

HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 495	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	K-12 Public Education	107	Y's 1	N's
SPONSOR(S):	Education Committee; Diaz, M. and Bileca	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	CS/CS/HB 323; CS/CS/CS/HB 515; HB 777; HB 977; CS/HB 1213; CS/CS/HB 1391; SB 180; SB 736; CS/CS/SB 1056; CS/SB 1240; CS/CS/SB 1548			

SUMMARY ANALYSIS

CS/HB 495 passed the House on March 5, 2018. The bill was amended in the Senate on March 7, 2018, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on March 9, 2018.

The bill provides that effective July 1, 2018, instructional personnel who are authorized to extend Deferred Retirement Option Program (DROP) participation beyond the 60-month period must have a termination date that is the last day of the last calendar month of the school year within the DROP extension granted by the employee. Administrative personnel in grades K-12 who have a DROP termination date on or after July 1, 2018, may be authorized to extend DROP participation beyond the initial 60 calendar month period if the administrative personnel's termination date is before the end of the school year.

The bill increases student access to computer science instruction by requiring middle and high schools to offer computer science courses; requiring the Department of Education (DOE) to identify computer science courses in the course code directory and on its website; requiring the Florida Virtual School (FLVS) to offer computer science courses identified by the DOE; requiring school districts that do not offer a computer science course to provide students access to computer science courses offered by the FLVS or by other means; establishing a grant program to provide training to teachers to earn computer science educator certificates and industry certifications; and providing a yearly bonus to teachers with a computer science educator certificate or industry certification who complete an authorized course, for up to 3 years. Funding for the teacher training grant program and teacher bonus program are subject to appropriation.

The bill creates a second-degree felony for an authority figure who solicits or engages in sexual, romantic or lewd conduct with a student enrolled at a school, regardless of the student's age; revises the definition of school trespassing to include school buses; and strengthens the reporting and investigation requirements for school employee misconduct.

The bill also specifies that students who are enrolled in an Advanced Placement, International Baccalaureate, or Advanced International Certificate Education course and earn the minimum score necessary to earn college credit are not required to take the state end-of-course assessment for that subject.

The fiscal impact of the bill is indeterminant.

This bill was approved by the Governor on April 6, 2018, ch. 2018-150, and will become effective on July 1, 2018, except as otherwise provided.

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

STORAGE NAME: h0495z1.PKQ.docx

DATE: April 12, 2018

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Florida Retirement System

Present Situation

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund.¹

The FRS is a multiple-employer, contributory plan² governed by the Florida Retirement System Act.³ As of June 30, 2017, the FRS provides retirement income benefits to 637,643 active members,⁴ 406,374 retired members and beneficiaries, and 32,233 members of the Deferred Retirement Option Program (DROP).⁵ It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities.⁶

Members of the FRS have two primary plan options available for participation:

- The pension plan, which is a defined benefit plan; and
- The investment plan, which is a defined contribution plan.⁷

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.⁸

FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (division).⁹ Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁰ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.¹¹

¹ *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017*, at 33. A copy of the report can be found online at:

http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited March 12, 2018)

[hereinafter *Annual Report*].

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011.

³ Chapter 121, F.S.

⁴ As of June 30, 2017, the FRS Pension Plan, which is a defined benefit plan, had 520,014 members, and the investment plan, which is a defined contribution plan, had 117,629 members. *Annual Report, supra* note 1, at 144.

⁵ *Id.*

⁶ Florida Retirement System Participating Employers for Plan Year 2017-18, prepared by the Department of Management Services, Division of Retirement, Revised February 2017, at 8. A copy of the document can be found online at:

<https://www.rol.frs.state.fl.us/forms/part-emp.pdf> (last visited March 12, 2018).

⁷ Section 121.021(3), F.S.

⁸ Sections 121.35 and 121.355, F.S.

⁹ Section 121.025, F.S.

¹⁰ Section 121.021(45)(a), F.S.

¹¹ Section 121.021(45)(b), F.S.

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.¹² Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65.¹³

DROP

All members in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.¹⁴ However, members who are instructional personnel employed by the Florida School for the Deaf and Blind and authorized by the Board of Trustees of the Florida School for the Deaf and Blind, who are instructional personnel as defined in s. 1012.01(2)(a)-(d), F.S., in grades K-12 and authorized by the district school superintendent, or who are instructional personnel as defined in s. 1012.01(2), F.S., employed by a developmental research school and authorized by the school's director, or if the school has no director, by the school's principal, may participate in DROP for up to three years beyond the initial five-year period.¹⁵ While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.¹⁶

Effect of the Bill

The bill provides that effective July 1, 2018, instructional personnel who are authorized to extend DROP participation beyond the 60-month period must have a termination date that is the last day of the last calendar month of the school year within the DROP extension granted by the employer. For those employees who have already extended DROP on or before July 1, 2018, the member's DROP participation may be extended through the last day of the last calendar month of that school year. The employer must notify the division of the change in termination date and the additional period of DROP participation for the affected instructional personnel.

In addition, administrative personnel in grades K-12 who have a DROP termination date on or after July 1, 2018, may be authorized to extend DROP participation beyond the initial 60 calendar month period if the administrative personnel's termination date is before the end of the school year. Such administrative personnel may have DROP participation extended until the last day of the last calendar month of the school year in which their original DROP termination date occurred.

Computer Science Instruction

Present Situation

Public schools are required to provide students in grades K-12 opportunities for learning computer science including, but not limited to, computer coding and computer programming.¹⁷ Such opportunities may include:¹⁸

- instruction regarding computer coding in elementary and middle school;
- instruction to develop computer usage and digital literacy skills in middle school; and
- courses in computer science, computer coding, and computer programming in high school, including opportunities to earn industry certifications related to the courses.

The law allows high schools to provide students opportunities to satisfy certain math and science graduation requirements by taking computer science courses of sufficient rigor and earning a related industry

¹² Section 121.021(29)(a)1., F.S.

¹³ Section 121.021(29)(a)2. and (b)2., F.S.

¹⁴ Section 121.091(13)(a) and (b), F.S.

¹⁵ Section 121.091(13)(b), F.S.

¹⁶ If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP is 1.3 percent.

¹⁷ Section 1007.2616(1), F.S.

¹⁸ *Id.*

certification.¹⁹ To qualify, the course must be in the area of computer science or 3D rapid prototype printing and the Commissioner of Education (commissioner) must identify the course and the related industry certification in the Course Code Directory.²⁰

A qualifying computer science course may satisfy up to one mathematics or science course credit, so long as the course is not Algebra I or higher-level mathematics or Biology I or higher-level science. A qualifying 3D rapid prototype printing course may satisfy up to two mathematics course credits, except for Algebra I.²¹

The Southern Regional Education Board recently identified five actions states can take to help address gaps in computer science instruction. The steps are:

- develop state computer science standards for K-12;
- lay the groundwork for learning computer science (focus on essential literacy skills and math concepts and skills students need to master grade-appropriate computer science standards);
- create clear pathways to computing careers by charging a state advisory council with developing pathways that meet identified workforce needs in computing fields;
- prepare great computer science teachers through special training and certification pathways; and
- educate communities about computer science and computing careers by embedding career advisement and encouraging partnerships with employers.²²

In 2016, the State Board of Education (SBE) revised the Next Generation Sunshine State Standards to include K-12 computer science standards.²³ Currently, courses in computer coding are listed in the Career Technical Education Program and Course Listing section in the Course Code Directory.²⁴ The Florida Department of Education (DOE) has identified several general education courses and career and technical education courses and programs that will incorporate the newly adopted computer science standards, including but not limited to:²⁵

- Computer Science Principles;
- Integrated Information Technology;
- Database Application Development and Programming;
- STEM labs K-5; and
- Meteorology Honors for Grade 9-12.

Currently, only 9.6 percent of high schools in the state have students enrolled in a computer science course, with 9.1 percent having students enrolled in a career and technical education computer science course.

Under 1 percent of combination schools have students enrolled in a computer science course, and only 0.2 percent of combination schools have students enrolled in a career and technical education computer science course. Thirty-three school districts do not have a high school or combination school offering any type of computer science course. Only one school district, Bay, has a middle school that offers a computer science course.²⁶ There are 463 teachers who hold a DOE-issued educator certificate in computer science.²⁷

¹⁹ Section 1007.2616(3), F.S.

²⁰ *Id.*

²¹ *Id.*

²² See Southern Regional Education Board, *Executive Summary: Bridging the Computer Science Education Gap: Five Actions States Can Take* (Nov. 2016), available at http://www.sreb.org/sites/main/files/file-attachments/csexec_summary.pdf.

²³ See rule 6A-1.09401(1)(n), F.A.C.

²⁴ Staff of the Florida Department of Education, *Staff Analysis of Senate Bill 468* (2016).

²⁵ Florida Department of Education, *Course and CTE Programs that Include the New Computer Science Standards for the 2017-2018 School Year*, Memorandum DPS: 2017-26 (Mar. 3, 2017).

²⁶ Email, Florida Department of Education, Office of Governmental Relations (Dec. 21, 2017).

²⁷ Email, Florida Department of Education, Office of Governmental Relations (Jan. 17, 2018).

Bonuses for Teachers of Advanced Courses and Courses Leading to Industry Certification

The Legislature allocates public education funding to Florida’s school districts through the Florida Education Finance Program (FEFP). The FEFP is a funding formula that helps to equalize education funding among Florida’s geographically diverse school districts and is the primary mechanism for funding the operating costs of Florida school districts, which among other things, includes the payment of teacher salaries.²⁸ In addition to funding school district operating costs, the FEFP also includes funds for teachers of advanced courses, such as International Baccalaureate (IB) courses, Advanced International Certificate of Education (AICE) courses, and Advanced Placement (AP) courses, whose students earn specified scores on the course examinations.²⁹

- *International Baccalaureate* bonus provides an IB teacher a \$50 bonus for each student who scores 4 or higher on the IB examination. An IB teacher in a “D” or “F” school who has at least one student scoring 4 or higher on the IB examination receives an additional \$500 bonus.³⁰
- *Advanced International Certificate of Education* bonus provides an AICE teacher a \$50 bonus for each student in a full-credit AICE course, or \$25 bonus for a student in a half-credit AICE course, who scores “E” or higher on the AICE examination. An AICE teacher in a “D” or “F” school receives an additional \$500 bonus if one of the teacher’s students scores “E” or higher on the full-credit AICE examination, or a \$250 bonus for each half-credit AICE course taught which has at least one student scoring “E” or higher on the half-credit AICE examination, not to exceed an additional \$500 bonus.³¹
- *Advanced Placement* bonus provides an AP teacher a \$50 bonus for each of his or her students who scores 3 or higher on the College Board AP examination. An AP teacher in a “D” or “F” school who has at least one student scoring 3 or higher on the College Board AP examination receives an additional \$500 bonus.³²

Yearly Teacher per-Student Bonuses by Advanced Course			
	IB	AP	AICE
Half Credit			\$25
Full Credit	\$50	\$50	\$50
Full Credit D Or F School	\$500 (per teacher)	\$500 (per teacher)	\$500 (per teacher)
Half Credit D Or F School			\$250 (per teacher)

FEFP funds are also used to provide bonuses for teachers who teach courses that lead to the attainment of a Career and Professional Education (CAPE) industry certification. Depending on the certification earned, a

²⁸ See s. 1011.60, F.S. The performance salary schedule is funded from the same sources used to pay instructional personnel and school administrators under the grandfathered salary schedule.

²⁹ Section 1011.62(1)(l)-(n), F.S.; *International Baccalaureate*, <http://www.ibo.org> (last visited Jan. 17, 2018); University of Cambridge, International Examinations, *Cambridge Advanced International Certificate of Education Diploma*, <http://www.cie.org.uk/qualifications/academic/uppersec/aice> (last visited March 12, 2018); College Board, *Advanced Placement Program*, <http://www.collegeboard.com/student/testing/ap/about.html> (last visited March 12, 2018).

³⁰ Section 1011.62(1)(l), F.S.

³¹ Section 1011.62(1)(m), F.S.

³² Section 1011.62(1)(n), F.S.

school district receives bonus funding of 0.1, 0.2, 0.3, 0.5, or 1.0 FTE.³³ Teacher bonus funding is awarded for each student taught by a teacher who provided instruction in a course that led to the student's attainment of a CAPE industry certification on the CAPE Industry Certification Funding List, as follows:

- A bonus in the amount of \$25 is awarded for a course with a weight of 0.1.³⁴
- A bonus in the amount of \$50 is awarded for a course with a weight of 0.2.³⁵
- A bonus in the amount of \$75 is awarded for a course with a weight of 0.3.³⁶
- A bonus in the amount of \$100 is awarded for a course with a weight of 0.5 or 1.0.³⁷

Yearly Teacher per-Student CAPE Bonuses		
Weight	Type	Amount
0.1 FTE	CAPE Industry Cert Does Not Articulate	\$25
0.2 FTE	CAPE Industry Cert Articulates to College Credit	\$50
0.3 FTE	CAPE Innovation Course ³⁸	\$75
0.5 FTE	CAPE Acceleration Industry Cert Articulates to 15-29 College Credit Hours ³⁹	\$100
1.0 FTE	CAPE Acceleration Industry Cert Articulates to 30+ College Credit Hours	\$100

Effect of the Bill

The bill defines the term "computer science" to mean the study of computers and algorithmic processes, including their principles, hardware and software designs, applications, and their impact on society. The bill specifies that "computer science" includes computer coding and computer programming.

The bill specifies that opportunities for computer science instruction must include courses in computer science in both middle school and high school. Under the bill, computer science courses must be integrated into each school district's middle and high schools, including combination schools in which any of grades 6 through 12 are taught.

The bill requires the DOE to identify computer science courses in the Course Code Directory and publish the courses on its website no later than July 1, 2018.

The bill requires the Florida Virtual School (FLVS) to offer computer science courses identified by the DOE. If a school district does not offer an identified course, the district must provide students access to the course through the FLVS or through other means.

³³ Section 1011.62(1)(o), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ A CAPE Innovation course is one of up to five courses annually approved by the commissioner that combines academic career content and incorporates at least two third-party assessments that, if completed successfully by the student, articulate to college credit. See s. 1003.4203(5)(a), F.S. For a list of approved courses, see Florida Department of Education, *CAPE Innovation Courses*, <http://www.fldoe.org/academics/career-adult-edu/cape-secondary/innovation.stml> (last visited March 12, 2018).

³⁹ A CAPE Acceleration industry certification is one annually approved by the commissioner that articulates to 15 or more college credits. See s. 1011.62(5)(b), F.S.

To encourage educators to earn credentials for teaching computer science, the bill establishes a bonus program, subject to appropriation. Under the program, a classroom teacher who is rated highly effective or effective pursuant to his or her evaluation in the previous school year, or who is newly hired but has not received an evaluation, must receive a bonus as follows:

- If the teacher holds an educator certificate in computer science or if he or she has passed the computer science subject area test and holds an adjunct certificate issued by the school district, the teacher will receive a bonus of \$1,000 after each year he or she completes teaching a computer science course identified by the DOE at a public middle, high, or combination school in the state, for up to 3 years.
- If the teacher holds an industry certification associated with a course identified by the DOE, the teacher will receive a bonus of \$500 after each year the individual completes teaching the identified course at a public middle, high, or combination school in the state, for up to 3 years.

A school district must report a qualifying classroom teacher to the DOE by a date and in a format established by the DOE. The bill specifies that an eligible classroom teacher will receive his or her bonus upon completion of the school year in which he or she taught the course but may not receive more than one bonus per year under the program.

Bonus funds under the program would be in addition to existing bonuses provided through the FEFP for teachers whose students pass exams that lead to college credit (AP, IB, and AICE) or the attainment of an industry certification.

To help teachers earn a qualifying credential under the bonus program, the bill provides that, subject to appropriation, a school district or a consortium of school districts may apply to the DOE for funding to deliver or facilitate training for classroom teachers to earn an educator certificate in computer science or an industry certification associated with an identified course. The bill specifies that the funding may only be used to provide training for classroom teachers and to pay fees for examinations that lead to a qualifying credential.

School Safety

Present Situation

Offenses against Sexual Conduct with Minors

There is no prohibition against consensual sexual conduct between a school authority figure and an adult student. However, there are several statutes in Florida law that prohibit adults from engaging or attempting to engage in sexual or lewd conduct with a minor. A "minor" is defined as any person under the age of 18 years.⁴⁰ These offenses include:

- a third degree felony for use of a computer online service, internet service, or any other device capable of electronic data storage, such as a cell phone, to seduce, solicit, lure, or entice, or attempt to do these things, with someone believed to be a minor.⁴¹
- a third degree felony for any person to transmit material harmful to a minor.⁴² "Material harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
 - predominately appeals to a prurient, shameful, or morbid interest;
 - is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
 - taken as a whole, is without serious literary, artistic, political, or scientific value for minors.⁴³

⁴⁰ Section 847.001(8), F.S.

⁴¹ Section 847.0135(3), F.S.

⁴² Section 847.0138(2)-(3), F.S.

⁴³ Section 847.001(6), F.S.

- a second degree felony for a person to travel any distance for the purpose of engaging in any illegal act or otherwise engage in other unlawful sexual conduct with a child, or with another person believed by the person to be a child.⁴⁴
- a felony offense for an adult to commit any lewd or lascivious battery, molestation, conduct, or exhibition, upon a child.⁴⁵

Reclassification of Sexual Offenses Committed by an Authority Figure on a Minor

Section 943.0435(1)(h)1, F.S., includes the following offenses involving minor victims:

- Kidnapping of child under age 13.⁴⁶
- False imprisonment of child under age 13.⁴⁷
- A person over 18 who intentionally lures or entices or attempts to lure or entice a child under the age of 12 into a structure, dwelling, or conveyance for other than lawful purposes.⁴⁸
- Human trafficking of minors.⁴⁹
- Sexual battery of a minor.⁵⁰
- Unlawful sexual activity with a minor.⁵¹
- Lewd or indecent exposure involving a minor.⁵²
- Video voyeurism involving a minor.⁵³
- Sexual performance by a child.⁵⁴
- Distributing harmful material to a minor.⁵⁵
- Possession or transmission of child pornography.⁵⁶

Florida law enhances any felony offense enumerated above if it is committed by an authority figure of a school upon a student.⁵⁷ An authority figure is a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.⁵⁸ A student is a person younger than 18 years of age who is enrolled at a school.⁵⁹ The offense is reclassified as follows:

- A felony of the third-degree⁶⁰ is reclassified to a second-degree felony.
- A felony of the second-degree⁶¹ is reclassified to a first-degree felony.
- A felony of the first-degree⁶² is reclassified to a life felony.⁶³

⁴⁴ Section 847.0135(4), F.S.

⁴⁵ Section 800.04, F.S.

⁴⁶ Section 787.01, F.S.

⁴⁷ Section 787.02, F.S.

⁴⁸ Section 785.025(2)(c), where the victim is a minor.

⁴⁹ Section 787.06(3)(b), (d), (f), or (g), F.S.

⁵⁰ Section 794.011, F.S.

⁵¹ Section 794.05, F.S.

⁵² Section 800.04, F.S.

⁵³ Section 810.145(8), F.S.

⁵⁴ Section 827.071, F.S.

⁵⁵ Section 847.0133, F.S.

⁵⁶ Section 847.0135, F.S.

⁵⁷ Section 775.0862, F.S.

⁵⁸ Section 775.0862(a), F.S.

⁵⁹ Section 775.0862(c), F.S.

⁶⁰ A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. ss. 775.082(3)(e) and 775.083(1)(c), F.S.

⁶¹ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082(3)(d) and 775.083(1)(b), F.S.

⁶² A first-degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082(3)(b)1 and 775.083(1)(b), F.S.

⁶³ A life felony is punishable by up to a term of imprisonment for life and a \$15,000 fine. ss. 775.082(3)(a)3 and 775.083(1)(a), F.S.

Teacher-Adult Student Relationship Laws in Other States

Other states have enacted similar legislation to prohibit teachers from having relationships with adult students. For example, in Connecticut, it is sexual assault in the second degree when a school employee engages in sexual intercourse with a student enrolled in the school, regardless of that student's age.⁶⁴

North Carolina categorizes the offense level based on the age difference between the school personnel and the adult student.⁶⁵ If the defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, or other school personnel, is at least four years older than the student and engages in vaginal intercourse or a sexual act with the student, the defendant is guilty of a class G⁶⁶ felony. If the defendant is less than four years older than the student, then the defendant is guilty of a lesser degree class I⁶⁷ felony.⁶⁸

Georgia makes it sexual assault punishable by up to 25 years in prison if a teacher, principal, assistant principal, or other administrator of any school who has supervisory or disciplinary authority over a student engages in sexual contact with the student and knew or should have known the student was enrolled at the same school, regardless of age.⁶⁹ Such conduct is not prohibited if the student is married to the other individual.⁷⁰

In *Paschal v. State*, a teacher was convicted of sexual assault for having a sexual relationship with an eighteen-year-old student.⁷¹ Paschal appealed his conviction, arguing that the statute violated his fundamental privacy right to engage in private, consensual, noncommercial acts of sexual intimacy with an adult. The Arkansas Supreme Court agreed, and held that because the two were adults engaged in a consensual sexual relationship, the statute unconstitutionally infringed on a fundamental right. In reaching this decision, the state Supreme Court stated that the statute⁷² was not the least restrictive method available to carry out a state's legitimate interest and therefore it was unconstitutional.⁷³ Following the Arkansas Supreme Court Decision, the statute was amended to make it a second degree sexual assault for person in a K-12 public or private school, who is a teacher, principal, athletic coach, or counselor, in a position of trust or authority to use his or her position of trust or authority over a student enrolled in the school and less than twenty-one years of age to engage in sexual contact with that student.⁷⁴

In *State v. Edwards*,⁷⁵ a teacher was convicted of unlawful sexual relations after he engaged in sexual intercourse with one of his 18-year-old high school students.⁷⁶ The criminal statute at issue defined unlawful sexual relations to mean:

consensual sexual intercourse . . . with a person who is not married to the offender if the offender is a teacher⁷⁷ or a person in a position of authority and the person with whom the

⁶⁴ CONN. GEN. STAT. § 53a-71.

⁶⁵ N.C. GEN. STAT. ANN. § 14-27.7.

⁶⁶ Class G felonies are considered mid-level felonies in North Carolina and punishable by potential prison time. *See North Carolina Structured Sentencing*, available at: http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/sstrainingmanual_09.pdf (last visited February 19, 2018).

⁶⁷ Class I felonies are considered low-level felonies in North Carolina and punishable by probation. *Id.*

⁶⁸ *Id.*

⁶⁹ GA. CODE ANN. § 16-6-5.1.

⁷⁰ *Id.*

⁷¹ *Paschal v. State*, 388 S.W. 3d 429 (2012 Ark. 127).

⁷² ARK. CODE ANN. § 5-14-125(a)(6).

⁷³ *Id.*

⁷⁴ GA. CODE ANN. § 16-6-5.1.

⁷⁵ 288 P.3d 494.

⁷⁶ *Id.*

⁷⁷ "'Teacher' includes teachers, supervisors, principals, superintendents, and any other professional employees in any public or private schools offering grades kindergarten through 12." *Id.* at 498.

offender is engaging in consensual sexual intercourse . . . is a student enrolled at the school where the offender is employed.⁷⁸

Unlike in *Paschal*, the *Edwards* court determined that Kansas's constitution does not provide a teacher a fundamental right to engage in sexual conduct with a student who is of age to consent.⁷⁹ Consistent with court decisions from Washington,⁸⁰ Connecticut,⁸¹ and Texas,⁸² the court applied a rational basis review of the statute, finding that it is a legitimate state interest to keep the school environment safe and free from sexual coercion from persons in positions of authority or trust.

The court noted that, when read in its entirety, the statute was intended to prohibit sexual conduct of persons with authority over other persons where the ability to freely consent is questionable, especially because teachers have constant unsupervised access to students and are in a unique position to groom or coerce students into exploitive or abusive conduct. Because the prohibition on sexual conduct with students was rationally related to the legitimate state interest, the court held the statute to be constitutional and affirmed the defendant's conviction.⁸³

Trespass of a Structure or Conveyance

Trespass of a structure or conveyance is a second degree misdemeanor⁸⁴ and occurs when an individual willfully enters or remains in any structure⁸⁵ or conveyance,⁸⁶ without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.⁸⁷ A conveyance includes a motor vehicle.⁸⁸

In order to arrest someone for misdemeanor trespass of a structure or conveyance, without a warrant, the crime must be committed in the presence of a law enforcement officer.⁸⁹ If a law enforcement officer does not witness the crime, the officer needs an arrest warrant to arrest the offender after the commission of the crime. A judge may issue an arrest warrant if, upon examination of the complaint and proof submitted, he or she is satisfied that probable cause exists that the crime was committed within the judge's jurisdiction.⁹⁰ Probable cause exists when the totality of facts and circumstances within one's knowledge would cause a reasonable person to believe that an offense has been or is being committed.⁹¹

Trespass on School Property

It is a second degree misdemeanor for any person to enter or remain upon the campus or school facility if the person does not have legitimate business on the campus or any other authorization to be there, or is a

⁷⁸ *Id.* at 498 (citing KAN. STAT. ANN. § 21-3520(a)(8)).

⁷⁹ *Id.* at 502.

⁸⁰ *State v. Hirschfelder*, 170 Wash. 2d 536, (Wash. 2010) (upholding statute criminalizing sexual intercourse between school employees and students who are at least 16 years old using rational basis review).

⁸¹ *State v. McKenzie-Adams*, 281 Conn. 486 (Conn. 2007) (refusing to apply strict scrutiny review of statute prohibiting a sexual relationship between a teacher and a students because it is "an inherently coercive relationship . . . wherein consent might not easily be refused.") *overruled on other grounds*.

⁸² *In re Shaw*, 204 S.W.3d 9 (Tex. App. 2006) (holding that protecting students from the pressures, emotional strain, conflicts, distractions, and other difficulties brought on by sexual conduct with school employees is a legitimate state interest).

⁸³ *Id.* at 504.

⁸⁴ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁸⁵ Section 810.011(1), F.S., defines "structure" as a building of any kind.

⁸⁶ Section 810.011(3), F.S., defines "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

⁸⁷ Section 810.08, F.S.

⁸⁸ Section 810.011(3), F.S.

⁸⁹ Section 901.15(1), F.S.

⁹⁰ Section 901.02(1), F.S.

⁹¹ *State v. Betz*, 815 So. 2d 627 (Fla. 2002); *see also Freeman v. State*, 909 So. 2d 965 (Fla. 3d DCA 2005).

student currently under suspension or expulsion. It is a first degree misdemeanor if a person enters or remains on campus or at a school facility after the principal of the school, or his or her designee, has directed the person to leave or not enter the campus or school facility.⁹² School means the grounds or any facility of any public or nonpublic kindergarten, elementary school, middle school, junior high school, or secondary school.⁹³

The statute allows a chief administrative officer of the school, or an employee, to take a person into custody if he or she has probable cause to believe that person is trespassing on school grounds.⁹⁴ If a trespasser is taken into custody, a law enforcement officer must immediately be called.⁹⁵

Unlike trespass of a structure or conveyance, an officer may arrest a person for trespassing on school grounds, without a warrant and after the commission of the offense, if the officer has probable cause to believe that person committed the offense.⁹⁶

Qualifications for Educator Certification and Employment, General Requirements

To be an educator in a traditional public school, charter school, virtual school, or other publicly operated school, a person must hold a certificate issued by the DOE.⁹⁷ Persons seeking employment at a public school as a school supervisor, principal, teacher, library media specialist, counselor, athletic coach, or in another instructional capacity must be certified.⁹⁸ The purpose of certification is to require school-based personnel to “possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools.”⁹⁹

To be eligible for an educator certificate or appointment in any position in a school district, a person must, among other things, be of good moral character and submit to fingerprinting and background screening and not have a criminal history that requires the applicant’s disqualification from certification or employment.¹⁰⁰

Instructional personnel and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students must undergo background screening, as applicable.¹⁰¹ To be employed in an instructional capacity, the person must be 18 years or older and hold a certificate or license issued by the SBE or the Department of Children and Families, except in specific circumstances.¹⁰²

Disqualifying Offenses

A person is ineligible for educator certification, and employment as an instructional personnel or school administrator with direct student contact in a public school or a private school that accepts McKay or Florida Tax Credit scholarship students, if he or she is convicted of a number of specified criminal offenses¹⁰³ including:

- sexual misconduct with certain developmentally disabled clients, mental health patients, forensic clients, or sexual misconduct in juvenile justice programs;

⁹² Section 810.097, F.S.

⁹³ Section 810.097(5), F.S.

⁹⁴ Section 810.097(3), F.S.

⁹⁵ *Id.*

⁹⁶ Section 810.097(4), F.S.

⁹⁷ Sections 1012.55(1) and 1002.33(12)(f), F.S.

⁹⁸ Section 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certified individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

⁹⁹ Section 1012.54, F.S.; rule 6A-4.001(1), F.A.C.

¹⁰⁰ Section 1012.56(2)(a)-(f), F.S.

¹⁰¹ Section 1012.32(2)(a), F.S.

¹⁰² Section 1012.32(1), F.S.

¹⁰³ Section 1001.42(7), 1012.315(1)-(2), and 1012.32(1), F.S.

- abuse, neglect, or exploitation of aged persons or disabled adults;
- murder;
- manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic;
- aggravated assault;
- aggravated battery;
- battery on a detention or commitment facility staff member or a juvenile probation officer;
- kidnapping;
- false imprisonment;
- luring or enticing a child;
- leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody or dependency proceedings;
- exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of school;
- possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property;
- sexual battery;
- sexual activity with or solicitation of a child by a person in familial or custodial authority;
- unlawful sexual activity with certain minors;
- female genital mutilation;
- prostitution;
- lewdness and indecent exposure;
- arson;
- voyeurism;
- coordinating the commission of theft in excess of \$3,000;
- theft from persons 65 years or older;
- dealing in stolen property;
- robbery;
- robbery by sudden snatching;
- carjacking;
- home-invasion robbery;
- fraudulent sale of controlled substance;
- abuse, aggravated abuse, or neglect of an elderly person or disabled adult;
- lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- incest;
- child abuse, aggravated child abuse, or neglect of a child;
- contributing to the delinquency or dependency of a child;
- sexual performance by a child;
- resisting arrest with violence;
- obscenity;
- causing, encouraging, soliciting, or recruiting another to join a criminal street gang;
- any drug abuse charges under ch. 893, F.S., if offense was a second degree felony or higher;
- introduction, removal, or possession of contraband at a correctional facility or juvenile detention facility or commitment program; and
- misdemeanor battery if the victim of the offense was a minor.¹⁰⁴

Any person who is found ineligible for employment or otherwise found through background screening to have been convicted of any crime involving moral turpitude¹⁰⁵ may not be employed, engaged to provide services, or serve in any position that requires direct contact with students.¹⁰⁶

¹⁰⁴ Section 1012.315, F.S.

Education Practices Commission

The SBE has adopted standards for educator conduct, referred to as the Principles of Professional Conduct for the Education Profession.¹⁰⁷ The Education Practices Commission (EPC) interprets and applies the principles.¹⁰⁸ At least once each year, the EPC must report to and meet with the SBE.¹⁰⁹ The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.¹¹⁰

Specifically, the EPC may revoke or suspend an educator's certificate if a person, among other things, has been:¹¹¹

- guilty of gross immorality or an act involving moral turpitude as defined by SBE rule;
- convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation; or
- disqualified from educator certification based on a conviction for certain criminal offenses.

Currently, the EPC has final order authority to impose one or more of the following penalties against an educator certificate:

- Denial of an application, including prohibiting reapplication for a period of up to ten years or permanently.
- Revocation or suspension of a certificate.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense
- Probation.
- Restriction of the authorized scope of practice.
- Written reprimand.
- Referral to the recovery network program.¹¹²

The DOE may deny certification if it has satisfactory evidence that an applicant has committed an act or acts, or that a situation exists, for which the EPC would be authorized to revoke a teaching certificate.¹¹³ The DOE's decision is subject to review by the EPC upon a written request from the applicant within 20 days after receipt of notice of denial.¹¹⁴

Investigations of Alleged Misconduct

The DOE must expeditiously investigate a filed complaint which, if legally sufficient,¹¹⁵ contains grounds for the revocation or suspension of a certificate or any other appropriate penalty.¹¹⁶ Legally sufficient complaints of misconduct that affect the health, safety, or welfare of a student must be given priority over other pending complaints.¹¹⁷ The DOE's Office of Professional Practice Services administers the state grievance process,

¹⁰⁵ Rule 6A-5.056(7), F.A.C., provides a list of offenses that are considered crimes involving moral turpitude, including the offenses listed in s. 1012.315, F.S.

¹⁰⁶ Section 1012.32(2), F.S.

¹⁰⁷ Section 1012.795(1)(j), F.S.; Rule 6A-10.081, F.A.C.

¹⁰⁸ Section 1012.79(7)(a), F.S.

¹⁰⁹ Section 1012.79(7)(c), F.S.

¹¹⁰ Section 1012.79(7)(b), F.S.

¹¹¹ Section 1012.795(1), F.S.

¹¹² Section 1012.798, F.S.

¹¹³ Section 1012.56(12)(a), F.S.

¹¹⁴ Section 1012.56(12)(b), F.S.

¹¹⁵ A complaint is legally sufficient if it contains "ultimate facts that show a violation has occurred" as provided in law and state board rule. S. 1012.796(1)(d), F.S.

¹¹⁶ Section 1012.796(1)(a), F.S.

¹¹⁷ Section 1012.796(1)(b), F.S.

investigates alleged misconduct by certified educators, and pursues disciplinary actions against the certificates of educators who are found to have committed acts of misconduct.¹¹⁸

Each school district must file with the DOE a legally sufficient complaint within 30 days after the date on which the subject of the complaint comes to the attention of the school district.¹¹⁹ The report must include all information relating to the complaint known to the school district. Each district school board must adopt policies and procedures for reporting legally sufficient complaints of misconduct to the DOE.¹²⁰

Complaints and materials relating to a school district's investigation of a complaint are confidential and exempt from public records laws until the conclusion of the preliminary investigation or until the investigation is considered inactive.¹²¹ A preliminary investigation is active so long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation is presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made.¹²²

Standards of Ethical Conduct for Instructional Personnel and School Administrators

Florida law requires each district school board to adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.¹²³ Among other things, the policies must establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health safety, or welfare of a student.¹²⁴

A school board member who knowingly fails to adopt policies that require instructional personnel and school administrators to report alleged misconduct by other instructional personnel and school administrators or that require the investigation of all reports of alleged misconduct that affect the health, safety, or welfare of a student forfeits his or her salary for 1 year.¹²⁵ Additionally, a district school superintendent who knowingly fails to investigate any allegation of misconduct by instructional personnel or school administrators that affects the health safety, or welfare of a student or who knowingly fails to report the misconduct to the DOE forfeits his or her salary for 1 year.¹²⁶

Effect of the Bill

Sexual Conduct by Authority Figures with Adult Students

The bill prohibits an authority figure from soliciting or engaging in sexual, romantic, or lewd conduct with a student and criminalizes the conduct between an authority figure and a student, regardless of the student's age and regardless of whether the behavior was consensual. In addition, the bill does not require that the authority figure use his or her position of authority over the student in order to procure the sexual conduct. It is enough that the person is an authority figure and engages in such conduct with a student to violate the prohibition of this bill.

¹¹⁸ Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited February 19, 2018).

¹¹⁹ Section 1012.796(1)(d), F.S.

¹²⁰ *Id.*

¹²¹ Section 1012.31(3)(a)1., F.S.

¹²² *Id.*

¹²³ Section 1001.42(6), F.S. The terms "instructional personnel" and "school administrators" are defined under s. 1012.01(2) and (3)(c), F.S. *See also* s. 1012.796(1)(d), F.S. (requiring school district policies to include standards of ethical conduct for instructional personnel and school administrators).

¹²⁴ *Id.*

¹²⁵ Section 1001.42(7)(b), F.S.

¹²⁶ Section 1001.51(12), F.S.

An authority figure is defined as a person 18 years of age or older who is employed by, volunteering at, or under contract with a school, including school resource officers. **The term "school" is revised to include a private school, a voluntary prekindergarten education program, an early learning program, a public school, the Florida School for the Deaf and Blind, and the Florida Virtual School. The term "school" does not include a facility dedicated exclusively to adult education.**

The bill does not define the terms "sexual conduct" and "lewd conduct." However, other statutes and case law do define these terms.¹²⁷

Trespass on School Property

The bill includes school bus in the definition of school for purposes of trespass on school grounds. This change will allow a chief administrative officer of a school, or an employee designated to maintain order on the campus, to detain someone until law enforcement arrives if they have probable cause to believe the person is trespassing or has trespassed on a school bus. It also allows a law enforcement officer to arrest someone for trespassing on a school bus, after the commission of the offense and without a warrant, if the officer has probable cause to believe the suspected person committed the crime.

Disqualifications from Employment, Duty to Report, and Disciplinary Authority

The bill revises the list of disqualifying criminal offenses to include the newly created prohibition on authority figures engaging or soliciting in sexual or lewd conduct with a student. The bill specifies that any person is ineligible for educator certification or employment in any position that requires direct contact with students if he or she has been convicted of a disqualifying offense. The current prohibition expressly applies to instructional personnel and school administrators.

The bill specifies that soliciting or engaging in sexual, romantic, or lewd conduct with a student or minor is an act involving moral turpitude for purposes of certified educator discipline and expressly includes such behavior within the jurisdiction of the EPC to suspend or revoke an educator certificate.

The bill requires that district school board policies include the duty to report misconduct of engaging in or soliciting sexual, romantic, or lewd conduct with a student. Further, district school board policy must require the district school superintendent to report to law enforcement any misconduct by school district personnel that would result in disqualification from educator certification or employment.

The bill provides that a school board member who knowingly fails to adopt a policy requiring the district school superintendent to report disqualifying misconduct forfeits his or her salary for 1 year. A district superintendent who fails to report disqualifying conduct to law enforcement also forfeits his or her salary for 1 year.

With respect to investigations of complaints of misconduct by a school district, the bill provides that the exemption from public records laws for active investigations does not absolve a school district from its duty to provide any legally sufficient complaint to the DOE within 30 days, regardless of the status of the complaint. Further, the bill specifies that a school district must file a legally sufficient complaint with the DOE within 30 days regardless of whether the subject of the complaint is still an employee of the school district.

¹²⁷ Section 847.001(16), F.S., defines "sexual conduct" to mean actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, public area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term "lewdness" is defined in case law as: the equivalent of both licentiousness (*Holton v. State*, 28 Fla. 303 (1891)) and lasciviousness (*McGuire v. State*, 489 So. 2d 729 (Fla. 1986)); and wicked, lustful, unchaste, licentious, or sensual design by the perpetrator of an act condemned by law as lewd (*Chesebrough v. State*, 255 So. 2d 675 (Fla. 1971)).

The bill requires that the resignation or termination of a public school employee before an investigation of misconduct by the employee affecting the health, safety, or welfare of a student is concluded must be clearly indicated in the employee's personnel file.

The bill also requires school districts, charter schools, and private schools participating in specified state scholarship programs to notify the DOE immediately when a teacher or administrator resigns before an investigation of misconduct affecting the health, safety, or welfare of a student is concluded. The DOE must then place an alert on the person's certificate file indicating that he or she resigned or was terminated before such an investigation was concluded.

The bill authorizes the DOE to deny a certification application if the EPC has authority to discipline, rather than to revoke a certificate. The bill also clarifies that the EPC may discipline an educator certificate if the certificateholder has had disciplinary action taken against any professional license either in Florida or in another state. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder must be construed as action against the license or certificate.

The bill expands the EPC's disciplinary authority to include a person who violates test security and a person who has adjudication withheld for, been found guilty of, or pled guilty to a misdemeanor, felony, or other criminal charge. The bill also clarifies that the EPC may deny the award of a certificate, bar an applicant from reapplying for a certificate, or allow the award of a certificate with one or more of the following conditions:

- Probation for a period of time.
- Restriction on the scope of practice.
- Issuance of a letter of reprimand.
- Referral to the recovery network program provided in s. 1012.798, F.S., under such terms and conditions as the commission may specify.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

The bill requires persons placed on probation to notify the DOE upon any separation from employment as opposed to only upon termination.

Florida Statewide Standardized Assessment Program

Present Situation

Florida's statewide accountability system differentiates public schools based in part on student performance on statewide standardized assessments.¹²⁸ In addition to grade-level English language arts and math assessments, student performance is measured using end-of-course (EOC) assessments for Civics, Biology, U.S. History, Algebra I and Geometry.¹²⁹ An EOC assessment constitutes 30 percent of a student's final course grade.¹³⁰

A student earning a scholar designation may satisfy the EOC assessment in science or social studies by enrolling in and earning the minimum score to receive college credit in the corresponding AP, IB, or AICE assessment.¹³¹

The law also provides that middle school students enrolled in a course with an associated EOC assessment must take the EOC assessment for that course and may not take the corresponding grade-level statewide,

¹²⁸ See s. 1008.34, F.S.

¹²⁹ See ss. 1003.4282(3) and 1008.22, F.S.

¹³⁰ See ss. 1003.4156(1) and 1003.4282(3), F.S.

¹³¹ Section 1003.4285(1), F.S.

standardized assessment.¹³² For example, an 8th grade student who is enrolled in Algebra I must take the Algebra I EOC assessment and may not be administered the 8th grade FSA math assessment.¹³³

Effect of the Bill

The bill specifies that students who are enrolled in an AP, IB, or AICE course and earn the minimum score necessary to earn college credit are not required to take the state EOC for that subject.

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:

The bill authorizes certain school instructional personnel and administrative personnel to extend the length of their participation in DROP at the discretion of the employer. As such, any fiscal impact from the provisions of the bill will be dependent on decisions made by local employers.

Funding for the teacher training grant program and teacher bonus program are subject to an appropriation.

¹³² Section 1008.22(3)(b)2., F.S. For example, an 8th grade student who is enrolled in Algebra I must take the Algebra I EOC assessment and may not be administered the 8th grade FSA math assessment.

¹³³ Section 1008.22(3)(b)2., F.S.