

SENATE BILL 6 VERSION 8-01255C-10		
SECTION # PG/LN	ISSUE/TOPIC	DISCUSSION/ANALYSIS
1 pg 7	Confidentiality of reports	Authorizes the release of previously confidential DCF investigative records to DOE for certification investigations <b>*Potential for disclosure of heretofore confidential information. Bill must reinforce and guarantee that such information remains confidential. Also authorizes release of information for which the DCF took no action</b>
2 pgs 7-9	Method of fixing millage	This section modifies subsections of the statute pertaining to truth in millage statements, public tax hearings and public notices of ad valorem tax increases. It details the public notice that would be required for failure to comply with the provisions (salary schedules, differentiated pay, end of course assessments, appraisal systems and contract requirements) of the bill. It is an insipid and unfunded mandate. It is unlikely that this section will be in the House companion.
3 pgs 9-11	Resolution of impasse	The section would delete ss. 447.403 (c) FS concerning impasse over MAP awards. While this is consistent with the deletion of MAP from the other parts of statute, <b>the larger issue will continue to be the CB agent's inability to negotiate on wages including performance pay.</b>
4 pgs 11-14	Charters schools	Requires Charter School to comply with requirements on salary schedules, assessments and contracts, permits fining of charter schools for failure to comply in an amount equal to 5 percent of instructional personnel and administrators' salaries. Further, charter school could not use length of service or degrees for pay.  Repeals Academic Performance Board of Charter School Districts - 1003.62  Repeals Deregulated Public School Pilot Program -1003.63  Noncompliance would subject these schools to a fine not to be paid from Legislature appropriated funds (It is unlikely that these schools have any other funds).
5 pgs 14-15	Educational Services in DJJ	Section removes "critical teacher shortage" program reference since program is deleted in bill
6 Pg 15	s. 1003.62	Deletes the statute on "academic performance based charters"
7 Pgs 15-16	High performing school districts	Requires these districts to comply with the accountability millage adjustment
8 Pg16	s. 1003.63	Removes reference to "deregulated public schools pilot."

<p>9 Pgs16- 23</p>	<p>Accountability for teacher preparation programs</p>	<p>Removes all waiver provision for student admission to programs, adds that approval of programs is contingent on DOE determination that graduates produce learning gains. <b>No model or criteria is suggested for the gains model measurement is specified.</b> The language also seeks to require a two- year warranty for graduates that would require programs to retrain graduates if they fail to demonstrate the gains required. Statistics on teacher preparation programs will be aggregated and published. Pre-service instruction is prescribed by gains.</p>
<p>10 Pgs 23-24</p>	<p>Pre service preparation programs</p>	<p>References to preservice teacher education program and preservice program for high achieving students are deleted.</p>
<p>11 Pgs 24-25</p>	<p>Post secondary educator preparation institutes</p>	<p>Addresses certification and admission requirements. Learning gains are linked for these graduates as well.</p>
<p>12 Pgs 26-27</p>	<p>Development of End of Course Assessments</p>	<ul style="list-style-type: none"> <li>• <b>Requires end-of-course (EOC) tests for <u>all courses and subjects not measured by state assessments.</u></b></li> <li>• <b>The EOC tests would be implemented by the 2013-14 school year.</b></li> <li>• <b>There is no appropriation tied to this massive request.</b></li> <li>• <b>There is too little time to develop and field test the assessments.</b></li> <li>• <b>There is no research suggesting the EOC tests for every subject are an educationally sound prescription for advancing learning.</b></li> <li>• <b>There is no money appropriated for the tests.</b></li> <li>• <b>Must adopt standard administration and security measures for tests</b>  <ul style="list-style-type: none"> <li>*1008.24 provides for criminal and disciplinary sanctions for employee misconduct associated with the administration of certain tests. End- of-course tests would fall within the parameters of the law as a “mandatory test” pursuant to 1008.22.</li> </ul> </li> </ul> <p>School superintendents are to certify full compliance with law as relates to testing security and administration of tests, reporting tests results and the use of testing for evaluations (appraisals) and compensation. Failure of superintendent to comply as determined by auditor or DOE investigation would be grounds for removal or suspension of superintendent under Article IV of Florida Constitution</p> <p style="text-align: center;"><b>*Article IV of the Florida Constitution authorizes the governor to suspend state officers not subject to impeachment for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony. The bill exceeds the grounds set forth in the Constitution and infers that the commissioner has this authority, which rests exclusively with the governor.</b></p> <p>DOE is to assist districts in developing and purchasing tests. DOE could develop items banks; assist in shared tests among district. Provide technical assistance in best practices on curriculum standards, administration and security</p> <p style="text-align: center;"><b>*DOE has assumed authority for the approval, and ultimate</b></p>

		determination of whether the district plan is valid. Given potential sanction, districts will naturally accede to DOE mandates and interpretations.
13 & 14 Pgs 27-29	State financial reward programs	Critical teacher shortage is deleted. Teacher loan forgiveness is deleted.
19 Pgs 29-35	Accountability Millage	<p>It is unlikely that this provision will be contained in the House companion.</p> <p>DOE authorized to certify that district failed to meet salary requirements and thus authorized to impose additional millage. No local resolution, ordinance or referendum is required to implement levy. Levy can only be used to compensate for loss of state funding and not other purpose.</p> <p>Prescribes notice of levy to state that the levy is the penalty for district noncompliance.</p> <p>Notice of public hearing on levy must articulate district violated the law. Boards must notice failure to comply with statutory requirements in Notice of Proposed Tax Increases. Notices must specify:</p> <p style="padding-left: 40px;">Failure to adopt a salary schedule that compensates teachers and school based administrators on the basis of school performance as opposed to years of experience and degrees, failure to comply with differentiated pay requirements, and failure to adopt end-of-year tests; failed to comply with evaluation and contractual requirements for teachers</p> <p>Authorizes DOE to reduce state FEEP funds in amount equal to levy.</p> <p style="padding-left: 40px;">Specifically, Article 9, section 4(b) of the Florida Constitution states that a “school board shall operate, control and supervise all free public schools within the school district <i>and may determine the rate of school district taxes</i> within the limits prescribed herein.” The case law interpreting this provision has held <u>unconstitutional</u> legislation that interferes with a school board’s discretion to levy tax amounts for schools, so long as the district collects the minimum amount required by s. 1011.62 and 1011.70, Florida Statutes. See <u>Dep’t of Educ. v. Glasser</u>, 622 So. 2d 1003 (Fla. 2d DCA 1992). Pursuant to Article 7, Section 9(b) of the Florida Constitution, a school district has discretion to levy whatever tax rate it chooses, so long as it stays within 10 mills of the statutory minimum amount. See <u>Glasser</u>. Article 7, Section 9(b) [“Local Taxes”] of the Florida Constitution states that “[a]d valorem taxes . . . shall not be levied in excess of the following millages . . . for all school purposes, ten mills.” The State Board of Education has no authority to require a local school board to</p>

		change the ten mills that are within its constitutional discretion. <u>See Glasser</u> (“ <i>We hold that section 236.25(1) and item 509 are unconstitutional to the extent these laws restrict the right of the school board to levy ad valorem taxes within the ten mill constitutional limit</i> ”)
20 Pg 35	Equity in school funding	Deletes references to exemption for academic charter based districts. These district are deleted in the bill
21 Pgs 35-36	Job fair provisions	No comments at this time
22 Pgs 36	Critical teacher shortage areas	The definition of these shortage areas would now be oriented directly to <b>“current and emerging educational and workforce needs.</b> “ This bad language narrows the actual teacher shortage needs in districts and pushes identification toward ever-changing <i>business-directed</i> definitions.  Further, it eliminates ethnic background, race and sex in determining critical teacher shortage areas.
23 Pgs 37 - 40	Compensation and salary schedules	<b><u>No new funds are appropriated for these mandates.</u></b> <ul style="list-style-type: none"> <li>• The language demands that school boards adopt salary schedules that base pay on performance – specifically, the schedule must <u>base more than 50 percent of each employee’s compensation on gains.</u></li> <li>• The language demands that school boards adopt salary schedules that differentiate pay based on assignment to high priority areas decided by the state DOE, critical shortage areas decided by the state DOE, and additional responsibilities, with the continuation of the differential pay contingent upon student learning gains</li> <li>• <u>Differential pay would not be subject to collective bargaining.</u></li> <li>• The language demands that school boards adopt a beginning teacher salary schedule, a schedule for a teacher holding certification from another state, and for a teacher who has a certificate but has not taught in the last five years.</li> <li>• The language demands that <u>the adopted salary schedule ignore any consideration for length of service (seniority) or academic degrees.</u></li> <li>• Calls into question methodology and fairness in developing salary schedules based solely on performance.</li> <li>• Calls into question whether or not existing PSC holders will be grandfathered into such a schedule, and if so, does that potentially mean a significant drop in salary and/or downward movement on the salary schedule? Teachers will have great uncertainty about their salaries on an annual basis.</li> <li>• Raises issues of due process and violation of property rights regarding existing professional contracts, and the expectations</li> </ul>

		<p>contained therein.</p> <ul style="list-style-type: none"> <li>• All of the above potentially infringes upon the constitutional right to bargain wages pursuant to <i>Fla. Const. Art. I, § 6</i> and 447.301, F.S.</li> <li>• State Board of Education given complete authority on defining learning gains for purposes of determining wages between school board (employer) and employee (teachers), Erodes local operation and management of school system.</li> </ul> <p><b>Each school board employee has a negotiated contract. Each contract has a salary schedule. This bill eliminates lawfully negotiated salary schedules that have been ratified and followed by the school board and the union. Article I, section 10, of the Florida Constitution prohibits passage of laws that impair the obligation of contracts. Through the constitutional right to bargain, our members through their locals have entered into contracts, through legitimate offers and consideration, which define wages. This section of the bill impairs all currently existing contracts.</b></p>
24 & 25 Pg 40	Section 1012.225 and 1012.2251 are repealed	<p>MAP is deleted.</p> <p>Just another in a long line of state mandated pay for performance schemes that has failed because they were unsupported, unsound, unpopular, unworkable</p>
26 Pg40	Contracts and reductions in force	<p>Language demands that RIF decisions be based primary on performance. Collective bargaining is precluded on this issue.</p> <p>Most collective bargaining agreements outline the manner in which employees are to be laid off. Seniority is to be used as the primary criteria typically in lay off situations. These decisions would no longer be pursuant to the collective bargaining agreement that includes the factors, such as seniority, that the parties have bargained, agreed upon and have been contained in most agreements for years</p> <p>This section also implicates employee's rights under the negotiated agreements and potentially violates Article, section 10.</p>
27 Pgs 40-42	Contracts with teachers hired after July 1, 2010	<p>*Provides for new definition of annual contract teacher, classroom teachers, probationary teachers. A new section, 1012.335, has been created dealing with contracts for teachers who are hired on or after July 1, 2010. <b><u>This would not be applicable to our current members.</u></b></p> <p>*Each new teacher hired on or after July 1, 2010, shall receive a "probationary contract".</p> <p>Allows for dismissal without cause or a resignation without a breach of contract for one (1) school year.</p> <p>The 97 day probationary period would no longer be in existence for new hires.</p> <p>A new teacher could be terminated without notice or cause within that entire first year of teaching. In essence, that</p>

		<p>teacher will be an at-will employee for the first year of teaching.</p> <p><b>July 1, 2010- New Hires</b>  For those classroom teachers as defined in section 1012.01(2)(a) (staff members assigned the professional activity of instructing students),  *May have up to five annual contracts  *Renewal of sixth year annual contract eligibility depends on:  Permanent certification  Recommendation by Superintendent/School Board approval  Effective or highly effective per appraisal.</p> <p>*Each year the teacher will have to meet the above stated criteria in order to obtain another annual contract.  *Permits suspension during term of annual contract  *Arguably, those other instructional personnel as defined in 1012.01(2) (b) – (d), would not be affected by this change and therefore would be able to obtain a professional services contract under current law.  *Provides no ongoing expectation of continues employment beyond each annual contract  * Creates different classifications of employees performing same duties</p> <p><b>1. Section 1012.335 of the bill (p. 40 et seq.) is unconstitutional because the creation of two unequally treated teacher classes among those who are similarly situated violates the due process clause of the U.S. Constitution, 14<sup>th</sup> Amendment.</b></p> <p>SUBJECT: ELIMINATION OF P.S.C. STATUS FOR TEACHERS HIRED AFTER JULY 1, 2010; THE SUBSEQUENT CO-EXISTENCE OF P.S.C. TEACHERS IN THE SAME JOB CATEGORIES AS TEACHERS WHO HAVE NO RIGHT TO A P.S.C., BASED SOLELY ON THEIR HIRING DATE (i.e. ANNUAL CONTRACT ONLY FOR ALL TEACHERS HIRED AFTER JULY 1, 2010).</p> <p>Even though teachers are not members of a protected minority class, if state legislation treats similarly situated employees as two different, unequal classes, the Equal Protection Clause may render the impugned legislation unconstitutional. Senate Bill 6 will create two classes of teachers working side by side in the same positions, i.e. PSC teachers and permanent annual contract teachers who perform identical work. The legislation creating this</p>
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distinction/disfavoring the non-PSC class is unconstitutional under the Equal Protection Clause (14<sup>th</sup> Amendment, U.S. Constitution) *unless* the distinction between PSC and non-PSC teachers is supported by a rational basis (“rational basis” standard of constitutional review). In the case of SB 6, there is no rational basis for the distinction between one group of PSC teachers and another group of annual contract teachers who are not working toward, and cannot work toward, a PSC. Making teachers easier to eliminate does not support the objective of improving education quality, which is the stated objective of the statute. See e.g. Ross v. Moffitt, 417 U.S. 600, 609 (1974) (“Equal Protection . . . emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable”); see also Engquist v. Oregon Dep’t of Agriculture, 553 U.S. 591 (2008) (“When those who appear similarly situated are nevertheless treated differently, the Equal Protection Clause requires at least a rational reason for the difference, to assure that all persons subject to legislation or regulation are indeed being ‘treated alike, under like circumstances and conditions’”), *quoting in part Hayes v. Missouri*, 120 U.S. 68, 71-72 (1887).

Current teachers who now hold professional services contracts will maintain those contracts **UNLESS** they fail to meet the proposed recertification requirements that are contained in this bill.

Requirements include: annual documentation of effective or highly effective performance for each year during the renewal period. Just one year of less than effective will preclude that individual from recertification, the certificate will expire and therefore the employment would be terminated due to lack of proper certification.

\*PSC teachers have a continued expectation of employment.

Disciplinary grounds are articulated in statute. For PSC teachers the bill does not include an additional ground based upon student learning gains. If action is taken via the certification route, it will cause multiple hearings at the state and local level.

Although this bill provides for an ability to have the professional certificate reinstated, the required conditions seem to make that impossible in that one can only be granted recertification upon proof of learning gains.

- 2. Section 1012.585(6) of the bill (p. 57 bottom) is unconstitutional because it infringes the employee’s substantive due process property right to continued employment, if tenured.**

**SUBJECT: THE LOSS OF EMPLOYMENT DUE TO AN**

		<p>EXPIRED TEACHER CERTIFICATION; SB 6 MANDATES THAT A CERTIFICATION SHALL EXPIRE IF THE TEACHER FAILS TO ACHIEVE 'EFFECTIVE PERFORMANCE' BASED ON LEARNING GAINS.</p> <p>This is tantamount to a termination, but circumvents the 'just cause' requirements in statute (unlike the traditional reasons for permanent certificate revocation under the Florida Statutes and EPC precedent). It furthermore is unconstitutional because teachers have a substantive due process right (14<sup>th</sup> Amendment, U.S. Constitution) to continued employment (i) if they have tenure (P.S.C. /CC), (ii) if they have a contract for continued employment, or (iii) if they received an express or <i>even</i> implied promise of continuing employment. <u>See Connell v. Higginbotham</u>, 402 U.S. 207 (1971). In some cases, a teacher may <i>even</i> have a property interest in continued employment if they had undergone several years of renewed annual contracts and the employer's policies somehow created a reasonable expectation of further employment. <u>See Perry v. Sindermann</u>, 408 U.S. 593 (1972). Thus, even certain untenured teachers may enjoy this type of constitutional property interest in continued employment. For those who do, SB 6 unlawfully interferes with this right to ongoing employment through the imposition of a DOE certification termination that has no basis in 'just cause' for termination of employment.</p> <p>A teacher who loses their employment as a result of the new SB 6 provision would not only be entitled to an administrative proceeding under ch. 120, Florida Statutes, but could file a section 1983 suit (42 U.S.C. § 1983) in federal court because their due process property right to continued employment had been violated by a state government entity. <u>See e.g. Vail v. Bd. of Education of Paris Union School Dist.</u>, 706 F. 2d 1435, 1437 (7<sup>th</sup> Cir. 1982). DOAH does not have the authority to adjudicate constitutional matters.</p> <p>A lack of learning gains does not meet the threshold for 'just cause' for terminating employment in any body of case law on this subject. If the 'just cause' definition in the statute is amended to include learning gains, this would entail the same constitutional implications, based on the expectation of continued employment (except when based on legitimate 'cause').</p> <p>A teacher who lost their employment as a result of this provision would not only be entitled to an administrative proceeding under s. 120, Florida Statutes, but could file a section 1983 suit (42 USC 1983) in federal court because their due process property right to</p>
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continued employment had been violated by a state government entity. See e.g. Vail v. Bd. of Education of Paris Union School Dist., 706 F. 2d 1435, 1437 (7<sup>th</sup> Cir. 1982). DOAH does not have the authority to adjudicate constitutional matters.

Just Cause:

Redefines Just cause only for this class of newly hired teachers to include “poor performance based upon lack of student learning gains”.

The bill creates Section 1012.335 which establishes a second class of teachers: those hired on or after July 1, 2010.

These teachers (Class 2 teachers) may never achieve professional service contract status, as may (Class 1 teachers) teachers hired before July 1, 2010.

Even after completing their status under the bill as “probationary contract” teachers, Class 2 teachers remain essentially at-will employees on annual contract, subject to nonrenewal without cause at the end of every school term.

Class 2 teachers may be suspended or dismissed for “just cause” as defined in paragraph 4 of this newly created Section 1012.335, which includes immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, being convicted of, or entering a plea of guilty to (regardless of adjudication) to any crime involving moral turpitude, or poor performance/lack of student learning gains.

Class 1 teachers remain subject to discipline for “just cause” as defined by existing Section **1012.33**, which is similar to the proposed “just cause” provision but does not expressly include poor performance/lack of student learning gains.

Both classes of teachers are, of course, subject to Catch 22 termination and permanent removal from the profession for failure to hold a professional educator certificate, for “... the certificate shall expire if the individual is not able to demonstrate effective performance as required by this subsection [newly created section 1012.585(6) of the bill] and the rules of the state board...” Moreover, the certificate cannot be renewed until the individual (who is now unable to teach) is able to demonstrate effective performance.

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Pgs 42-51

Appraisal

- Adds that evaluations are for the purpose of increasing student achievement.
- The Department must approve each school-based administrator appraisal system and the appraisal instruments.
- The Department shall collect the annual performance ratings of all instructional and school-based administrative personnel from each school district.
- The Department will then report the percentage of each of the employees receiving each rating category by school and by district.
- Some of the mandated conditions for the design of the district's appraisal system are that it must be designed to support high-quality instruction and increased academic achievement; must provide appropriate appraisal instruments, procedures, and criteria for continuous quality improvement of the professional skills of instructional personnel; must include a mechanism to examine performance data from multiple sources, including parent input into employee performance appraisals; and must differentiate among four levels of performance: unsatisfactory, needs improvement, effective, and highly effective.
- The Commissioner of Education shall consult with performance pay experts and classroom teachers in developing the performance levels.
- **Beginning at the 2014-2015** school year, instructional personnel and school-based administrators may not be rated as effective or highly effective if their students fail to demonstrate learning gains.
- The appraisal must be conducted at least once a year. However, the appraisal must be conducted twice a year for beginning teachers, teachers with professional certificates from other states, and teachers with professional certificates who have not taught during the previous certification period.
- Student learning gains must comprise more than 50 percent of the determination of the classroom teacher's performance. For instructional personnel who are not classroom teachers, the student learning gains of the school must comprise more than 50

		<p>percent of the determination of the individual's performance.</p> <ul style="list-style-type: none"> <li>• Student learning gains are measured by state assessments, district assessments for subject areas and grade levels, or AP, IB, and AICE exams -- or a national industry certification identified in the Industry Certified Funding List pursuant to rules adopted by the State Board of Education.</li> <li>• Other factors in the appraisal include the ability to plan and deliver effective instruction and effective use of technology in the classroom, as well as the ability to use assessment data and other evidence of student learning to design and implement differentiated instructional strategies in order to meet individual student needs for remediation or acceleration.</li> <li>• The State Board of Education shall adopt rules that include the method of calculating rates of student learning tied to differentiated levels of performance. <ul style="list-style-type: none"> <li>• Strips local control.</li> <li>• No identification of the "performance pay experts" who will be consulted to develop the performance levels. Again, intrudes upon local negotiated agreements as to the manner in which evaluations will be developed.</li> <li>• No explanation of how student learning gains will be measured.</li> <li>• No explanation of what measure of student learning gains will meet the standard for effective and highly effective.</li> <li>• Instructional personnel not inside the classroom will be assessed based on students who are not under their control.</li> </ul> </li> </ul>
29 Pg 51	Out of field teaching	<p>Beginning 2010-11 School district cannot assign beginning teachers to teach reading, science, or math if they are not certified in those subjects</p>
30 Pg 51	Teacher quality; legislative findings	<p>The bill deletes the legislative finding that teacher quality be a comprehensive approach to increasing student achievement ( the bill deletes 1012.52 and relies upon the statement in the accomplished practice as it replacement)</p>
31 Pgs 51-56	Certification requirements	<p>A number of changes are made in this section.</p> <ul style="list-style-type: none"> <li>• Holders of certificates in others states will now have to pass subject</li> </ul>

		<p>area tests in the first semester of teaching on a temp Florida certification.</p> <ul style="list-style-type: none"> <li>• Reading instruction becomes a new required competency</li> </ul>
<p>32 Pgs 56 - 58</p>	<p>Renewal of certification</p>	<p>National Board certification no longer satisfies state renewal requirements for the lifetime of the national certificate. The program is repealed in next section.</p> <p>Beginning with the 2014-15 school year, the requirement for renewal of a professional certificate shall include documentation of effective performance as set forth in this bill under section 1012.34 – <u>for each year of instructional performance the during the renewal period.</u> How this documentation would occur and the process would be designed by the state DOE.</p>
<p>33 Pg58</p>	<p>Dale Hickam Program 1012.72</p>	<p><b>National Board program is repealed</b>  <b><u>Repeals the Dale Hickam Act- 1012.72</u></b>  Eliminates NBCT teachers life certificate and the entire provision expires July 1, 2014.</p> <ul style="list-style-type: none"> <li>• Replete in the bill are intrusions upon and outright interference with the collective bargaining process. Article I, Section 6 provides, “The right of employees by and through a labor organization to bargain collectively shall not be denied or abridged.”</li> <li>• Section 1012.22(1) (c) 4 removes salary schedules and their adoption by a district school board <b>are no longer subject to “negotiations as provided in chapter 447”.</b></li> <li>• Section 1012.33(5) removes RIF decisions from consideration of <b>“terms of a collectively bargained agreement”.</b> <ul style="list-style-type: none"> <li>• Every school board employee in a bargaining unit in Florida has a negotiated contract. Every contract has a negotiated salary schedule. This proposed law requires the elimination of all salary schedules lawfully negotiated in contracts, ratified and being followed by the school board employers and the union.</li> </ul> </li> </ul>
<p>34</p>	<p>Education Practices Commission</p>	

Pgs 58-59		Changes the composition and experience requirements for the commission No comments are offered at this time.
35 Pgs 59-60	EPC authority to discipline	Simply gives EPC disciplinary authority over the new contracts
36 Pgs 60-61	Review of teacher prep programs	Requires a methodology to determine the cost-effectiveness of teacher prep program. No comments offered at this time.
37 Pg 61	Where the changes to the bill apply	<b>The language actually reads</b> <b>The amendments to ss. 1012.22 and 1012.33, Florida Statutes, shall apply to contracts newly entered into, extended, or readopted on or after July 1, 2010, and to all contracts on or after July 1, 2013.</b> Our reading here suggest that whether an educators has one of the new contracts established in the bill or retains an existing CC or PSC... the contract is only as good as the evaluation and student gains measured for that teacher. So your contract is only as good as your evaluation for learning gains as set forth in the bill.