HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1573 CS — Equal Opportunity to Obtain a High Quality Education
SPONSOR(S): Rubio and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Choice & Innovation Committee	5 Y, 2 N, w/CS	Hassell	Kooi
2) Education Appropriations Committee	11 Y, 5 N	Hamon	Hamon
3) Education Council	8 Y, 2 N, w/CS	Hassell	Cobb
4)			
5)			

SUMMARY ANALYSIS

This joint resolution proposes to create a new section in Article IX of the Florida Constitution relating to education. The joint resolution states that every child deserves an equal opportunity to obtain a high quality education regardless of his or her family's income, religion, or race. It states that funding for a high quality public kindergarten through grade 12 education is fundamental and requires the Legislature to ensure that school funding be primarily used on classroom instruction.

The joint resolution provides that the Legislature is authorized to enact and publicly fund education programs for students who are in prekindergarten through college who have disabilities, are economically disadvantaged, or meet other legislatively specified criteria, as provided by law, without regard to the religious nature of any participant or nonpublic provider, notwithstanding any other provision in Article IX or the no-aid provision of Article I, section 3 of the Florida Constitution. It also clarifies that the joint resolution does not establish a right to an education program not provided by law.

This joint resolution creates section 8, Article IX, of the Florida Constitution.

This is a joint resolution which requires passage by 3/5 vote of each chamber.

The Division of Elections with the Department of State estimates that the non-recurring cost of compliance with the publication requirements would be approximately $50,000 in the 2006-2007 fiscal year.

If certain scholarship programs ceased to exist, the state could experience increased costs of approximately $39.0 million in the Florida Education Finance Program (FEFP). See FISCAL COMMENTS.

If the joint resolution is passed in the 2006 Legislative session, the proposed amendment would be placed before the electorate at the 2006 general election, and if adopted will take effect January 2, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The joint resolution would authorize enhanced options for an equal opportunity to obtain a high quality education for every child from prekindergarten through college, as provided by law.

Safeguard individual liberty- The joint resolution would authorize enhanced options for an equal opportunity to obtain a high quality education for every child from prekindergarten through college, as provided by law.

Empower families- The joint resolution would authorize enhanced options for an equal opportunity to obtain a high quality education for every child from prekindergarten through college, as provided by law.

B. EFFECT OF PROPOSED CHANGES:

CONSTITUTIONAL AMENDMENT

Background

Florida's Free Public Schools Provision

As revised in 1998, Article IX, section 1(a) of the Florida Constitution states in pertinent part:

> The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

The revisions made to article IX, section 1, affirmed the understanding that education is and will continue to be a "fundamental value" and "a paramount duty of the state." The sole purpose of the Constitution Revision Commission's revision to article IX was "to increase the state's constitutional duty by raising the constitutional standard for adequate education, making the standard high quality."[1] There was no mention, at the time, of an intent to make public schools the exclusive manner by which the Legislature could make provision for educating children. In fact, a proposal to preclude educational vouchers was presented to the Commission by the public, but never accepted.[2]

Opportunity Scholarship Program

Following the Constitutional revision of 1998, the Legislature enacted the Opportunity Scholarship Program (OSP) as part of the A+ Education Plan in 1999,[3] based on a finding that a public school student should not be compelled to remain in a school deemed by the state to be failing for a minimum

---

[1] Jon Mills and Timothy McLendon, *Setting a New Standard for Public Education: Revision 6 Increases the Duty of the State to Make "Adequate Provision" for Florida Schools,* 52 Fla. L. Rev. 329, 331 (2000).
[2] *Id.*
[3] ch. 99-398, Laws of Fla.

of two years during a four- year period.[4] The OSP was designed to provide the parents of a student attending, or assigned to attend, a failing school with the opportunity to send their child to a satisfactorily performing public school, or to an *eligible* private school of their choice. The program also provides students entering kindergarten or the first grade of a failing school with the same opportunity to choose an alternate public or private school.[5]

All private schools have the option to participate in the OSP so long as the schools meet the criteria set forth in statute and have registered to participate with the Department of Education (DOE).[6] The DOE is responsible for verifying the student's initial admission acceptance and continued enrollment and attendance in the chosen private school. After DOE provides proper documentation, the Chief Financial Officer makes four equal installments, known as warrants, payable to the student's parent. The warrant is mailed by the DOE to the chosen private school and the student's parent is then required to restrictively endorse the warrants to the private school for receipt of the OSP funds.[7]

Participation of students and private schools has steadily increased as additional public schools have been deemed failing.[8] Currently, there are 733 students attending 53 private schools. Of the private schools participating in the OSP, 71.7 percent are sectarian, and 55.3 percent of the OSP students utilizing opportunity scholarships are attending those sectarian schools. The majority of private schools accepting OSP students have fewer than 10 students utilizing opportunity scholarships.[9] There are a few private schools in the Miami-Dade and Palm Beach County school districts, however, with larger numbers of scholarship students.

Bush v. Holmes I

The OSP has been the subject of a constitutional challenge since it was implemented in 1999. In 2000, the trial court held that OSP violates the free public schools provision of article IX, section 1, of the state Constitution.[10] On appeal, however, the First District Court of Appeal reversed the lower court's ruling and found that "nothing in article IX, section 1 clearly prohibits the Legislature from allowing the well-delineated use of public funds for private school education, particularly in circumstances where the Legislature finds such use necessary."[11] The appellate court declined to address the other constitutional issues raised, and remanded the case to the trial court for further proceedings.[12] The Florida Supreme Court denied discretionary review.[13]

Bush v. Holmes II - First DCA opinion

The trial court, on remand, held that OSP violated the no-aid provision of article I, section 3 of the Florida Constitution.[14] Article 1, section 3 of the Florida Constitution states in pertinent part:

> No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect,

---

[4] Section 1002.38(1), F.S., provides that a failing school is a school that has received grade of "F" for two years in a four-year period.
[5] Section 1002.38(2) F.S., provides for student eligibility.
[6] Section 1002.38(4), F.S., provides eligibility requirements.
[7] Section 1002.38(6), F.S., provides methodology for funding and payment.
[8] Preliminary numbers for the 2005-2006 school year, however, show that there are 30 fewer students attending private schools on opportunity scholarships than the previous year.
[9] Based upon numbers provided by the Department of Education (DOE) for September 2005 voucher payments.
[10] *Bush v. Holmes et al.,* 767 So. 2d 668, 674 (Fla. 1st DCA 2000). The trial court applied the canon of construction *expression unius est exclusion alterius.*
[11] *Id.* at 675.
[12] *Id.*at 677.
[13] *See Holmes v. Bush,* 790 So. 2d 1104 (Fla. 2001).
[14] *Bush. v. Holmes*, 886 So. 2d 345 (Fla. 1st DCA 2004) (hereinafter *Holmes* II). The plaintiffs voluntarily dismissed their claims under the federal Establishment Clause and the school fund provision of Article IX, section 6, of the Florida constitution.

or religious denomination or in aid of any sectarian institution.

While the case was pending on remand, the U.S. Supreme Court upheld a program similar to the OSP. In *Zelman v. Simmons-Harris,* the Court held that the Ohio Pilot Project Scholarship Program was constitutional under the federal Establishment Clause.[15] The federal clause provides that "Congress shall make no law respecting an establishment of religion...."[16] Subsequently, the challengers to the OSP voluntarily dismissed their claims under the federal Establishment Clause and "the school fund provision" of the Florida Constitution.[17] The only remaining issue for the trial court to decide was whether the OSP violated the no-aid provision of the Florida Constitution.[18]

On appeal, a divided en banc panel of the First District Court of Appeal upheld the trial court's ruling that the OSP violates article I, section 3, of the Florida Constitution.[19] In so holding, the Court cited concerns over the fact that state revenues were being used to fund the scholarships, that the "direct or indirect" language in the constitution was a broad prohibition on the use of state revenues, and that the prohibition included many of the schools receiving the scholarships due to their religious affiliation.[20] The appellate court certified to the Florida Supreme Court the following question: "Does the Florida Opportunity Scholarship Program, section 229.0537, Florida Statutes (1999), violate article I, section 3 [the no-aid provision] of the Florida Constitution?"[21]

As noted above, the no-aid provision was the only constitutional ground upon which the trial and district courts based their opinions when *Bush v. Holmes* was heard a second time. Because the U.S. Supreme Court in *Zelman* held that a program similar to the OSP does not violate the federal Establishment Clause, the district court's majority opinion concentrated on how Florida's no-aid provision is more restrictive than the federal clause. The district court held that while the first sentence of Florida's provision is synonymous with the federal clause, the additional language of the state's no-aid provision expands restrictions on aid to religion by specifically prohibiting the expenditure of public funds "directly or indirectly" to aid sectarian institutions.[22]

The district court invalidated the OSP to the extent that it authorizes state funds to eventually reach sectarian schools.[23] The court went on to invalidate the entire statute because it could not find that the Legislature would have intended for provisions of the statute to be severable *or* that the Legislature would have adopted the OSP without the intent that vouchers would be used at private sectarian schools.[24]

Bush v. Holmes II – Supreme Court majority opinion

After granting certification, the court held that the OSP violates the free public school provision's requirement that adequate provision be made for a "uniform, efficient, safe, secure, and high quality system of free public schools."[25] The court found that the provision acted as a "limitation on the

---

[15] See 536 U.S. 639 (2002). The Ohio program allowed parents of Cleveland schoolchildren to receive a tuition voucher redeemable either in participating Cleveland private schools or public schools in adjacent districts.
[16] U.S. CONST. amend I.
[17] Article IX, section 6, Fla Const.
[18] *Holmes II*, 886 So. 2d at 345.
[19] *Id.* at 340.
[20] *Id.* at 352-354.
[21] *Id.* at 367. Judge Benton wrote the majority opinion which was joined by seven other judges. He also wrote a separate opinion finding that OSP violated article 9, section 1, which was joined by only four out of the fourteen judges on the panel. Section 229.0537 F.S., cited by the court, was renumbered as a result of chapter 2002-387, Laws of Florida, and is now Section 1002.38, F.S.
[22] *Id*. at 344.
[23] *Id.* at 352.
[24] *Id.* at 346, FN 4. In an opinion concurring in part and dissenting in part, Judge Wolf would have upheld the provision allowing students to utilize vouchers at non-sectarian private schools (*id*. at 371).
[25] *Holmes v. Bush,* 919 So. 2d at 410. The court also noted that article IX, section 6, or the state school fund provision, limiting disbursement of funds to the "support and maintenance of free public schools," reinforced its opinion invalidating the OSP.

Legislature's power because it provides both a mandate to provide for children's education and a restriction on the execution of that mandate."[26] The court reasoned that the sentences comprising the free public schools provision must be read together.[27] The sentence mandating that "adequate provision" for public education be made must be read in conjunction with the successive sentence prescribing the manner for carrying out that mandate. Following the first trial court's reasoning, the Supreme Court found that the two sentences read together create an implied prohibition against the Legislature providing state funds for any means of education other than the public school system.[28]

Applying the doctrine of *expressio unius est exclusio alterius*, meaning the expression or inclusion of one thing implies the exclusion of alternatives, the Court read the constitutional directive to the state to provide for a "uniform, efficient, safe, secure, and high quality system of free public schools…" to prohibit any other program in addition to the uniform system of free public schools that is currently provided.[29]

The court also expressed concern that the private schools that students attend on opportunity scholarships are "not subject to the *uniformity* requirements of the public school system," mentioned in the constitution.[30] Though OSP students must take statewide assessment tests, the court noted that a private schools' curriculum and teachers are not subject to the same standards or supervision applied to public schools.[31] Without state regulation, the court opined, private school curriculum standards may vary greatly depending on the accrediting body.[32] Based upon this reasoning, the court found the alternative system of private schools receiving funding through the OSP did not meet the uniformity requirement.

The Court concluded its opinion by declining to address the no-aid provision in their opinion but stated that the Court "...neither approve[s] or disapprove[s] the First District's determination that the OSP violates the "no-aid" provision in Article 1, section 3 of the Florida Constitution…."[33]

Bush v. Holmes II – Supreme Court dissenting opinion

The dissent responded that the constitutional provision at issue was clear and unambiguous and that it should be given its plain and obvious meaning. Accordingly, there was no reason to resort to canons of statutory interpretation and construction in construing the intent of the provision.[34]

---

[26] *Id*. at 406.
[27] *Id.* at 406-407 (employing the principal of statutory construction *in pari materia,* which means the provisions are to be construed together to ascertain the general meaning).
[28] *Id.* See *supra* note 11, at 2, for discussion of the statutory construction *expressio unius est exlusio alterius.*
[29] *Id.* at 406-407.
[30] *Id.* at 412. (emphasis added)
[31] *Id.* at 409-410.
[32] *Id.* at 410.
[33] *Id.* at 413.
[34] *See Holmes II,* 919 So. 2d 392, 420 (Bell, J. dissenting). The dissent recognized the significant expansion of the Court's authority through the use of *expressio unius* to interpret the free public schools provision and cited to the fact that courts nationwide generally agree that it is a maxim of statutory construction that should rarely, if ever, be used in construing the state constitution, and then, only with great caution. (Citing State ex rel. Jackman v. Court of Common Pleas of Cuyahoga County, 224 N.E. 2d 906, 910 (Ohio 1967) (recognizing that the *expressio unius* maxim should be applied with caution to constitutional provisions … relating to the legislative branch of government, since [the maxim] cannot be made to restrict the plenary power of the legislature") (citing 16 C.J.S. *Constitutional Law* § 69 (2005) (stating "the maxim 'expressio unius est exclusion alterius' does not apply with the same force to a constitution as to a statute …, and it should be used sparingly"); Reale v. Bd. of Real Estate Appraisers, 880 P.2d 1205, 1213 (Colo. 1994) (declaring that the *expressio unius* maxim is "inapt" when used to imply a limitation in a state constitution because the "powers not specifically limited [in the constitution] are presumptively retained by the people's representatives."); Penrod v. Crowley, 356 P.2d 73, 80 (Idaho 1960) (stating that e*xpressio unius* does not apply when interpreting the provisions of the state constitution.); Baker v. Martin, 410 S.E.2d 887, 891 (N.C. 1991) (stating that e*xpressio unius* has never been applied to interpret the state constitution because the maxim "flies in the face" of the principle that "[a]ll power which is not *expressly limited* … in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution.")

The dissent noted that unlike the federal constitution, the state constitution is a limitation upon the power of government rather than a grant of that power.[35] As such, the courts are without authority to invalidate the legislative enactment "unless it is clearly contrary to an express or necessarily implied prohibition within the constitution."[36]

The dissent pointed out that nothing in the text of article IX, section 1 clearly prohibits or necessarily implies the prohibition of the use of funds to provide other educational opportunities outside of the uniform system required by the provision. The text is devoid of language indicating an exclusive intent in that it does not state that "the government's provision for education shall be "by" or "through" a system of free public schools." It does require adequate provision "for" a system of free public schools which would not preclude additional programs. The dissent argued that "without language of exclusion or preclusion, there is no support for the majority's finding that public schools are the exclusive means by or through which the government may fulfill its duty to make adequate provision for the education of every child in Florida."[37] Consequently, the Court was without authority to declare OSP unconstitutional.[38]

Effect on Other Educational Choice Programs

The Supreme Court's opinion invalidating the OSP provided that the ruling is to apply prospectively at the end of the current school year to avoid disrupting the education of the scholarship students.[39] Similar to the district court's opinion, which sought to limit its application to the OSP, the Supreme Court attempted to limit its ruling, stating that the effect of its decision on other programs would be speculation.[40] The Court specifically noted, however, that prekindergarten, community colleges, adult education, and general welfare programs are not implicated by this decision.[41]

Nevertheless, despite the tenor of the court's ruling, there are other educational programs that could still be open to challenge under *either* the Supreme Court's ruling on the free public schools provision *or* the district court of appeal's ruling on the no-aid provision.[42]

John M. McKay Scholarship Program

In the 1999-2000 school year, the John M. McKay Scholarships for Students with Disabilities Program (McKay) was a pilot program in which two students chose to utilize a McKay scholarship to attend a school of their choice. Just six years later the popularity of the program has soared as 16,812 students chose to utilize a McKay scholarship in the 2005-2006 school year to attend a school of their choice.

---

[35] *Id.* at 414, citing *Chiles v. Phelps,* 714 So.2d 453, 458 (Fla.1998) (citing *Savage v. Board of Public Instruction,* 101 Fla. 1362, 133 So. 341, 344 (1931), for the proposition that "[t]he Constitution of this state is not a grant of power to the Legislature, but a limitation only upon legislative power, and unless legislation be clearly contrary to some express or necessarily implied prohibition found in the Constitution, the courts are without authority to declare legislative [a]cts invalid" and recognizing that "[t]he legislature's power is inherent, though it may be limited by the constitution"); *see also State ex rel. Green v. Pearson,* 153 Fla. 314, 14 So.2d 565, 567 (1943) ("It is a familiarly accepted doctrine of constitutional law that the power of the Legislature is inherent.... The legislative branch looks to the Constitution not for sources of power but for limitations upon power.").
[36] *Id.,* citing *Chapman v. Reddick,* 41 Fla. 120, 25 So. 673, 677 (1899) ("[U]nless legislation duly passed be clearly contrary to some express or implied prohibition contained [in the constitution], the courts have no authority to pronounce it invalid.").
[37] *Id.* at 416.
[38] *Id.* at 413.
[39] *Id.*
[40] *Id.*
[41] *Id.* The Court found that these programs were not implicated because pre-kindergarten is addressed separately in the free public schools section and does not have a requirement that it be provided by particular means; community colleges and adult general education programs are not within the general conception of free public schools or institutions of higher learning; and many of the other private welfare programs are not affected by the constitutional provision upon which this opinion is based – article IX.
[42] Given that the First DCA is the only court to address the no-aid provision and its effect on a program such as OSP, it is binding statewide unless and until the Supreme Court addresses the issue. See *Stanfill v. State,* 384 So. 2d 141, 143 (Fla. 1980).

The McKay program allows parents of students with disabilities whose parent is "dissatisfied with the student's progress" at the child's assigned public school to choose the best academic environment for their child.[43] The McKay program is similarly structured to the OSP to the extent that parents of eligible students may choose from any private school, religious or non-religious, so long as the school meets the criteria set forth in statute.[44] Also, the manner in which McKay scholarship funds are distributed is similar to that of the OSP.[45]

Corporate Tax Credit Scholarship Program

The Corporate Tax Credit Scholarship Program (CTC) was established by the 2001 Legislature to provide an income tax credit for corporations that contribute money to nonprofit scholarship-funding organizations (SFO) that award scholarships to students within the state who qualify for free or reduced-price school lunches under the National School Lunch Program.[46] The corporations receive a dollar for dollar tax credit for these donations.

The CTC Program is similar to the OSP to the extent parents may choose any private school so long as the school meets the criteria set forth in statute.[47] However, there are differences in the way the CTC program is funded that may be significant with regard to potential constitutional challenges.

Unlike OSP, the CTC scholarships are funded solely through private donations. Although the donors receive a dollar for dollar tax credit for the donations, the money never becomes part of the state treasury and therefore, cannot be considered a government appropriation of funds. For example, in *Johnson v. Presbyterian Homes of Synod of Florida, Inc.,* the Florida Supreme Court held that a tax exemption for a property owned by the Presbyterian Synod of Florida "did not involve a disbursement from the public treasury."[48]

Likewise, tax credits similar to those provided in the CTC program have been found not to be violative of a constitutional provision similar to the language in article I, section 3, due to the fact that they do not involve a government appropriation of funds.[49] Nevertheless, there is no Florida case squarely on point involving a tax credit.

In the 2005-2006 school year, 14,084 students chose to utilize a CTC scholarship to attend a school of their choice, with approximately 82% of the students choosing to attend a sectarian school.[50] Of the 14,084 scholarship students 41.9% are African American, 23.1% are White, non-Hispanic and 22.1% are Hispanic.[51]

Voluntary Prekindergarten Education Program

In 2002, the electors of Florida approved Amendment No. 8 to the state Constitution.[52] The Amendment required the Legislature to establish a new early childhood development and education program for every four-year-old child in the state by the 2005 school year. The 2004 Legislature created the Voluntary Prekindergarten Education Program (VPK), which allows a parent to enroll his or her child in a voluntary, free prekindergarten program offered during the year before the child is eligible for admission to kindergarten.

---

[43] Section 1002.39(2), F.S.
[44] Section 1002.39(4), F.S.
[45] Section 1002.39(6), F. S. Approximately 47.8% of the 16,812 students chose to attend a religiously affiliated school.
[46] Chapter 2001-225, L.O.F.; section 220.187(2)(e), F. S., defines qualified student.
[47] Section 220.187(6), F. S., provides for eligible nonpublic school obligations.
[48] 239 So. 2d 256 (Fla. 1970).
[49] *Kotterman v. Killian,* 972 P. 2d 606, 612-613, 620 (Ariz. 1999).
[50] Florida Department of Education, Corporate Tax Credit Scholarship Program February Quarterly Report 2006.
[51] *Id.*
[52] Article IX, section 1(b), Fla. Const.

The program allows public and nonpublic schools that educate four year- olds to receive funding from the state. However, apart from allowing religiously affiliated providers, the eligibility criteria for program providers are dissimilar to the OSP and McKay provider requirements.[53] As of January 31, 2006, there are 93,681 children enrolled in the VPK program of which 13,227 children are being served by faith based providers.[54] While the VPK program was expressly distinguished from OSP by the Florida Supreme Court majority, it remains vulnerable under the standing First DCA opinion.

Other Programs Potentially Affected

In addition to the McKay and VPK programs, the following list of State Funded Financial Aid Programs provides an account of how many students may be affected by the First District of Appeal's reasoning in that they are attending an institution with a religious affiliation and received financial aid in the 2004-2005 fiscal year.[55]

- The Bright Futures Scholarship Program is a lottery-funded scholarship program created by the 1997 Legislature to reward high school graduates who merit recognition of high academic achievement and enroll in a degree program, certificate program, or applied technology program at an eligible public or private Florida postsecondary institution.[56] 3,647 of the 130,597 Bright Futures Scholarship recipients attended an institution with a religious affiliation.
- The Florida Residence Access Grant (FRAG) is a tuition assistance program for students registered at eligible independent, nonprofit colleges or universities in Florida.[57] 16,275 of the 35,502 FRAG recipients attended an institution with a religious affiliation.
- The Florida Student Assistance Grant (FSAG) Program consists of three state-funded financial assistance programs that are available to undergraduate students who demonstrate financial need.[58] 6,637 of the 11,896 Florida Private Student Assistance Grant (FSAG-PR) recipients and 133 of the 10,745 of the Florida Postsecondary Student Assistance Grant (FSAG-PO) recipients attended an institution with a religious affiliation.
- The Mary McLeod Bethune Scholarship (MMB) Program provides matching grants for private sources that raise money for scholarships to be awarded to students who attend Florida Agricultural and Mechanical University, Bethune-Cookman College, Edward Waters College, or Florida Memorial College.[59] 223 of the 262 MMB recipients attended an institution with a religious affiliation.

Effects of Proposed Changes

This joint resolution proposes to create a new section in Article IX of the Florida Constitution relating to education. The joint resolution states that every child deserves an equal opportunity to obtain a high quality education regardless of his or her family's income, religion, or race. It states that funding for a high quality public kindergarten through grade 12 education is fundamental and requires the Legislature to ensure that school funding be primarily used on classroom instruction, rather than administration.

The joint resolution provides that the Legislature is authorized to enact and publicly fund education programs for students who are in prekindergarten through college who have disabilities, are economically disadvantaged, or meet other legislatively specified criteria, as provided by law, without regard to the religious nature of any participant or nonpublic provider, notwithstanding any other provision in Article IX or the no-aid provision of Article I, section 3 of the Florida Constitution. It also clarifies that the joint resolution does not establish a right to an education program not provided by law.

[53] Sections 1002.71 and 1002.55, F.S.
[54] The Agency for Workforce Innovation
[55] Florida Department of Education Office of Student Financial Assistance
[56] Sections 1009.53 and 1009.5333, F.S.
[57] Section 1009.89, F.S. and Rule 6A-20.007, F.A.C.
[58] Sections 1009.50 - 1009.52, F.S. and Rules 6A-20.031 – 6A-20.033, F.A.C.
[59] Section 1009.73, F.S. and Rule 6A-20.029, F.A.C.

Prioritizing Public School Funds to the Classroom

By Constitutional mandate, the Legislature has the duty to make adequate provision for the education of all children in the state of Florida.[60] To provide for a high quality public kindergarten through grade 12 education, the joint resolution requires that the Legislature ensure that funding provided for public schools is primarily being used for classroom instruction, rather than on administration.

It also provides that classroom instruction and administration shall be defined by law. Accordingly, should the resolution be approved by the electors in the November 2006 election, implementing legislation would determine the details of what constitutes classroom instruction and administration.

As a result of the resolution, school districts will be required to focus their attention on how much of their educational funds are being spent in the classroom and prioritize their use of funds so that public school funding can be targeted to areas that will produce increased student performance.

Providing for Options that Include Non-Public Schools

The joint resolution provides that students in prekindergarten through college who have disabilities, are economically disadvantaged, or meet other legislatively specified criteria may participate, as provided by law, in education programs that include nonpublic schools.

This provision clearly addresses the constitutional viability of the McKay and CTC scholarship programs under Article IX, section 1 by specifically referencing students with disabilities and those who are economically disadvantaged. It also protects the VPK program, which is available to all 4 year-old children without regard to family income or disability, by clarifying the Legislature's authority to provide choices to the parents of prekindergarten students.

The joint resolution also clarifies the Legislature's authority to enact and publicly fund educational student programs regardless of the religious nature of any participant or nonpublic provider and irrespective of any other provision of Article IX or the no-aid provision of Article I, section 3 of the Florida Constitution. This provision protects the McKay, VPK, Bright Futures, FRAG, FSAG, MMB and any other programs that might involve participation by religiously affiliated providers from challenge based upon the ruling by the First District Court of Appeal regarding Article I, section 3.

The joint resolution does not absolve the Legislature from funding the system of free public schools required by the Florida Constitution.[61] In contrast, it simply provides that the Legislature is authorized to enact and fund other educational opportunities for students who have disabilities, are economically disadvantaged, or meet other legislatively specified criteria, as provided by law. Consequently, the joint resolution will preserve the ability of 16,812 McKay Scholarship students, 14,084 Corporate Tax Credit Scholarship students, 13,227 Voluntary Prekindergarten students, and 26,915 postsecondary education students to attend a school of their choice, as provided by law.

REVISION OR AMENDMENT TO THE STATE CONSTITUTION

Background

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.[62]

---

[60] Article IX, s. 1(a), Fla. Const.
[61] *Id.*
[62] *See* Art. XI, ss. 1-4, and 6, Fla. Const.

Depending on the method, all proposed amendments or revisions to the Constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.[63]

Article XI, s.1, of the Florida Constitution provides for proposed changes to the Constitution originating with the Legislature:

> SECTION 1: **Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.[64] If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.[65]

The Florida Constitution provides that if the proposed amendment or revision is approved by the vote of electors, it is effective as an amendment to or revision of the Constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.[66]

<u>Effects of Proposed Changes</u>

This joint resolution proposes to create a new section of Article XI of the Florida Constitution relating to education. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, and if adopted will take effect January 2, 2007.

C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The joint resolution does not appear to have a fiscal impact on state revenues.

2. Expenditures:

   Revision of State Constitution

---

[63] *See* Art. XI, ss 2, 5, and 6, Fla. Const.
[64] *See* Art. XI, s. 5(c), Fla. Const.
[65] *See* Art. XI, s.5(a), Fla. Const.
[66] *See* Art. XI, s.5(e), Fla. Const.

The Division of Elections with the Department of State estimates that the non-recurring cost of compliance with the publication requirements would be approximately $50,000 in 2006-2007 fiscal year.

Non-Recurring	**FY 2006-07**
Department of State, Division of Elections	
Publication Costs	$50,000 (General Revenue)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The joint resolution does not appear to have any impact on local government revenues.

2. Expenditures:

   The joint resolution does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

For the 2004-05 fiscal year, payments for McKay Scholarships and Opportunity Scholarships totaled $100,167,925 and $3,127,115, respectively for a total for both programs of $103,295,040. The scholarship payment is the lesser of the FEFP funds generated or tuition and fees. There were some instances where tuition and fees were less than the FEFP funds, which resulted in a reversion or savings to the state of $1.6 million in FEFP funds.

In the 2005-06 fiscal year, the CTC Program scholarship amount is $3,500 per student, while the state average per student FEFP funding amount is $6,152.67, resulting in a state savings of $2,652.67 or $37.4 million for 14,084 students.

If the scholarship programs ceased to exist, the state would experience increased costs in the FEFP program of $39.0 million ($1.6 million + $37.4 million).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The municipality/county mandates provision relates only to general bills and therefore would not apply to this joint resolution.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This is a joint resolution which requires passage by a 3/5 vote of each chamber.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Choice and Innovation Committee adopted one amendment and reported the bill favorably with a Committee Substitute (CS). The amendment clarifies that the proposed joint resolution does not establish a right to an education program not provided by law, and it revises the ballot summary accordingly.

The analysis is drawn to the CS.

On April 28, 2006, the Education Council adopted one amendment and reported the bill favorably with a Committee Substitute (CS). The amendment revises the requirement that districts spend a minimum of sixty-five percent of funding on classroom instruction specifying instead that districts must spend school funding “primarily” on classroom instruction. It also revises the eligibility for students to participate in education programs, and narrows the reference to Article I, section 3, of the Florida Constitution to the no-aid provision of that section.

The analysis is drawn to the CS.