STORAGE NAME: h0303.ei.doc
DATE: February 8, 2001

HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION INNOVATION
ANALYSIS

BILL #: HB 303

RELATING TO: Relief from Overcrowded Schools

SPONSOR(S): Representatives Lacasa, Melvin, Diaz-Balart, Murman, Mealor, Baxley, Rubio, Andrews and Brown

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) EDUCATION INNOVATION
(2) FISCAL POLICY & RESOURCES
(3) COUNCIL FOR LIFELONG LEARNING
(4)
(5)

I. SUMMARY:

This bill creates the School Crowding Relief Intervention for Parents and Teachers (S.C.R.I.P.T.) grants program so that a parent of a student who is enrolled in an overcrowded public school may receive a grant to help pay for the student's attendance at an eligible private school. The program is aimed to provide immediate and targeted relief for public school overcrowding.

The bill defines an overcrowded school as either a school that has a capital outlay FTE enrollment that exceeds 120 percent of the space and occupant design capacity of its nonrelocatable facilities, or a school that incorporated relocatable or modular instructional space in its initial design and has a capital outlay FTE enrollment that exceeds 120 percent of the space and occupant design of its core facilities.

The bill specifies that the parent of any K-12 student who is enrolled in an overcrowded school may, within the first 30 days of the student's attendance, exercise one of the following options: keep the student enrolled in the overcrowded school, transfer the student to a non-overcrowded public school within the district, or request, on an annual basis, a S.C.R.I.P.T. grant of $3,000 to assist in paying for the student's attendance at an eligible private school of the parent's choice.

The bill requires the Department of Education (DOE) to annually publicize the schools in each district that are overcrowded and then to calculate the number of initial S.C.R.I.P.T. grants that will be made available for each of those overcrowded schools in that school year. School districts must notify all parents who have children enrolled in an overcrowded school of the availability of the S.C.R.I.P.T. grants. The parents must notify the school district of what option they choose to exercise within three weeks of receiving notification from the school district that their child attends an overcrowded school. The bill permits DOE to adopt rules in order to implement the provisions of the S.C.R.I.P.T. grants program.

The S.C.R.I.P.T. grants program will save the State money through savings realized from the difference between the annual amount of the grant and the average cost of providing public school education and from a reduced need to construct permanent facilities to house the students in overcrowded schools.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [X]	No []	N/A []
2.	Lower Taxes	Yes [X]	No []	N/A []
3.	Individual Freedom	Yes [X]	No []	N/A []
4.	Personal Responsibility	Yes [X]	No []	N/A []
5.	Family Empowerment	Yes [X]	No []	N/A []

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Traditionally, the Florida Legislature and the local school districts have addressed the provision of educational facilities through either the construction of new facilities or the expansion of existing facilities. In addition to state education funds provided annually through the Capital Outlay & Debt Services and Public Education Capital Outlay funds ($345.4 million for FY 2000-2001), several options are available to provide educational facilities through local revenue generation, such as the two mill levy of ad valorem property tax for capital outlay, local option sales surtax, and the ability to pledge for debt service for bonds and certificates of participation. Districts also receive additional state dollars for school construction through the Classrooms First Program, Effort Index Grant Program, and the School Infrastructure Thrift Program

1997 SPECIAL SESSION ON SCHOOL OVERCROWDING

In November 1997, the Governor called the Legislature into special session to deal with the issue of school overcrowding. During this session the Legislature passed the SMART Schools Act.

The ASMART Schools Act@ (**S**oundly-**M**ade, **A**ccountable, **R**easonable and **T**hrifty Schools Act) was the Legislature's long-term solution to school overcrowding. This act was based on four basic principles:

- Provide *immediate assistance* to the school districts,
- Maintain *functional, frugal* school construction standards,
- Be a *balanced plan* with respect to all 67 school districts, and
- Raise *no new taxes.*

To accomplish a long-term solution and obey the principles established, the Legislature included seven components to the SMART Schools Act.

1. *Classrooms First Funding, Section 235.187, F.S.*

Classrooms First Funding is a $2.02 billion lottery-bonding program. The Legislature made a 20 year pledge of approximately $180 million a year toward school construction. Depending on their new school needs, districts may choose to receive their funding as bond proceeds or cash. All 67 school districts receive a portion of these funds based on a modified Public Education Capital Outlay (PECO) distribution.

As the name indicates, districts must build "Classrooms First." After a school district meets its need for new classroom space, these funds may be used for major repair or maintenance or the replacement of unsatisfactory relocatables. These funds are not to be used to purchase more relocatables. This component of the SMART Schools Act provides immediate funding assistance to the school districts.

According to DOE, as of February 2001, $1.17 billion in Classrooms First awards have been distributed to school districts. Of the $2.02 billion appropriated, $854 million is still available for school construction.

2. *School Infrastructure Thrift Program, Sections 235.2155 and 235.216, F.S.*

The SIT (School Infrastructure Thrift) Program is an incentive fund created to encourage functional, frugal school construction. A school district can receive a SIT award in one of two ways: 1) they can receive an award for "savings realized through functional, frugal construction" or 2) "savings realized through the operation of charter schools in non-school-district facilities." These awards are up to 50 percent of the savings on the statutorily defined cost-per-student station.

In the 1999 Legislative Session, the SIT Program was amended to end the SIT award that school districts receive for the operation of charter schools in non-school-district facilities after the 1999-2000 school year since charter schools began to receive an annual legislative appropriation for capital outlay needs.

According to DOE, as of February 2001, SIT awards totaling $189.9 million have been distributed to school districts for functional, frugal school construction and the operation of charter schools.

3. Effort Index Grants, Section 235.186, F.S.

The Effort Index Grant (EIG) Fund is a $300 million, long-term incentive program designed to provide *select* districts with funding for *new construction only* if these districts still have a *need* for new student stations after a certain level of *local effort* is provided.

The EIG program was amended in the 1999 Legislative Session to do the following:

- EIG funds are allocated to four districts identified by the SMART Schools Clearinghouse as being eligible for the grant program. Section 235.186, F.S., specifies the following: Clay County is allocated $7.4 million, Dade County is allocated $62.8 million, Hendry County is allocated $1.6 million, and Madison County is allocated $ .4 million.

- The remaining $227.8 million of EIG funds are distributed to districts that (1) between July 1, 1995 and June 30, 1999 received direct proceeds from the ½ cent sales surtax for public school capital outlay or received proceeds from any portion of the local government infrastructure sales surtax; or (2) meet any two of the following criteria:

    a) The district levied the full 2 mills of nonvoted discretionary capital outlay during fiscal years 1995-1999;
    b) The district levied a cumulative voted millage equal to 2.5 mills for fiscal years 1995-1999;
    c) The district received proceeds of school impact fees greater than $500 per dwelling unit which were in effect on July 1, 1998; or

d) The district received direct proceeds from either the ½ cent sales tax for school capital outlay or from any portion of the local government infrastructure sales surtax.

- As of January 200,1 DOE reports that the following districts have been appropriated the remaining $227.8 million: Bay ($2.3 million), Broward ($48.2 million), Collier ($6.6 million), Duval ($15 million), Escambia ($4.8 million), Gulf ($ .3 million), Hernando ($2.2 million), Hillsborough ($24.2 million), Indian River ($2.1 million), Jackson ($ .8 million), Lake ($5.9 million), Leon ($2.8 million), Manatee ($4.6 million), Martin ($2.8 million), Monroe ($ .98 million), Okaloosa ($3 million), Orange ($26.4 million), Osceola ($6.9 million), Palm Beach ($23.7 million), Pasco ($7.3 million), Putnam ($1.8 million), St. Johns ($4.5 million), St. Lucie ($4 million), Santa Rosa ($4.3 million), Sarasota ($5.6 million), Seminole ($7.6 million), Volusia ($7.4 million), Wakulla ($ .7 million).

According to DOE, as of February 2001, $87.5 million in EIG funds have been distributed to school districts. Of the $300 million appropriated, $212 million is still available. However, EIG funds cannot be distributed until a district has encumbered all of its Classrooms First funds.

4. *SMART Schools Clearinghouse, Section 235.217, F.S.*

The SMART School Clearinghouse is comprised of five members appointed by the Governor, Speaker of the House of Representatives, and President of the Senate. The Clearinghouse is responsible for making recommendations for SIT Program awards. The Clearinghouse recommends frugal construction standards and reviews school districts' performance in meeting established design and construction standards in the 5-year work plans.

5. *Small County Assistance Program*

The Small County Assistance Program was another portion of the SMART Schools Act that provides immediate assistance in funding school construction. This program provided a one time $50 million appropriation from bond proceeds for construction, repair, renovation or remodeling in small, rural districts. According to DOE, the following counties were appropriated Small County Assistance funds: Gilchrist ($10.5 million), Levy ($4.2 million), Liberty ($10.2 million), Madison ($2.3 million), Okechobee ($1.8 million), Putnam ($6.7 million), Suwannee ($3.9 million), and Wakulla ($9.4 million).

According to DOE, as of February 2001, $42 million in Small County Assistance have been distributed to school districts. Of the $50 million appropriated, $6.2 million has not been disbursed to Putnam County and $ .5 million has not been disbursed to Gilchrist County.

6. *Five-year District Facilities Work Program, Sections 235.185 and 235.218, F.S.*

Each school district must annually prepare a five-year district facilities work program. The program must provide for public hearings and input. The program will reflect the estimated revenues, needs, a schedule of all capital outlay projects, and major repair and renovation projects and project costs.

7. *Frugal Schools Program, Section 235.2197, F.S.*

The Frugal Schools Program publicly recognizes school districts that implement "best financial management practices" when planning, constructing and operating educational facilities. Districts who qualify under s. 235.2197, F.S., may receive a "Seal of Best Financial

Management." This program restores public confidence in local school boards and their construction programs.

While the SMART Schools Act created or modified all the above-mentioned programs, it also did the following with respect to school facilities:

- Set as a goal by July 1, 2003, all relocatables over 20 years of age shall be removed and relocatables at overcrowded schools are to be decreased by half;
- Established relocatable standards; and
- Established functional, frugal costs per student station.

RELOCATABLES AS CLASSROOMS

Section 235.062, F.S. requires that by July 1, 2003, student stations in relocatable facilities exceeding 20 years of age and in use by a district during the 1998-1999 fiscal year must be removed and the number of all other relocatable student stations at over-capacity schools during that fiscal year must be decreased by half.

According to the Department of Education as of February 2001, there are 17,971 relocatables used as classrooms throughout the State.

STATE AID TO PRIVATE ENTITIES FOR EDUCATION

Currently, there are programs in place within the State which provide public dollars for payment of educational services provided by private entities in the K-12 system:

- Section 229.0537, F.S., establishes the Opportunity Scholarship Program, which provides scholarships for students in schools that have received a grade of "F" twice in a 4-year period. The parents of students enrolled at those schools have the option of (1) continue to enroll the student at that school, (2) enroll the student at a higher performing public school within the district, (3) enroll the student at a higher performing public school in an adjacent district, as long as space is available, or (4) request an Opportunity Scholarship. These scholarships can be used for the child's education at an eligible private school.
- Section 229.05371, F.S., provides scholarships to a public or private school of choice for students with disabilities whose academic progress in at least two areas has not met expected levels for the previous year, as determined by the student's individual education plan.
- Section 230.23 (4)(m), F.S., authorizes school districts to contract with a non-public school or community facility for the purpose of special education and related services to eligible exceptional students.
- Section 230.23161(12), F.S., authorizes and strongly encourages school districts to contract with a private provider for the provision of educational programs to youths placed with the Department of Juvenile Justice (DJJ). Recent survey results indicate that private providers account for 37% of the educational services delivered to students in juvenile justice facilities.

PRIVATE SCHOOLS

Private elementary and secondary schools in Florida are not licensed, approved, accredited or regulated by the state, however they are required by Section 229.808, F.S., to make their existence known to the Department of Education (DOE) and respond to an annual survey designed to make information about them available to the public. Section 229.808, F.S., also requires that each person who establishes, purchases or otherwise becomes an owner of a private school must, within 5 days of assuming ownership, file with the Florida Department of Law Enforcement (FDLE), a

complete set of fingerprints for a criminal background check. The owner of a private school may require school employees to file a complete set of fingerprints with FDLE.

According to DOE, in the 2000-2001 school year, there are 2,048 known private schools.

According to DOE, private schools may be accredited by one of several accrediting associations, such as Southern Association of Colleges and Schools (SACS), Florida Catholic Conference (FCC), or Florida Association of Christian Colleges & Schools (FACCS). These accrediting associations have required standards in several areas such as: admission policies, financial status, salaries and working conditions, record keeping, transportation, length of school year, school size, class size, teacher training and experience, physical plant and equipment, academic programs and media, standardized testing and assessment, health and safety, and discipline.

C. EFFECT OF PROPOSED CHANGES:

In response to the recognition that despite an infusion of several billions of state dollars for K-12 public educational facilities since the November 1997 Special Legislative Session on School Overcrowding, some school districts continue to have overcrowded schools, HB 303 creates the S.C.R.I.P.T. (School Crowding Relief Intervention for Parents and Teachers) grants program so that a parent of a student who is enrolled in an overcrowded public school may receive a grant to help pay for the student's attendance at an eligible private school. The state and the district can meet the growing demand for student stations by using not only construction, but also by lowering the demand for student stations at public schools. The program is aimed to provide immediate and targeted relief for public school overcrowding. This program would be an additional tool for school districts to provide space for public school students.

Students attending private institutions would lessen the demand for student stations in public institutions. Every student who uses a grant to attend a private institution would be one less student who needs a student station in a public school.

ELIGIBLE OVERCROWDED SCHOOLS

The bill defines an overcrowded school as either a school that has a capital outlay FTE enrollment that exceeds 120 percent of the space and occupant design capacity of its nonrelocatable facilities, or a school that incorporated relocatable or modular instructional space in its initial design and has a capital outlay FTE enrollment that exceeds 120 percent of the space and occupant design of its core facilities.

PARENTAL CHOICE

The bill specifies that the parent of any K-12 student who is enrolled in an overcrowded public school may, within the first 30 days of the student's attendance, exercise one of the following options:

- Have the student remain enrolled in the overcrowded school,
- Transfer the student to a non-overcrowded public school within the district, or
- Request, on an annual basis, a S.C.R.I.P.T. grant of $3,000 to assist in paying for the student's attendance at an eligible private school of the parent's choice.

PRIVATE SCHOOL ELIGIBILITY

HB 303 specifies that in order to be eligible to participate in the S.C.R.I.P.T. grants program, a private school:

- Must be a Florida private school.
- May be sectarian or nonsectarian.
- Must demonstrate fiscal soundness by being in operation for one school year or by providing DOE with a statement by a certified public accountant confirming that the private school is insured and that the owner(s) of the school have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with all revenues that may be reasonably expected. In lieu of such a statement, a surety bond or letter of credit for the amount equal to the S.C.R.I.P.T. grants fund for any school year may be filed with DOE.
- Must comply with the antidiscrimination provisions of 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin.
- Must meet state and local health and safety laws and codes.
- Must comply with all state statutes applicable to the general regulation of private schools.
- Except for the first year of implementation, must notify DOE and the school district in which it is located of its intent to participate in the program by July 1 preceding the school year in which it intends to participate and the notice must specify the grade levels and services that the private school has available for the S.C.R.I.P.T. grants program.

OPERATION OF THE S.C.R.I.P.T. PROGRAM

The bill requires the Department of Education (DOE) to annually publicize the schools in each district that are overcrowded and to then calculate the number of initial S.C.R.I.P.T. grants that will be made available for each of those overcrowded schools for that year. DOE must provide that information to the superintendent and school board chair of each district at least two weeks prior to the beginning of the school year.

The bill requires that each school district notify the parent of each student enrolled in an overcrowded school, within one week of the child's enrollment, that the school is overcrowded and that the parent has the right to exercise one of the three options previously mentioned. This notification must include a listing of the public schools, including charter schools, within the district that are not overcrowded.

The bill specifies that within three weeks of receiving this notification from the school district, the parent must notify the district as to which of the options he or she chooses to exercise. Failure of the parent to provide notification must be construed as the parent exercising his or her choice of keeping the child in the overcrowded school. If the parent chooses to send his or her child to a non-overcrowded school within the district, the parent must inform the school district which public school he or she has selected and must agree to provide any necessary transportation for the student to attend the chosen public school.

The bill requires that upon receiving notification from the parent as to which option he or she has chosen, the school district must notify DOE of the number of students whose parents have opted to request initial S.C.R.I.P.T. grants.

If the parent chooses to participate in the S.C.R.I.P.T. grants program, the parent must obtain acceptance for admission of the student to an eligible private school, notify DOE of his or her request for a S.C.R.I.P.T. grant, and provide DOE with the name and address of the selected

private school to which the student has been accepted. The parent must also agree to provide transportation for the student to the private school and to pay any costs associated with the student's attendance at the private school that exceeds the annual amount of the S.C.R.I.P.T. grant. The bill states that the parent must also agree that the education provided by the private school satisfies the student's full need for educational services from the student's school.

After the first year of the student's attendance at a private school under the S.C.R.I.P.T. grants program, the parent must notify DOE by July 1 of each year of the parent's intent to renew the grant, and include the name and address of the private school chosen for the student to attend the following year. For the purpose of educational continuity and parental choice, an initial S.C.R.I.P.T. grant, once awarded, is renewable as long as the parent is a Florida resident and the student lawfully attends an eligible private school through the 12th grade. However, a parent may, at any time, choose to return his or her child to public school.

S.C.R.I.P.T. GRANT DISBURSEMENT

The bill requires the Comptroller to make S.C.R.I.P.T. grant payments to recipients in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year. The initial payment is made upon DOE's verification of the student's enrollment at an eligible private school, and subsequent payments are made upon DOE's verification of the student's continued enrollment and attendance at the private school. The payments are made payable to the student's parent and are mailed by DOE to the private school of the parent's choice, and the parent must endorse the payment to the private school.

INITIAL S.C.R.I.P.T. GRANTS

The bill provides that initial S.C.R.I.P.T. grants must be offered on a first-come, first-served basis to parents who have a child enrolled at an overcrowded public school. The number of initial S.C.R.I.P.T. grants to be awarded must be determined annually by DOE and capped at the number that would reduce the school's enrollment to 100 percent of its capacity. If the number of students for whom parents timely seek initial S.C.R.I.P.T. grants in any school year from any school exceeds the cap calculated for that school during that school year by DOE, the initial S.C.R.I.P.T. grants for that school for that school year must be awarded by lottery.

After the school district has notified DOE of the number of students whose parents have opted to request initial S.C.R.I.P.T. grants, the bill requires DOE to transfer from the school district's appropriated funds the total amount of $3,000 grants for the district's students, up to the amount that would reduce each school's enrollment to 100 percent capacity, from the FEFP to a separate account for the disbursement of the initial S.C.R.I.P.T. grants. The bill also requires DOE to provide in its annual budget for S.C.R.I.P.T. grants for parents who wish their children to continue participation in the program beyond the initial year of participation.

DOE ADMINISTRATION

The bill requires DOE to administer the S.C.R.I.P.T. grants program and permits DOE to adopt rules pursuant to current law in order to implement the provisions of the program. The bill specifies that the inclusion of eligible private school within options available to Florida public school students does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of private schools beyond those reasonably necessary to enforce the S.C.R.I.P.T. grants program.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates Section 235.063, F.S., in order to (1) create the S.C.R.I.P.T. grants program to provide for the immediate relief of school overcrowding, (2) provide for parental choice, (3) specify school districts obligations, (4) specify parent obligations, (5) specify private school eligibility, (6) provide for initial S.C.R.I.P.T. grants, (7) provide for S.C.R.I.P.T. grant renewal, (8) provide for S.C.R.I.P.T. grant disbursement, and (9) provide for the Department of Education's obligations.

Section 2: Provides for the bill to become effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Please see fiscal comments.

2. Expenditures:

Please see fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The annual value of a S.C.R.I.P.T. grant is $3,000, which is to be used by parents to assist in the payment of the child's attendance at an eligible private school.

Parents of children in overcrowded schools who choose to send their children to a non-overcrowded public school within their district must provide for the transportation of that student to the non-overcrowded public school.

D. FISCAL COMMENTS:

Every public school student who receives a S.C.R.I.P.T. grant and attends a private school will save the state money because of the difference between the grant amount, $3,000, and the average cost of providing public school education, approximately $5,000, which includes basic FEFP funding ($3,416.73 for 2000-2001 according to DOE), transportation, textbooks, and other categorical funds.

Another potential saving is a reduction in the cost of constructing additional classroom facilities for students who receive a grant to attend a private school in lieu of attending an overcrowded public school. The statutory allowed cost for construction per student station for 2000-2001 is as follows:

Elementary school $12,382
Middle school.....$14,197
High school.....$18,786

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

FLORIDA CASES

Article IX, Section 1 of the Florida Constitution provides that "…Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows student 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."

This language was added to the State Constitution by a 1998 amendment and, consequently, has not had time to be fully constitutionally explored by the courts. However the latest ruling on this language is a unanimous decision by the First District Court of Appeals in *Bush v. Holmes* (October 2000), which states:

> *Nothing in article IX, section 1 [of the Florida Constitution] 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 is necessary. We therefore reject the trial court's finding that the constitution not only mandates that the State 'make adequate provision for the education of all children' in Florida, but that it also prescribes the sole means for implementation of that mandate. Contrary to the conclusion of the trial court, and the argument advanced by [the plaintiffs], article IX, section 1 does not unalterably hitch the requirement to make adequate provision for education to a single, specified engine, that being the public school system.*

The Florida Supreme Court had previously stated in *School Board of Escambia County v. Stat*e, 353 S.2d 834, 837 (Fla.1977), that "by definition...a uniform system results when the constituent parts, although unequal in number, operate to a common plan or serve a common purpose."

The Florida Supreme Court further explained its notion of a "uniform system of free public schools" in *St.John's County v. Northeast Florida Builder's Association, Inc*., 583 S.2d 635 (Fla. 1991):

> *We see nothing in this section of the Constitution that mandates uniform sources of school funding among the several counties...The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature.*

The Court in *Florida Department of Education v. Glasse*r, 622 So.2d 944 (Fla. 1993), continued to suggest "that the uniformity clause will not be construed as tightly restrictive but merely as establishing a larger framework in which a broad degree of variation is possible."

The Court has consistently stated that decisions concerning the uniformity of the state's school system should be left to the legislature. In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chile*s, 680 So.2d 400 (Fla. 1996), the Florida Supreme Court once again refused to examine the adequacy of legislative findings by explaining:

> *[W]e must consider this issue in the context that appropriations are textually and constitutionally committed to the legislature. Any judicial involvement would involve usurping the legislature's power to appropriate funds for education. The judiciary must defer to the wisdom of those who have carefully evaluated and studied the social, economic, and political ramifications of this complex issue - the legislature.*

In conclusion, the Court held that:

> *[T]he legislature has been vested with enormous discretion by the Florida Constitution to determine what provision to make for an adequate and uniform system of free public schools. Id* at 408.

Jackson v. Benson (Wisconsin Supreme Court, 1998)

In June of 1998, the Wisconsin Supreme Court upheld the nation's first private school choice program against legal challenge (*Jackson v. Benson,* 218 Wis. 2d 835). In November of 1998 the United States Supreme Court declined to review the Wisconsin Supreme Court decision.

Wisconsin's private school choice plan was challenged on a number of constitutional grounds:

> Establishment Clause of the U.S. Constitution:
> The court held the plan did not violate the Establishment Clause "because it has a secular purpose, it will not have the primary effect of advancing religion, and it will not lead to excessive entanglement between the State and participating sectarian private schools." The court noted that "eligibility…is determined by neutral, secular criteria that neither favor nor disfavor religion, and aid is made available to both religious and secular beneficiaries on a nondiscriminatory basis," that the plan "places on equal footing options of public and private school choice, and vests power in the hands of parents to choose where to direct the funds allocated for their children's benefit." The court found no excessive entanglement because "the program does not involve the State in any way with the (private) schools' governance, curriculum, or day-to-day affairs. The State's regulation of participating private schools, while designed to ensure that the program's educational purposes are fulfilled, does not approach the level of constitutionally impermissible involvement."

Wisconsin Uniformity Clause:
Responding to arguments that the legislature was prohibited from spending public education funds for private education purposes, the court held that while the uniformity clause "requires the legislature to provide the opportunity for all children in Wisconsin to receive a free uniform basic education," this "provides not a ceiling but a floor upon which the legislature can build additional opportunities for school children in Wisconsin."

Wisconsin Public Purpose Doctrine:
The court held that "education constitutes a valid public purpose (and) that private schools may be employed to further that purpose." The court concluded that "the statutory controls applicable to private schools coupled with parental choice sufficed to ensure that the public purpose was met."

Federal and State Equal Protection Rights:
Pointing out that all participating private schools must comply with federal antidiscrimination provisions and are required to select students on a random basis, the court held that "on its face, the (plan) is race-neutral . . . it allows a group of students, chosen without regard to race, to attend schools of their choice."

Mitchell v. Helms (United States Supreme Court, 2000)

In June 2000 the United States Supreme Court held that Chapter 2 of the Education Consolidation and Improvement Act of 1981, which provides government aid in materials and equipment to public and private schools, was not a law establishing religion. The court reasoned that this law did not violate the First Amendment because it neither resulted in religious indoctrination by the government, nor defined its recipients by reference to religion.

The Court relied on the criteria set out in *Agostini v. Felton*, 521 U.S. 203, to determine whether Chapter 2 violated the Establishment Clause. Government aid has the effect of advancing religion only if it (1) results in governmental indoctrination, (2) defines its recipients by reference to religion, or (3) creates an excessive entanglement. The Court only addressed the first two criteria because the lower court's finding that Chapter 2 did not create an excessive entanglement was not challenged.

Governmental Indoctrination
"In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, the Court has consistently turned to the neutrality principle…As a way of assuring neutrality, the Court has repeatedly considered whether any governmental aid to religious institutions results from the genuinely independent and private choices of individual parents.

The Court further stated that Chapter 2 did not result in government indoctrination because, "It determines eligibility for aid neutrally, making a broad array of schools eligible without regard to their religious affiliations or lack thereof. It also allocates aid based on the private choices of students and their parents as to which schools to attend."

Defining recipients
The Court noted that Chapter 2 does not define its recipients by reference to religion, "since aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis."

In conclusion, the U.S. Supreme Court has ruled in recent years that as long as a law concerning government aid for private education does not aid or establish one religion in favor of another, it is constitutional. Furthermore, the first three state Supreme Courts to consider the constitutionality of

school choice have upheld the programs under the First Amendment. However, it must be noted that a school choice program for overcrowded schools has yet to be considered by the courts.

B. RULE-MAKING AUTHORITY:

This bill permits DOE to adopt rules in order to implement the provisions of the S.C.R.I.P.T. grants program.

C. OTHER COMMENTS:

Based on the definition of an "overcrowded school" as it currently appears in HB 303, there are approximately 621 overcrowded public schools during the current academic year. Consequently, under that definition, approximately 235,182 students would be eligible for S.C.R.I.P.T. grants if the grants were currently available.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:	Staff Director:
Anitere Flores	Daniel Furman