

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Appropriations Committee

BILL: SJR 1828

INTRODUCER: Senator Wise

SUBJECT: Revision of Class Size Requirements/Public Schools

DATE: April 20, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Favorable
2.	Armstrong	Hamon	EA	Favorable
3.			WPSC	
4.			RC	
5.				
6.				

I. Summary:

This Senate Joint Resolution (SJR) proposes amending Section 1, Article IX of the State Constitution to revise the maximum class size requirements. Beginning with the 2010-2011 school year, class size compliance would be calculated by the school level average number of students who can be assigned to each teacher in the following grade categories:

- Prekindergarten through the 3rd grade, 18 students;
- 4th grade through the 8th grade, 22 students; and
- 9th grade through the 12th grade, 25 students.

However, the joint resolution maintains an absolute maximum number of students who may be assigned to a teacher in an individual classroom as follows:

- 21 students in prekindergarten through grade 3; and
- 27 students in grades 4 through 8.

The joint resolution also:

- Retains the application of the class size amendment to core-curricula classes;
- Repeals the requirement for funding annual reductions to class size of at least two students to achieve the maximum constitutional class size limits; and
- Provides that the constitutional class size requirements do not apply to virtual classes.

This joint resolution provides for the proposed amendment to be placed on the ballot at the next general election and if approved would apply retroactively to the beginning of the 2010-2011 school year.

This SJR amends Section 1, Article IX of the State Constitution.

II. Present Situation:

Constitutional Amendment

In November 2002, s. 1, Art. IX of the State Constitution was amended to provide that by the beginning of the 2010 school year the maximum number of students assigned to a teacher who teaches core-curricula courses in public school classrooms shall be as follows:

- Prekindergarten through grade 3, the number of students may not exceed 18;
- Grades 4 through 8, the number of students may not exceed 22; and
- Grades 9 through 12, the number of students may not exceed 25.

The amendment required that beginning with the 2003-2004 fiscal year, the Legislature must provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the number of students per classroom does not exceed the maximum required by the beginning of the 2010-2011 school year.

Implementation

The law establishes an implementation schedule for reducing the number of students per classroom by at least two students per year as follows:¹

- 2003-2004 through 2005-2006 at the district level;
- 2006-2007 through 2008-2009² at the school level; and
- 2009-2010 and thereafter, at the classroom level.

To implement the class size reduction provisions of the constitutional amendment, the Legislature created an operating categorical fund for the following purposes:³

- If the district has not met the constitutional maximums specified, or has not reduced its class size by the required two students per year toward the constitutional maximums, the categorical funds must be used to reduce class size; and
- If the district has met the constitutional maximums or has successfully made the two student reduction towards meeting those maximums, the funds may be used for any lawful operating expenditure. Priority, however, shall be given to increase salaries of classroom teachers and to implement the differentiated pay provisions in s. 1012.22, F.S.

In addition, in order to provide capital outlay funds to school districts for school construction for class size reduction, the Legislature created the Classrooms for Kids program to allocate funds

¹ s. 1003.03(2)(b), F.S.

² ch. 2008-142, L.O.F.

³ ch. 2003-391, L.O.F., codified in s. 1011.685, F.S.

appropriated for this purpose.⁴ A district is required to spend these funds only on the construction, renovation, remodeling, or repair of educational facilities, or the purchase or lease-purchase of relocatables that are in excess of the projects and relocatables identified in the district's five-year work program adopted before March 15, 2003.⁵

To date, the Legislature has appropriated \$10,426,329,653 in the Class Size Reduction categorical for operations and \$2,533,400,000 for facilities funding for the Classrooms for Kids program.⁶ The following provides historical funding amounts appropriated by the Legislature for operations and school construction to meet the constitutional class size requirements:

Year	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Operating Funds	\$468,198,634	\$ 972,191,216	\$1,507,199,696	\$2,108,529,344	\$2,640,719,730	\$2,729,491,033
Facilities Funds	\$ 600,000,000	\$100,000,000	\$ 83,400,000	\$1,100,000,000	\$650,000,000	\$0
Total	\$1,068,198,634	\$1,072,191,216	\$1,590,599,696	\$3,208,529,344	\$3,290,719,730	\$2,729,491,033

A district must consider specific options to implement the class size requirements and the two-student-per-year reduction, including: adopting policies to encourage students to take dual enrollment courses and courses from the Florida Virtual School; repealing district school board policies that require students to have more than 24 credits to graduate from high school; maximizing the use of instructional staff; using innovative methods to reduce the cost of school construction; adopting alternative methods of class scheduling, such as block scheduling; and redrawing school attendance zones to better utilize under-capacity schools.⁷

Accountability and Compliance

If a school district has not reduced average class size by two students as required in s. 1003.03 (2), F.S., at the time of the third Florida Education Finance Program (FEFP) calculation, the DOE must calculate an amount from the district's class size reduction operating funds which is proportionate to the amount of class size reduction not accomplished.⁸ This calculated amount is then transferred from the district's operating budget to the district's fixed capital outlay account. In a year when appropriations are reduced, the Commissioner of Education may recommend a waiver of up to 50 percent of the transfer of funds from operating to facilities appropriations for districts that fail to meet the class size limitation.⁹

Before a transfer occurs, a district may appeal to the DOE for a waiver.¹⁰ The Commissioner may subsequently recommend an adjustment to the transfer calculations if the district demonstrates a valid reason for its inability to comply. Appeals and adjustments that have been recommended by the Commissioner include: district reporting errors; an inability to hire teachers; unexpected student enrollment growth; and the impact of budget cuts on reducing class

⁴ *Id.*, codified in s. 1013.735, F.S.

⁵ *Id.*

⁶ DOE, Presentation to Senate Pre-K–12 Appropriations Committee, February 5, 2009.

⁷ s. 1003.03(3), F.S.

⁸ s. 1003.03 (4), F.S.

⁹ ch. 2009-3, L.O.F.

¹⁰ DOE bill analysis of SJR 1828, March 6, 2009.

size.¹¹ The final authority, the Legislative Budget Commission, may then approve an alternate amount of funds to be transferred, if the Commissioner and the State Board of Education determine that a district is unable meet the class size reduction requirements despite appropriate efforts to do so.¹²

During fiscal years 2003-2004 through 2007-2008, after district appeals, a cumulative total of \$6,659,971 has been transferred from the class size reduction operating categorical to district class size reduction fixed capital outlay.¹³ The greatest level of funding transferred in any one year was \$3,273,943 in FY 2006-2007. For 2008-2009, the DOE determined that prior to appeals, 39 traditional public schools (1.26 percent) in 17 school districts had not reduced their school level average by two students.¹⁴ There were no traditional public schools out of compliance after the appeals process; no funds were transferred from the class size reduction operating categorical to fixed capital outlay in 2008-2009.¹⁵

The law provides two additional accountability requirements. The DOE annually determines which districts have not met the two-student-per-year reduction.¹⁶ Beginning in the 2005-2006 school year, each district that fails to comply must implement one of the following policies in the subsequent school year: year-round schools; double sessions; rezoning; or maximizing use of instructional staff. Beginning in the 2006-2007 school year, the DOE must develop a constitutional compliance plan, which includes redrawing school attendance zones, for each district that fails to meet the requirements.

For the 2008-2009 school year¹⁷, the following reflects the number and percentage of traditional schools over the school average class size:

- 26 schools or 1.40 percent in prekindergarten through grade 3;
- 12 schools or 0.47 percent in grades 4 through 8; and
- 4 schools or 0.69 percent in grades 9 through 12.

Virtually all schools have met the school average class size requirement.

Challenges and Considerations

For the 2008-2009 school year, the following reflects the number and percentage of individual classrooms in traditional schools with students over the constitutional class size maximums:

- 83,992 classrooms or 26.44 percent in prekindergarten through grade 3;
- 68,777 classrooms or 24.92 percent in grades 4 through 8; and
- 48,439 classrooms or 32.52 percent in grades 9 through 12.

¹¹ *Id.*

¹² s. 1003.03(4)(a)2., F.S.

¹³ DOE, February 5, 2009. This applies to traditional public schools.

¹⁴ DOE bill analysis of SJR 1828, March 6, 2009.

¹⁵ DOE, February 5, 2009.

¹⁶ s. 1003.03 (4), F.S.

¹⁷ DOE, as of the 2008-2009 FEFP Revised 3rd Calculation.

This data suggests that school districts will have a significant challenge in meeting the constitutional maximum class size requirements by the beginning of the 2010-2011 school year.

Beginning in the 2009-2010 school year, the accountability requirement for non-compliance is changed from the school level average to the classroom maximum. According to the DOE, it is presumed that district transfers from operating funds to capital outlay could exceed the largest amount transferred to date in 2006-2007, or \$3,273,943, if the calculation remains at the classroom level.

As indicated by a number of practitioners, even if some districts are able to achieve the required maximum class sizes by 2010-2011, logistical concerns would potentially still exist. For example, if a school would have all classrooms in each grade at the maximum class size at the beginning of the school year, and then one additional student would enroll one month after the start of the school year, to continue to meet the constitutional requirement, the district would need to hire a new teacher for an additional class of students. This would potentially cause significant disruption for displaced and reassigned students, parents, teachers, and would potentially contribute to facility utilization problems and other planning issues.

Charter schools are not exempt from the constitutional class size requirement. However, on March 14, 2008, two charter schools challenged the authority of the DOE to apply the maximum class size statute to charter schools in the absence of a rule. On December 17, 2008, a final order was issued determining that the class size statute did not to apply to charter schools pursuant to the provisions in s. 1002.33(16), F.S., which exempts charter schools from all provisions of the School Code with certain exceptions.¹⁸ Because of this ruling, no funding transfers were calculated for non-compliant charter schools for 2008-2009,¹⁹ even though charter schools receive full funding from the state for the class size reduction categorical.

III. Effect of Proposed Changes:

Subject to voter approval, this Senate Joint Resolution would make changes to the class size reduction requirements. The joint resolution amends the method by which class size compliance is measured. Class size is to be calculated by the school level average number of students who can be assigned to each teacher. By the beginning of the 2010-2011 school year, the school level average number of students per teacher may not exceed the following limits:

- Prekindergarten through the 3rd grade, 18 students;
- 4th grade through the 8th grade, 22 students; and
- 9th grade through the 12th grade, 25 students.

The joint resolution also provides that the maximum number of students who can be assigned to one teacher teaching core-curricula courses in an individual public school classroom shall not exceed the following:

¹⁸ *The Renaissance Charter School, Inc., and the Lee Charter Foundation, Inc., v. Department of Education*, DOAH Case No. 08-1309RU.

¹⁹ DOE, February 5, 2009.

- Prekindergarten through grade 3, the number of students may not exceed 21; and
- Grades 4 through 8, the number of students may not exceed 27.

There is no individual classroom cap for students in grades 9 through 12.

Amending the class size requirement to the school level average class size for 2010-2011 and thereafter provides districts with the flexibility to meet the class size requirements and reduces the likelihood that districts would have to implement the options required in s. 1003.03(3), F.S., to reduce class size in accordance with the current, more rigid requirements. However, it should be noted that individual classes are limited to a specific number of students over the maximum for two of the three grade groupings (i.e., three students in prekindergarten through grade 3 and five students in grades 4 through 8).

The joint resolution also:

- Repeals the requirement for funding the annual two-student-per-year reductions to class size to achieve the constitutional class size limits; and
- Provides that the constitutional class size requirements do not apply to virtual classes.

The joint resolution does not address the issue of reconciling the constitutional class size requirements in the beginning of the 2010-2011 school year with the submission of the resolution to the voters in November 2010. There could be several months in which the current constitutional class maximums apply before the joint resolution, if approved, is implemented. This may affect a school district's ability to effectively and efficiently plan their budget for the 2010-2011 school year. An implementing bill may be appropriate in the 2010 regular session to address this issue.

Other Potential Implications:

The current constitutional class size provisions may operationally reduce the flexibility of school districts at a time of economic uncertainty. The joint resolution, if approved by the voters, would restore this flexibility.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**Joint Resolutions to Amend the State Constitution**

Under Section 1, Article XI, of the State Constitution, constitutional amendments may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment must then be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. Submission of the amendment at an earlier special election requires an affirmative vote of three-fourths of the membership of each house of the Legislature and limitation to a single amendment or revision, pursuant to Section 5 of Article XI of the State Constitution.

Regarding the standard of review for amendments that are proposed by the Legislature, the Florida Supreme Court has typically applied a presumption of validity to these amendments.²⁰

Paragraph (e) of Section 5, Article XI, of the State Constitution, requires 60 percent voter approval for a constitutional amendment to pass.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If a special election is necessary, standard costs associated with elections will result, and may be significant. For the most recent special election, in 2007, the cost to the state was \$23 million. Estimates for prospective special elections are \$30 million. For a general election, additional funds would be needed by the Department of State to pay for advertising for the 2010-2011 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ Thomas R. Rutherford, *The People Drunk Or The People Sober? Direct Democracy Meets the Supreme Court of Florida*, 15 STTLR 61, 75 (2002).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
