

**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 Budget Committee

BILL: SB 1466

INTRODUCER: Senator Simmons

SUBJECT: Class Size

DATE: March 24, 2011                      REVISED: \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|-----------------|----------------|-----------|--------------------|
| 1. | deMarsh-Mathues | Matthews       | ED        | <b>Favorable</b>   |
| 2. | Armstrong       | Hamon          | BEA       | <b>Favorable</b>   |
| 3. | Hamon           | Meyer, C.      | BC        | <b>Pre-meeting</b> |
| 4. |                 |                |           |                    |
| 5. |                 |                |           |                    |
| 6. |                 |                |           |                    |

**I. Summary:**

The bill redefines the terms “core-curricula courses” as follows:

- Language arts/reading, mathematics, and science courses in prekindergarten through grade 3;
- Courses in grades 4 through 8 in subjects that are measured by state assessment at any grade level;
- Courses in grades 9 through 12 in subjects that are measured by state assessment at any grade level;
- Courses that are specifically identified by name in statute as required for high school graduation and that are not measured by state assessments, excluding any extracurricular courses;
- Exceptional student education courses; and
- English for Speakers of Other Languages courses.

The bill also:

- Specifies the maximum number of students for a core-curricula high school course in which a student in grades 4 through 8 is enrolled for high school graduation credit;
- Redefines the term “extracurricular courses” to include courses that may result in college credit;

- Specifies a timeframe for satisfying and maintaining class size maximums, with specific exceptions for an extreme emergency beyond the district's control and when a student enrolls after the October survey period;
- Provides requirements and limitations on the maximum number of students who can be assigned to a teacher when an existing class temporarily exceeds the class size maximums; and
- Provides that only a school district that meets the maximum class size requirements may use the class size reduction operational categorical funds for any lawful operating expenditure.

This bill substantially amends sections 1003.01, 1003.03, and 1011.685, Florida Statutes.

## 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 school year.

### Implementation

Section 1003.03(2)(b), F.S., establishes an implementation schedule for reducing the average number of students per classroom by at least two students per year as follows:

- 2003-2004 through 2005-2006 at the district level;
- 2006-2007 through 2009-2010<sup>1</sup> at the school level; and
- 2010-2011 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:<sup>2</sup>

- If the district has not met the constitutional maximums specified, or has not reduced its class size by the required average 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 average two student reduction towards meeting those maximums, the funds may be used for any

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<sup>1</sup> ch. 2009-59, L.O.F.

<sup>2</sup> s. 3, ch. 2003-391, L.O.F., codified in s. 1011.685, F.S.

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, Florida Statutes.

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 appropriated for this purpose.<sup>3</sup> 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.<sup>4</sup>

The Legislature has appropriated over \$16 billion in the Class Size Reduction categorical for operations and \$2.5 billion for facilities funding for the Classrooms for Kids program.<sup>5</sup> 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         | 2009-10         |
|-------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <b>Operating Funds</b>  | \$ 468,198,634  | \$ 972,191,216  | \$1,507,199,696 | \$2,108,529,344 | \$2,640,719,730 | \$2,729,491,033 | \$2,845,578,849 |
| <b>Facilities Funds</b> | \$ 600,000,000  | \$ 100,000,000  | \$ 83,400,000   | \$1,100,000,000 | \$ 650,000,000  | \$0             | \$0             |
| <b>Total</b>            | \$1,068,198,634 | \$1,072,191,216 | \$1,590,599,696 | \$3,208,529,344 | \$3,290,719,730 | \$2,729,491,033 | \$2,845,578,849 |

The appropriation for operations in 2010-2011 was \$2,927,921,474.

A district must consider specific options to implement the class size requirements, 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.<sup>6</sup>

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.<sup>7</sup> Because of this ruling, no funding transfers were

<sup>3</sup> s. 4, ch. 2003-391, L.O.F., codified in s. 1013.735, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> DOE presentation to the Senate Pre-K–12 Education Appropriations Committee, January 21, 2010, on file with the committee.

<sup>6</sup> s. 1003.03(3), F.S.

<sup>7</sup> *The Renaissance Charter School, Inc., and the Lee Charter Foundation, Inc., v. Department of Education*, DOAH Case No. 08-1309RU.

calculated for non-compliant charter schools for 2008-2009 and 2009-10, even though charter schools receive full funding from the state for the class size reduction categorical.

The 2010 Legislature provided that charter schools shall be in compliance with Section 1003.03, Florida Statutes, relating to maximum class size, except that the calculation shall be the average at the school level.<sup>8</sup>

### **Accountability and Compliance**

The 2010 Legislature revised the accountability provisions by providing for the following:<sup>9</sup>

- Compliance determination based on the October student enrollment survey;
- A reduction calculation to class size funding for noncompliant districts which may be adjusted for good cause;
- A reallocation bonus of up to five percent of the base student allocation for compliant districts, not to exceed 25 percent of the reduced funds;
- An add-back of the remaining 75 percent of the reduced funds if districts submit a plan to meet the requirements by October of the subsequent year;
- A requirement, for the 2010-2011 school year, that school boards hold public hearings on strategies to meet class size requirements before the district budget is adopted; and
- Authorization of virtual instruction programs as an option to meet class size requirements.

### **Considerations**<sup>10</sup>

Compliance for fiscal year 2010-2011 is calculated at the classroom level for traditional public schools and at the school level for charter schools. The adjustment to the districts class size allocation is calculated by the DOE and verified by the Florida Education Finance Program Allocation Conference. The amount of funds adjusted is to be the lesser of the amount calculated or the undistributed balance of the district's class size reduction operating categorical. The Commissioner of Education may make a recommendation to the Legislative Budget Commission for an alternate amount of funds for the compliance calculation, if the Commissioner has evidence that a district was unable to meet the class size requirement despite appropriate efforts to do so or because of an extreme emergency.<sup>11</sup>

For the initial calculation completed on December 29, 2010, there were 44,556 traditional public school classrooms in 35 school districts and 3 lab schools that were not in compliance with class size requirements, for a potential total compliance calculation amount from the class size compliance calculation operating categorical of \$40,795,637. There were 44 charter schools that were not in compliance with school level class size requirements, for a potential total compliance calculation amount from the class size compliance calculation operating categorical of \$2,292,191.

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<sup>8</sup> ch. 2010-154, L.O.F.

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

<sup>10</sup> Legislative Budget Commission Meeting materials for March 16, 2011, on file with the committee.

<sup>11</sup> s. 1003.03(4)(c), F.S.

Following the review of evidence, the Commissioner determined that data reporting errors were factors to be considered in the appeal process. After reviewing appeals related to data reporting errors, the potential compliance calculation amount for traditional public schools was decreased by \$1,757,302, for an adjusted potential compliance calculation amount of \$39,038,335. The potential compliance calculation amount for charter schools was decreased by \$1,935,249, for an adjusted potential compliance calculation amount of \$356,942.

Following the appeal process, the Commissioner recommended an adjustment for unexpected student growth that resulted in an additional decrease in the potential class size operating categorical compliance calculation amount of \$7,733,211 for traditional public schools and \$1,403 for charter schools. After the appeal process and adjustments for unexpected growth, the adjusted total potential compliance calculation amount was \$31,305,124 for traditional public schools and \$355,539 for charter schools.

The Commissioner has recommended that the Legislative Budget Commission approve the alternate compliance calculation amounts of \$31,305,124 for traditional public schools and \$355,539 for charter schools.

If the Legislative Budget Commission approves the alternate compliance calculation amounts, the Commissioner will reallocate a portion of the compliance calculation amounts to districts and charter schools that have fully met class size requirements.<sup>12</sup> This reallocation may be up to five percent of the base student allocation multiplied by the total district FTE students, but cannot exceed 25 percent of the total funds reduced, resulting in a reallocation of \$7,826,281 for traditional schools and \$88,885 for charter schools. The funds remaining after the reallocation will be returned to districts and charter schools that were not in compliance with class size requirements and submitted a plan by February 15, 2011 describing the specific actions that will be taken to fully comply with class size requirements by October of the 2011-2012 school year.<sup>13</sup> For the current year, all districts and charter schools not in compliance submitted a plan by the deadline, so that, if the Legislative Budget Commission provides approval, the remaining funds, or 75 percent, will be returned.

### III. Effect of Proposed Changes:

#### Core-curricula and Extracurricular Courses

The bill redefines the terms “core-curricula courses”. Under current law, the courses are defined by the Department of Education as mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and course taught in traditional, self-contained elementary school classrooms.<sup>14</sup> Under the bill, the courses are specified by grade levels, subjects measured by state assessments, high school graduation requirements, and subgroups of students:

- Language arts/reading, mathematics, and science courses in prekindergarten through grade 3;

<sup>12</sup> s.1003.03(4)(d)

<sup>13</sup> s. 1003.03(4)(e), F.S.

<sup>14</sup> Courses offered under ss. 1002.37 (the Florida Virtual School), 1002.415 (the K-8 Virtual School Program), and 1002.45 (the school district virtual instruction (VIP) programs), F.S., are excluded.

- Courses in grades 4 through 8 in subjects that are measured by state assessment at any grade level;
- Courses in grades 9 through 12 in subjects that are measured by state assessment at any grade level;
- Courses that are specifically identified by name in statute as required for high school graduation and that are not measured by state assessments, excluding any extracurricular courses;
- Exceptional student education courses; and
- English for Speakers of Other Languages courses.

For a core-curricula high school course in which a student in grades 4 through 8 is enrolled for high school graduation credit, the maximum number of students would be 25. Finally, the term “extracurricular courses” would also be redefined to include courses that may result in college credit. Current law specifies that these courses include physical education, fine arts, performing fine arts, and career education.

Florida high school students are currently required to complete 24 credits in order to earn a high school diploma. Students must also earn passing scores on the Florida Comprehensive Assessment Test (FCAT) or attain a passing score on the SAT or ACT. Beginning in the 2010-2011 school year, high school graduation requirements increase to include more rigorous courses. Students will be required to pass statewide, standardized end-of-course (EOC) assessments in specific courses beginning with the 2011-2012 school year. Beginning with students entering grade 9 in the following school years, courses include Geometry (2010-2011), Biology I (2011-2012), Algebra II (2012-2013), Chemistry or physics (2013-2014), and an additional equally rigorous science course (2013-2014).<sup>15</sup>

The DOE notes that in 2010-2011, there were 849 core courses. Under the current bill, there would be 288 core courses.<sup>16</sup> The decrease would primarily be due to foreign languages, honors and advanced courses at the middle and secondary grade levels, courses without state assessments, and courses that are not required for graduation at the middle and high school level.

### **Compliance**

Under the bill, a timeframe is specified for satisfying and maintaining class size maximums, with specific exceptions for an extreme emergency beyond the district’s control and when a student enrolls after the October survey period. Based on a school district’s determination that not assigning the student would be impractical, educationally unsound, or disruptive to student learning, a student could be assigned to an existing class that temporarily exceeds the class size maximums. However, the additional number of students who can be assigned to a teacher above the maximum may not exceed the following:

- Prekindergarten through 3rd grade, up to three students above the maximum;
- 4th grade through 8th grade, up to five students above the maximum; and
- 9<sup>th</sup> grade through 12<sup>th</sup> grade, up to five students above the maximum.

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<sup>15</sup> See ch. 2010-22, L.O.F., codified in ss. 1003.428 and 1003.429, F.S.

<sup>16</sup> DOE, March 15, 2010, on file with the committee.

This temporary exception is also contingent upon a district school board developing a plan that provides that a school will be in full compliance with the maximum class size requirements by the following year's October student membership survey.

Finally, the bill provides that only a school district that meets the maximum class size requirements may use the class size reduction operational categorical funds for any lawful operating expenditure.

#### **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:

This bill may be subject to constitutional challenge, based on the class size provision contained in s. 1, Art. IX, state constitution. Specifically, a potential argument exists that this proposed language authorizes maximums in excess of the caps provided in the Florida constitution. In an advisory opinion to the Attorney General on the validity of the class size constitutional amendment, the Florida Supreme Court referred to the Legislature's role as intended by the initiative as follows:

Rather than restricting the Legislature, the proposed amendment gives the Legislature latitude in designing ways to reach the class size goal articulated in the ballot initiative....<sup>17</sup>

The court also indicated that the primary purpose of the amendment is the legislative funding of reduced class size. This bill does not address the amount the Legislature appropriates for class size. Rather, it provides operational flexibility to school districts to meet the class size maximums, while assuring that children attending public schools obtain a high quality education.

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<sup>17</sup> *Advisory Opinion to the Attorney General re: Florida's Amendment to Reduce Class Size*, 816 So.2d 580, 584-85 (S.Ct. 2002).

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact is minimal; however, the bill would provide greater operational flexibility to school districts in meeting the class size requirements.

In addition, the bill provides that once a school district meets the maximum class size requirements, the district may use the class size reduction operating categorical funds for any lawful operating expenditure.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.