories that are substantially similar in number and connotation: unsatisfactory, needs improvement, satisfactory, high-performing, and outstanding. Instructional personnel must receive no unsatisfactory or needs improvement ratings and may receive no more than one satisfactory rating on the areas evaluated in order to receive a reward.
4. Instructional personnel evaluation based on student performance - District school boards shall determine appropriate methods to evaluate instruc-

tional personnel based on the performance of their students. The methods must measure improved student achievement during the course of the school year; and must be approved by the State Board of Education.

a. Evaluation of improved student achievement for instructional personnel linked by course numbers to instruction in reading or math shall be determined by a standardized test.

b. Evaluation of improved student achievement for instructional personnel not linked by course numbers to instruction in reading or math shall be determined by instruments that measure the Sunshine State Standards for the area, including challenging grade-level content and critical thinking skills. District school boards shall develop methods to evaluate improved student achievement in specialized areas, including exceptional student education, fine arts, career and technical education, and other specialties so that all instructional personnel are eligible for rewards.

c. Evaluation of improved student achievement for secondary instructional personnel linked by course number to instruction in social studies or science may be assessed by a standardized test; by linking improved student achievement in reading or mathematics of the students enrolled in the instructional personnel's social studies or science class, as measured by a standardized test; or by instruments that measure the Sunshine State Standards for the area, including challenging grade-level content and critical thinking skills.

District school board STAR Plan proposals may include a methodology for performance pay rewards for district-selected school-based leaders who supervise or directly assist the instructional personnel whose student achievement results in a STAR Plan reward.

Section 5. (1) The recurring sum of \$130,517,222 from the General Revenue Fund and the nonrecurring sum of \$16,982,778 from the Principal State School Trust Fund is appropriated to the Department of Education for the 2006-2007 fiscal year as a supplemental appropriation for Aid to Local Governments, Grants and Aids—Florida Education Finance Program. These funds shall be allocated among school districts based on each district's proportion of the state total K-12 base funding and shall be expended for any of the following purposes:

(a) To fund Special Teachers Are Rewarded (STAR) performance pay plans that are implemented based on proviso language following Specific Appropriation 91 in section 2 of chapter 2006-25, Laws of Florida, in effect as of July 1, 2006. A district that has been requested by the State Board of Education to submit a revised STAR plan must submit its revised plan by May 1, 2007. The state board shall review the revised plan and may either approve the revised plan or deny the district eligibility to receive STAR plan funds for the 2006-2007 fiscal year;

(b) To fund performance pay policies adopted pursuant to s. 1012.22, Florida Statutes, if a district school board amends its policy to conform to s. 1012.225(1), (2), and (3), Florida Statutes, prior to the disbursement of

funds. However, a school district that does not amend its plan as described in this paragraph may disburse funds only in an amount equal to the amount of funds the district disbursed under its policy for the 2005-2006 school year; or

(c) To fund performance pay policies approved by the district school board which meet the requirements of s. 1012.225(1), (2), and (3), Florida Statutes.

(2) The amended policies adopted under paragraph (1)(b) and the policies adopted under paragraph (1)(c) are subject to negotiation as provided in chapter 447, Florida Statutes, except that if an impasse occurs pursuant to s. 447.403, Florida Statutes, the procedures set forth in s. 447.403(2)(c), Florida Statutes, as created by this act, shall apply. School districts receiving funds under this section must comply with s. 1012.225(5)(c), Florida Statutes.

(3) Each school district shall refund the undisbursed balance of its allotment from this appropriation as of September 1, 2007, to the Department of Education. If such funds are not remitted to the department by October 1, 2007, the department shall withhold an equivalent amount from the district's allocation from the Florida Education Finance Program for the 2007-2008 fiscal year.

Section 6. Section 3 of chapter 2006-26, Laws of Florida, is repealed.

Section 7. Effective June 30, 2007, s. 1012.22(1)(c)4., Florida Statutes, is repealed. Rules adopted by the State Board of Education pursuant to s. 1012.22, Florida Statutes, which are in conflict with this act are suspended.

Section 8. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor March 29, 2007.

Filed in Office Secretary of State March 29, 2007.