

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Education Appropriations Committee

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BILL: CS/SB 1146

INTRODUCER: Judiciary Committee and Senators King and Wise

SUBJECT: Maximum Class Size/Teachers

DATE: March 30, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>Matthews</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<b>Fav/CS</b>
3.	<u>Armstrong</u>	<u>Newman</u>	<u>EA</u>	<b>Favorable</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill amends s. 1003.03, F.S., relating to the implementation of class size reduction requirements. For fiscal years 2006-2007 through 2009-2010 and thereafter, each teacher assigned to any classroom must be included in the calculation for compliance. The bill permits school districts to use teaching strategies that include the assignment of more than one teacher to a classroom of students if the strategies were implemented prior to July 1, 2005. Effective July 1, 2005, the bill permits school districts to implement additional teaching strategies, but only for specified purposes and subject to certain requirements.

The bill provides that the use of these strategies meets the letter and intent of the State Constitution and the Florida Statutes for implementing class-size reduction. The provisions of the bill apply retroactively. The bill prohibits the imposition of financial or other penalties on a school district that uses any legal strategy, including, but not limited to, those enumerated in s. 1003.03(2) and (3), F.S.

This bill substantially amends section 1003.03, Florida Statutes.

## II. Present Situation:

### Class Size Requirements

An amendment to s. 1, art. IX, of the State Constitution was approved by the voters in November 2002, placing limits on class sizes based upon grade level. The language of the amendment provides that by the beginning of the 2010-2011 school year the maximum number of students assigned to a teacher teaching 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.

For those districts that are not in compliance, 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 does not exceed the limits outlined above. Again, the districts must meet the size requirements by the beginning of the 2010-2011 school year.

To implement the class-size reduction provisions of the constitutional amendment, the Legislature created an operating categorical fund in s. 1011.685, F.S., for the following purposes:

- 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 funds must be used to reduce class size.<sup>1</sup>
- If the district has met the constitutional maximums or has successfully made the two student reduction toward meeting those maximums, the funds may be used for any lawful operating expenditure. Priority, however, shall be given to increase salaries of classroom teachers.<sup>2</sup>

The Legislature also created s. 1003.03, F.S., to identify how districts might implement the constitutional amendment and to provide accountability should a district not meet the implementation deadlines. To implement the class size requirements and the two-student-per-year reduction, a district must consider the following options:

- Adopt policies to encourage students to take dual enrollment courses and courses from the Florida Virtual School;
- Repeal district school board policies that require students to have more than 24 credits to graduate from high school;
- Adopt policies to allow students to graduate from high school as soon as they pass the grade 10 Florida Comprehensive Assessment Test (FCAT) and complete the courses required for high school graduation;
- Use methods to maximize use of instructional staff, such as changing required teaching loads and scheduling of planning periods, deploying district employees that have professional certification to the classroom, using adjunct educators, or any other method not prohibited by law;
- Use innovative methods to reduce the cost of school construction by using prototype school designs, using SMART Schools designs, participating in the School Infrastructure Thrift Program, or any other method not prohibited by law;
- Use joint-use facilities through partnerships with community colleges, state universities, and private colleges and universities;

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<sup>1</sup> Section 1011.685(2)(a), F.S.

<sup>2</sup> Section 1011.685(2)(b), F.S.

- Use joint-use facilities available for use as K-12 classrooms that do not meet the K-12 state requirements for educational facilities in the Florida Building Code, provided that the facilities meet all other health, life, safety, and fire codes;
- Adopt alternative methods of class scheduling, such as block scheduling;
- Redraw school attendance zones to maximize use of facilities while minimizing the additional use of transportation;
- Operate schools beyond the normal operating hours to provide classes in the evening or operate more than one session of school during the day;
- Use year-round schools and other nontraditional calendars that do not adversely impact annual assessment of student achievement;
- Review and consider amending any collective bargaining contracts that hinder the implementation of class-size reduction; and
- Use any other approach not prohibited by law.<sup>3</sup>

In determining compliance, the Department of Education (DOE) is to annually calculate the status of each district for the three class size measures based upon a schedule.<sup>4</sup> For FY 2003-2004 through 2005-2006, the calculation for compliance is measured by a district average.<sup>5</sup> In FY 2006-2007 and 2007-2008, compliance will be measured by a school average.<sup>6</sup> Beginning with FY 2008-2009, compliance will be measured at the individual classroom level.<sup>7</sup>

Beginning in the 2005-2006 school year, the DOE shall determine by January 15 of each year which districts have not met the two-student-per-year reduction.<sup>8</sup> Each district that has not met the two-student-per-year reduction must implement one of the following policies in the subsequent school year:

- Year-round schools;
- Double sessions;
- Rezoning; or
- Maximizing use of instructional staff by changing required teacher loads and scheduling of planning periods, deploying school district employees who have professional certification to the classroom, using adjunct educators, operating schools beyond the normal operating hours to provide classes in the evening or operating more than one session during the day.<sup>9</sup>

Beginning in the 2006-2007 school year, the DOE shall annually determine which districts do not meet the class size requirements as outlined in s. 1003.03(2), F.S.<sup>10</sup> In addition to its authority under s. 1008.32, F.S., the DOE must develop a constitutional compliance plan for each district that fails to meet the requirements which includes redrawing school attendance zones.<sup>11</sup>

<sup>3</sup> Section 1003.03(3), F.S.

<sup>4</sup> Section 1003.03(2)(c), F.S.

<sup>5</sup> Section 1003.03(2)(b)1., F.S.

<sup>6</sup> Section 1003.03(2)(b)2., F.S.

<sup>7</sup> Section 1003.03(2)(b)3., F.S.

<sup>8</sup> Section 1003.03(4)(b), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 1003.03(4)(c), F.S.

<sup>11</sup> *Id.*

Section 1003.03(2)(c), F.S., provides that the baseline against which the district compliance comparisons are to be made is the average class size from the February 2003 student membership survey. Section 1003.03(4)(a), F.S., directs the DOE to transfer funds from a district’s operating categorical to an approved fixed capital outlay appropriation in a proportionate amount to the class size reduction not accomplished by that district. In practice, before such a transfer may occur, districts have been permitted to appeal the DOE’s calculations by explaining why a district has failed to comply. Unexpected enrollment growth has been accepted as a valid ground for appeal. These transfers from operations to capital are regarded by school districts as a penalty because they will cause a reduction in their recurring operating budgets in the middle of the school year. The first two years of application of the transfer “penalty” for district level class size reduction compliance, have only yielded a handful of districts with relatively minor transfer amounts.

In 2004-2005, the transfer calculation after appeals totaled \$1,076,719 and affected nine districts.<sup>12</sup> In 2005-06, the transfer calculation after appeals totaled \$496,059 and affected only one district.

The DOE reported the progress that districts have made in reducing class sizes. According to the DOE, the statewide district class size averages have declined as follows:<sup>13</sup>

Statewide District Class Size Averages			
Year	Grades PreK-3	Grades 4-8	Grades 9-12
2002-2003	23.07	24.16	24.10
2003-2004	20.54	22.43	24.06
2004-2005	18.98	21.32	23.73
2005-2006	18.16	20.48	22.96
<b>Change from 2002-2003</b>	<b>(4.91)</b>	<b>(3.68)</b>	<b>(1.14)</b>

For FY 2006-2007, Specific Appropriations 7 and 92 of Senate Bill 2700 provide \$2,167,551,110 for class-size reduction operating expenses.

**Co-Teaching**

The statutes are silent on the use of co-teaching as an option to implement the class size requirements and the two-student-per-year reduction. There is no administrative rule that prohibits or authorizes the use of co-teaching for this purpose.

The State Board of Education established a policy to exclude co-teaching from the calculation of class-size compliance for the 2006-2007 school year.<sup>14</sup> The policy was not adopted as a rule.<sup>15</sup>

<sup>12</sup> *Id.*

<sup>13</sup> Memorandum from John L. Winn, Commissioner of Education, to District School Superintendents, December 27, 2005, Attachment I, *District Class Size Averages, 2006 Compliance Calculation.*

<sup>14</sup> State Board of Education Minutes, June 21, 2005.

<sup>15</sup> Section 120.52(15), F.S., defines a rule, in part, as an “agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.”

Subsequent to the State Board's decision, the DOE provided guidance to the school district superintendents, which indicated that co-teaching may be a valuable strategy for delivering instruction, but it is not an acceptable approach for meeting the class size requirements. The guidance document defined the term "co-teaching" as an instructional strategy whereby two or more teachers in a classroom share responsibility for planning, delivering, and evaluating instruction for all students in a class. Co-teaching occurs whenever a class or subject is taught by two or more teachers and continues for the entire class period.<sup>16</sup>

The DOE also provided instructions for calculating class size. For the 2005-2006 school year, co-teaching (the additional teacher in the classroom) has been included in the calculation of district average class sizes. However, the percentage of classes taught using this strategy in each district in each grade group was not allowed to increase over the calculation for 2004-2005.

In addition, if the percentage was greater, the use of co-teaching would have affected compliance and could have caused a transfer of class size funds from operations to capital. As it turned out, no district experienced a percentage increase in the use of co-teaching in 2005-06 when compared with 2004-05. The DOE advised the districts that co-teaching (the additional teacher) would not be used to calculate compliance with the school average class size, beginning in 2006-2007. Additionally, co-teachers may be used as a strategy to include exceptional education students (ESE) in the general education classroom. However, if this strategy is used after 2005-2006, the ESE teacher may not be used in the calculation to meet the class size requirements.<sup>17</sup>

According to the DOE, co-teaching has increased by 260 percent since the implementation of the class-size amendment: 14 districts exceed this average and 12 of the districts exceed 500 percent. Thirty-seven districts reported the use of co-teaching in 2002-2003, while 53 districts reported the use of this teaching strategy in 2004-2005.<sup>18</sup> An October 2004 DOE report indicated that there were 7,065 co-taught classrooms statewide: 2,399 in Prekindergarten to Grade 3; 3,298 in Grades 4 to 8; and 1,368 in Grades 9 to 12.

### III. Effect of Proposed Changes:

The bill would essentially override the State Board of Education's prohibition on using co-teaching as a means of meeting class size requirements.

The bill amends s. 1003.03, F.S., relating to the implementation of the class size requirements. For FY 2006-2007 through 2009-2010, and thereafter, each teacher assigned to any classroom must be included in the calculation for compliance.<sup>19</sup>

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<sup>16</sup> Memorandum from Linda Champion, Deputy Commissioner, Finance and Operations, Department of Education, to District School Superintendents, July 13, 2005, available at <http://info.fldoe.org/docushare/dsweb/Get/Document-3096/coteachcs.pdf>.

<sup>17</sup> Bureau of Education Information and Accountability Services, Florida Department of Education, *Technical Assistance Note: Calculating Class Size and the Use of Co-Teachers*, August 9, 2005, p. 4.

<sup>18</sup> Jeanine Blomberg, Update on Co-Teaching, Presentation before the State Board of Education, August 16, 2005, available at [http://www.fldoe.org/meetings/2005\\_08\\_16/Co-Teaching\\_Pres.pdf](http://www.fldoe.org/meetings/2005_08_16/Co-Teaching_Pres.pdf).

<sup>19</sup> To illustrate, where there is more than one teacher assigned to a classroom, both teachers together may be assigned the number of students under the class-size caps instead of one of the two teachers being assigned the number of students (i.e., a classroom could have twice the number of students where the class has two teachers).

The bill permits school districts to use teaching strategies that include the assignment of more than one teacher to a classroom of students if the strategies were implemented prior to July 1, 2005. Effective July 1, 2005, the bill permits school districts to implement additional teaching strategies that include the assignment of more than one teacher to a classroom of students. However, these strategies may only be used for the following purposes:

- Pairing teachers for staff development;
- Pairing new teachers with veteran teachers;
- Pairing teachers who are teaching out-of-field with teachers who are in-field;
- Reducing turnover among new teachers;
- Providing for more flexibility and innovation in the classroom; and
- Improving learning opportunities for students, including students who have disabilities.

Co-teaching strategies may be implemented subject to the following restrictions:<sup>20</sup>

- “Reasonable limits”<sup>21</sup> must be in place to prevent overcrowding of classrooms and to ensure that teacher-to-student ratios within a curriculum area or grade level meet the constitutional requirements;
- At least one member of the team must have a minimum of three years of teaching experience, and at least one member must be teaching in-field; and
- The teachers must be trained in team-teaching methods within one year after assignment.

It is unclear how the provision for in-field teaching will be reconciled with the requirements of the federal No Child Left Behind Act.<sup>22</sup> The Act provides that by June 30, 2006, all teachers of core academic subjects must meet the “high quality teacher” requirements, including demonstrating subject-matter competency in the areas that they teach.

The bill provides that the use of these strategies meets the letter and intent of the State Constitution and the Florida Statutes for implementing class-size reduction.

The bill prohibits the imposition of financial or other penalties on a school district that uses any legal strategy, including, but not limited to, those enumerated in s. 1003.03(3), F.S., and the provisions in the bill.

The effective date of the bill is upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

<sup>20</sup> New s. 1003.03(5)(b)1.

<sup>21</sup> The bill does not define the term reasonable limits.

<sup>22</sup> Pub. L. No. 107-110, 115 Stat. 1425 (2002), available at <http://www.ed.gov/policy/elsec/leg/esea02/107-110.pdf>.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Section 1, Article IX of the State Constitution requires that the legislature ensure "a sufficient number of classrooms so that . . . [t]he maximum number of students who are assigned to each teacher who is teaching in public school classrooms" does not exceed certain limits. It also provides for a phase in by requiring the legislature to "provide sufficient funds to reduce the average number of students in each classroom" by a certain number. Numerous discussions have occurred about how the constitutional requirement applies to physical classrooms (students per classroom) versus teachers (students per teacher). This bill anticipates co-teaching, which would fit within a "students per teacher" interpretation of the Constitution, but which might be argued to strain a "students per classroom" interpretation.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact of the bill cannot be determined with any degree of certainty because of the lack of information from which reliable calculations can be made, and the difficulty in predicting school district behavior on this issue.

If this bill *does not pass*, and the State Board of Education's policy on co-teaching is enforced, there could be a significant fiscal impact on both school district operations and capital costs. The cost of construction to provide additional classrooms for the second teacher in the co-taught classrooms could be significant if the district does not have sufficient available capacity to place students elsewhere who are in excess of the class size maximum in the co-taught classroom. In some districts this would be the case; however, in others, significant construction might be necessary because available capacity would require rezoning, for example, which may not be a desirable local option.

Alternatively, the cost of construction could be minimal if the district has additional capacity and/or is more able to achieve local rezoning so that students could be placed elsewhere who are in excess of the class size maximum for the co-taught classroom.

If this bill *does not pass*, and the State Board of Education's policy on co-teaching is enforced, the effect on operations for any district with insufficient capacity to place the excess students would be felt more immediately with a revised class size reduction compliance calculation, in which the second teacher in the classroom would not be recognized, so that the calculated average class size would increase. To the degree that this change would cause the district's average class size to not decrease by two or to be greater than the maximum required, it would cause a greater transfer of class size funds from operations to the capital account.

Conversely, if this bill *passes*, and co-teaching is allowed as an instructional strategy and can be counted to meet class size reduction requirements, then school construction costs would be less and districts would experience less potential reduction in their operating budgets from transfer to their capital accounts for noncompliance.

In addition, if this bill *does not pass*, and the State Board of Education's policy on co-teaching is enforced, the economic costs of potential reduced learning for both students and new teachers from disincentivizing co-teaching cannot be measured.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



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## **VIII. Summary of Amendments:**

None.

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

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