

Schools & Learning Council Meeting Packet

**Friday, March 7, 2008
9:30 am – 12:00 noon
212 Knott Building**

**Marco Rubio
Speaker**

**Joe H. Pickens
Council Chair**

Council Meeting Notice
HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Schools & Learning Council

Start Date and Time: Friday, March 07, 2008 09:30 am

End Date and Time: Friday, March 07, 2008 12:00 pm

Location: 212 Knott Building

Duration: 2.50 hrs

Consideration of the following proposed council bill(s):

PCB SLC 08-02 -- Education Governance Joint Resolution

Consideration of the following bill(s):

HB 491 Certification of Public School Educators by Carroll

HB 653 Corporate Income Tax Credit Scholarship Program by Traviesa

NOTICE FINALIZED on 03/05/2008 15:18 by TJG

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SLC 08-02 Education Governance Joint Resolution

SPONSOR(S): Schools & Learning Council

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council		White <i>TW</i>	Cobb <i>CC</i>
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Under the joint resolution, voters would have the option to restructure public education governance by approving state constitutional amendments that would:

- Reinstate the Commissioner of Education as an elected official accountable to the voters and as a member of the State Cabinet.
- Restore the membership of the State Board of Education to that of the Governor and Cabinet, elected officials accountable to the voters.
- Retain the Board of Governors, but modify its appointed membership from 14 to six members with shorter, four-year terms and revise its authority to administering the state university system as provided by law.
- Retain university boards of trustees, but require all appointments to be made by the Governor, an elected official, and revise their authority to administering each state university as provided by law.
- Establish a Florida college system (FCS) for two-year and four-year public postsecondary educational institutions that grant undergraduate academic degrees.
- Establish a Florida college board to oversee and coordinate the FCS, and local boards of trustees to administer each institution within the FCS, as provided by law.

The joint resolution requires passage by 3/5 vote of each chamber. If passed, the proposed amendments would be placed on the ballot of the next general election in November 2008. Sixty percent voter approval is required for adoption.

The Department of State estimates that the non-recurring cost to comply with constitutional publication requirements would be less than \$350,000 for the 2008-2009 Fiscal Year. **(See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT).**

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The joint resolution does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

State Cabinet: Article IV, s. 1 of the State Constitution establishes the executive branch of state government and provides that the "...supreme executive power shall be vested in a governor." Article IV, s. 4 of the State Constitution subdivides the executive power by providing for three elected Cabinet officers: an Attorney General, a Chief Financial Officer, and a Commissioner of Agriculture. The Governor and Cabinet members serve as trustees of the Internal Improvement Trust Fund and Land Acquisition Trust Fund and as the agency head for the Florida Department of Law Enforcement.¹

Prior to 2003, there were six elected members of the state cabinet. In 1998, Florida voters approved Ballot Initiative No. 8, which became effective on January 7, 2003. This amendment reduced the Cabinet to three members by retaining the Commissioner of Agriculture and the Attorney General, merging the Treasurer and Comptroller into one Cabinet office called the "Chief Financial Officer," and removing the Secretary of State and the Commissioner of Education from the Cabinet.²

State Board of Education: Article IX, s. 2 of the State Constitution establishes the SBE and provides it with the power to supervise Florida's system of free public education as provided by law. The SBE is comprised of seven members appointed by the Governor to staggered four-year terms, subject to Senate confirmation.

Section 1001.02, F.S., states that the SBE is the chief implementing and coordinating body of K-20 public education in Florida, except for the state university system, and that its focus is to be on high-level policy decisions. The SBE is designated as the head of the Department of Education (DOE), which includes a Division of Community Colleges and Division of Public Schools.³ It is authorized to adopt rules to implement its statutory duties and may delegate its general powers, unless otherwise prohibited by statute, to the Commissioner of Education.⁴

Prior to 2003, the SBE was comprised of the Governor and Cabinet and was responsible for supervising the system of public education as provided by law. In 1998, Florida voters approved Ballot Initiative No. 8, which became effective on January 7, 2003. This amendment revised the composition of the SBE to make it a board of gubernatorial appointees and modified the SBE's authority to be the supervision of the system of *free* public education as provided by law (emphasis added).⁵

Commissioner of Education: Article IX, s. 2 of the State Constitution requires the SBE to appoint a Commissioner of Education. Statute provides that the Commissioner is the chief educational officer of the state and that his or her office must operate all statewide functions necessary to support the SBE.⁶ The Commissioner also serves as the Executive Director of the DOE.⁷

¹ Article IV, s. 4(f) and (g) of the State Constitution.

² Ballot Initiative Number 8, passed Nov. 2, 1998.

³ Section 20.15, F.S.

⁴ *Id.*; Section 1001.02, F.S.

⁵ Ballot Initiative Number 8, passed Nov. 2, 1998..

⁶ Section 1001.10, F.S.

⁷ Section 20.15, F.S.

Prior to 2003, the Commissioner of Education was an elected official responsible for supervising the public education system as provided by law. In 1998, Florida voters approved Ballot Initiative No. 8, which became effective on January 7, 2003. This amendment eliminated the requirement of voter approval for the Commissioner and required his or her appointment to be made by the appointed membership of the SBE.⁸

State University System: In the 2002 General Election, Florida voters approved a ballot initiative⁹ that created Article IX, s. 7 of the State Constitution.¹⁰ Under this section, a system of governance for the state university system (SUS) was established effective January 7, 2003, for purposes of achieving excellence through teaching students, advancing research, and providing public service for the benefit of Florida's citizens, communities, and economies.

The section specifies that the SUS is to be governed by a 17-member statewide board of governors (BOG) comprised of: 14 gubernatorial appointees, subject to Senate confirmation, with staggered terms of seven years; the Commissioner of Education; the chair of the advisory council of faculty senates; and the president of the Florida student association.¹¹

The BOG is required to regulate, control, and manage the SUS. Further, the Constitution specifies that the BOG's responsibilities include, but are not limited to: defining university missions; defining articulation with public schools and community colleges; coordinating and operating the university system; avoiding wasteful duplication of facilities or programs; and establishing the powers and duties of the university boards of trustees.¹² The BOG's management of the SUS is subject to the power of the Legislature to appropriate for the expenditure of funds and the BOG must account for its expenditure of funds as provided by law.¹³

The State Constitution also creates local boards of trustees to administer each state university. Each local board consists of 13 members: six appointees by the Governor; five appointees by the BOG; the chair of the faculty senate; and the president of the student body. Appointed members of each local board are subject to Senate confirmation and serve staggered terms of five years as provided by law. The BOG is required to establish the powers and duties of the local boards.¹⁴

Since the establishment of the SUS in 2003, legislation has twice been enacted to clarify its constitutional governance structure.¹⁵ This legislation created statutes that assigned management powers to the BOG, while reserving fiscal and other constitutionally-required legislative powers for the Legislature. Specifically, statute assigns:

- The BOG responsibilities that include submitting budget requests for the universities under its jurisdiction; adopting strategic plans for the SUS and each member university; governing university admissions; establishing a personnel system for university employees; and establishing tuition for graduate and professional programs and out-of-state fees for all programs.¹⁶

⁸ Ballot Initiative Number 8, passed Nov. 2, 1998.

⁹ Ballot Initiative Number 11, passed Nov. 5, 2002.

¹⁰ Prior to 2003, each state university was governed by a 13-member board of trustees: 12 gubernatorial appointees, subject to Senate confirmation, and the student body president elected on the university's main campus. Appointments were for four-year staggered terms. Section 1001.71, F.S. (2002). Each board of trustees was responsible for governing the university in accordance with law and rules of the SBE. Section 1001.74, F.S. (2002). The SBE exercised oversight authority over the state universities as a component part of the K-20 education system. Section 1001.02, F.S. (2002).

¹¹ Article IX, s. 7(d) of the State Constitution.

¹² Article IX, s. 7(c) and (d) of the State Constitution.

¹³ Article IX, s. 7(d) of the State Constitution.

¹⁴ Article IX, s. 7(c) of the State Constitution.

¹⁵ See chs. 2005-285 and 2007-217, L.O.F.

¹⁶ Sections 1001.705(1)(b) and 1009.24(4), F.S.

- The Legislature responsibilities that include establishing tuition and fees for undergraduates; establishing policies for merit and need-based financial aid and for the expenditure of, and accountability for, legislatively appropriated funds; and establishing policies relating to the health, safety, and welfare of university students and employees.¹⁷

In July 2007, litigation challenging the constitutionality of the above-described statutes, as well as numerous other sections of law, was filed by Bob Graham, the BOG, and others against Senate President Ken Pruitt and House Speaker Marco Rubio.¹⁸ The plaintiffs have amended their complaint three times. In their latest complaint filed on February 4, 2008, the plaintiffs argue, among other things, that statutes providing for the Legislature to determine undergraduate tuition and fees and placing limitations on the fees that universities may collect violate: (a) Article IX, s. 7 of the State Constitution, authorizing the BOG to operate the SUS; and (b) Article II, s. 7 of the State Constitution, prohibiting one branch of government from exercising powers appertaining to another branch.¹⁹ On February 26, 2008, President Pruitt and Speaker Rubio filed a Motion to Strike Allegations of the Third Amended Complaint and a Motion to Dismiss the Third Amended Complaint.

Effect of Proposed Changes: The joint resolution, if adopted by the voters, would revise the governance structure for public education in this state in the manner explained below.

Commissioner of Education and the SBE: The Commissioner of Education would be a member of the Cabinet, who is elected by the voters, rather than a SBE appointee. Further, the appointed membership of the SBE would be replaced with the Governor and Cabinet. Finally, the Commissioner of Education would be authorized to supervise the public education system as provided by law and would join the Governor and other Cabinet members as a trustee of the Internal Improvement Trust Fund and Land Acquisition Trust Fund and as the agency head for the Florida Department of Law Enforcement.²⁰ Accordingly, under these amendments, education governance would be restored to its 1998 structure with respect to the Commissioner, Cabinet, and SBE.

State University System: The BOG would be retained in the governance structure for the SUS, but its authority would be to administer the SUS as provided by law, rather than to govern the SUS, subject to the Legislature's power to appropriate. The membership of the BOG would be comprised of six gubernatorial appointees, subject to Senate confirmation, with staggered four-year terms, rather than 14 gubernatorial appointees, subject to Senate confirmation, with staggered seven-year terms. The Commissioner of Education, chair of the advisory council of faculty senates, and president of the Florida student association would continue to be members.

Further, each local board of trustees would be comprised of 11 gubernatorial appointees, subject to Senate confirmation, rather than six gubernatorial and five BOG appointees, subject to Senate confirmation. The chair of the faculty senate and president of the university student body would continue to be members. The powers and duties of each local board would be as provided by law, rather than established by the BOG.

¹⁷ Section 1001.705(1)(c), F.S.

¹⁸ *Bob Graham, et al v. Ken Pruitt, President of the Florida Senate and Marco Rubio, Speaker of the Florida House of Representatives*, Amended Complaint for Declaratory Judgment, Case No. 2007-CA-1818 (Fla. 2nd Judicial Circuit).

¹⁹ *Bob Graham, et al vs. Ken Pruitt, President of the Florida Senate and Marco Rubio, Speaker of the Florida House of Representatives*, Third Amended Complaint for Declaratory Judgment, Case No. 2007-CA-1818 (Fla. 2nd Judicial Circuit).

²⁰ The percentage of cabinet members required to agree in order to act under the following provisions of the State Constitution will be impacted by the addition of the elected Commissioner of Education to the cabinet: (1) Article IV, s. 3 of the State Constitution authorizes the Supreme Court to determine the Governor's capacity or incapacity to serve upon the written suggestion of three cabinet members; (2) Article IV, s. 6 of the State Constitution states that, when provided by law, confirmation by the Senate or by three cabinet members shall be required for appointment to or removal from a statutory office; and (3) Article IV, s. 8 of the State Constitution provides that the Governor with the consent of two cabinet members may grant pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Florida College System: A Florida college system (FCS) would be established for the stated purposes of: maximizing open access for students; responding to community needs for postsecondary academic education and career degree education; and providing associate and baccalaureate degrees that will best meet the state's employment needs. The FCS would be comprised of two-year and four-year public postsecondary educational institutions that grant academic degrees at the undergraduate level as provided by law. These institutions would be prohibited from offering graduate degree programs.

A Florida college board would be created to oversee and coordinate the FCS as provided by law. The seven-member board would be comprised of: (a) six gubernatorial appointees, subject to Senate confirmation, with staggered four-year terms; and (b) the Commissioner of Education. Additionally, local boards of trustees would be created to administer each institution within the FCS as provided by law. Membership for each board would be as provided by law.

Implementation Schedule: The joint resolution would place the proposed amendments on the ballot of the next general election in November 2008, and, if approved by the voters, the amendments would take effect on July 1, 2009. The terms for the currently appointed members of the SBE, BOG, and local boards of trustees and the term for the Commissioner of Education would expire on that effective date. The Governor and Cabinet would be required to appoint a Commissioner of Education to serve until a Commissioner is elected in the November 2010, general election.

C. SECTION DIRECTORY:

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Division of Elections within the Department of State has indicated that in the past the average non-recurring cost of compliance with the publication requirements for a constitutional amendment has been \$60,000; however, this cost has become higher in recent years and can be substantially greater depending on the advertising inches required by a joint resolution.²¹ For example in 2007, publication of the fourteen-page joint resolution relating to property taxes cost \$350,000.²² At the time of this analysis, estimated publication costs for this nine-page joint resolution were not yet available, but are expected to be less than \$350,000.

The elimination of the appointed SBE and the reduction in membership of the statewide BOG may reduce the administrative expenditures associated with the meetings of these boards. Annually, the SBE²³ and BOG²⁴ each spend approximately \$40,000 for travel and per diem costs; however, this savings may be offset by the joint resolution's creation of the Florida college board.

²¹ Information provided by Department of State representatives on February 29, 2008.

²² Committee Substitute for Senate Joint Resolution 2-D, Enrolled (Special Session 2007D).

²³ Information provided by DOE representatives on February 25, 2008.

²⁴ Information provided by BOG representatives on February 27, 2008.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article XI, s.1, of the State Constitution provides for proposed changes to the Constitution by the Legislature:

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

If passed, the proposed amendment must 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.²⁵ The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.²⁶ Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.²⁷

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

B. RULE-MAKING AUTHORITY:

None.

²⁵ Article XI, s. 5(a) of the State Constitution.

²⁶ Article XI, s. 5(d) of the State Constitution

²⁷ Article XI, s. 5(a) of the State Constitution.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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BILL

ORIGINAL

YEAR

House Joint Resolution

A joint resolution proposing amendments to Section 4 of Article IV and Sections 2 and 7 of Article IX, the creation of Section 8 of Article IX, and the creation of a new section in Article XII of the State Constitution to create the position of Commissioner of Education as an elected member of the Cabinet, to revise the membership of the State Board of Education, which shall consist of the Governor and the Cabinet, to revise the membership, terms, and duties of the local boards of trustees and the Board of Governors of the State University System, to establish the Florida College System, to provide for a local board of trustees to govern each institution in the Florida College System, to provide for the Florida College Board, and to provide an effective date.

Be It Resolved by the Legislature of the State of Florida:

That the following amendments to Section 4 of Article IV and Sections 2 and 7 of Article IX, the creation of Section 8 of Article IX, and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election:

ARTICLE IV

EXECUTIVE

SECTION 4. Cabinet.--

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28 (a) There shall be a cabinet composed of an attorney
 29 general, a chief financial officer, ~~and~~ a commissioner of
 30 agriculture, and a commissioner of education. In addition to the
 31 powers and duties specified herein, they shall exercise such
 32 powers and perform such duties as may be prescribed by law. In
 33 the event of a tie vote of the governor and cabinet, the side on
 34 which the governor voted shall be deemed to prevail.

35 (b) The attorney general shall be the chief state legal
 36 officer. There is created in the office of the attorney general
 37 the position of statewide prosecutor. The statewide prosecutor
 38 shall have concurrent jurisdiction with the state attorneys to
 39 prosecute violations of criminal laws occurring or having
 40 occurred, in two or more judicial circuits as part of a related
 41 transaction, or when any such offense is affecting or has
 42 affected two or more judicial circuits as provided by general
 43 law. The statewide prosecutor shall be appointed by the attorney
 44 general from not less than three persons nominated by the
 45 judicial nominating commission for the supreme court, or as
 46 otherwise provided by general law.

47 (c) The chief financial officer shall serve as the chief
 48 fiscal officer of the state, and shall settle and approve
 49 accounts against the state, and shall keep all state funds and
 50 securities.

51 (d) The commissioner of agriculture shall have supervision
 52 of matters pertaining to agriculture except as otherwise
 53 provided by law.

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BILL ORIGINAL YEAR

54 (e) The commissioner of education shall supervise the
 55 public education system in a manner prescribed by law, except as
 56 otherwise provided in this constitution.

57 (f)~~(e)~~ The governor as chair, the chief financial officer,
 58 and the attorney general shall constitute the state board of
 59 administration, which shall succeed to all the power, control,
 60 and authority of the state board of administration established
 61 pursuant to Article IX, Section 16 of the Constitution of 1885,
 62 and which shall continue as a body at least for the life of
 63 Article XII, Section 9(c).

64 (g)~~(f)~~ The governor as chair, the chief financial officer,
 65 the attorney general, ~~and~~ the commissioner of agriculture, and
 66 the commissioner of education shall constitute the trustees of
 67 the internal improvement trust fund and the land acquisition
 68 trust fund as provided by law.

69 (h)~~(g)~~ The governor as chair, the chief financial officer,
 70 the attorney general, ~~and~~ the commissioner of agriculture, and
 71 the commissioner of education shall constitute the agency head
 72 of the Department of Law Enforcement.

73 ARTICLE IX

74 EDUCATION

75 SECTION 2. State board of education.--The governor and the
 76 members of the cabinet shall constitute the state board of
 77 education, which shall be a body corporate and have such
 78 supervision of the public education system as is provided by
 79 law. ~~The state board of education shall be a body corporate and~~
 80 ~~have such supervision of the system of free public education as~~
 81 ~~is provided by law. The state board of education shall consist~~

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BILL ORIGINAL YEAR

82 ~~of seven members appointed by the governor to staggered 4-year~~
 83 ~~terms, subject to confirmation by the senate. The state board of~~
 84 ~~education shall appoint the commissioner of education.~~

85 SECTION 7. State university system.--

86 (a) PURPOSES. In order to achieve excellence through
 87 teaching students, advancing research and providing public
 88 service for the benefit of Florida's citizens, their communities
 89 and economies, the people hereby establish a system of
 90 governance for the state university system of Florida.

91 (b) STATE UNIVERSITY SYSTEM. There shall be a single
 92 state university system comprised of all public universities. A
 93 ~~board of trustees shall administer each public university and a~~
 94 ~~board of governors shall govern the state university system.~~

95 (c) LOCAL BOARDS OF TRUSTEES. Each public local
 96 ~~constituent~~ university shall be administered by a board of
 97 trustees as provided by law ~~consisting of thirteen members~~
 98 ~~dedicated to the purposes of the state university system. The~~
 99 ~~board of governors shall establish the powers and duties of the~~
 100 ~~boards of trustees.~~ Each board of trustees shall consist of
 101 eleven six citizen members appointed by the governor and ~~five~~
 102 ~~citizen members appointed by the board of governors.~~ The
 103 appointed members shall be confirmed by the senate and serve
 104 staggered terms of five years as provided by law. The chair of
 105 the faculty senate, or the equivalent, and the president of the
 106 student body of the university shall also be members.

107 (d) STATEWIDE BOARD OF GOVERNORS. The board of governors
 108 shall administer the state ~~be a body corporate consisting of~~
 109 ~~seventeen members. The board shall operate, regulate, control,~~

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BILL ORIGINAL YEAR

110 ~~and be fully responsible for the management of the whole~~
 111 ~~university system as provided by law. These responsibilities~~
 112 ~~shall include, but not be limited to, defining the distinctive~~
 113 ~~mission of each constituent university and its articulation with~~
 114 ~~free public schools and community colleges, ensuring the well-~~
 115 ~~planned coordination and operation of the system, and avoiding~~
 116 ~~wasteful duplication of facilities or programs. The board's~~
 117 ~~management shall be subject to the powers of the legislature to~~
 118 ~~appropriate for the expenditure of funds, and the board shall~~
 119 ~~account for such expenditures as provided by law. The governor~~
 120 shall appoint to the board six ~~fourteen~~ citizens dedicated to
 121 the purposes of the state university system. The appointed
 122 members shall be confirmed by the senate and serve staggered
 123 terms of four ~~seven~~ years as provided by law. The commissioner
 124 of education, the chair of the advisory council of faculty
 125 senates, or the equivalent, and the president of the Florida
 126 student association, or the equivalent, shall also be members of
 127 the board.

128 SECTION 8. Florida college system.--

129 (a) PURPOSES. In order to maximize open access for
 130 students, respond to community needs for postsecondary academic
 131 education and career degree education, and provide associate and
 132 baccalaureate degrees that will best meet the state's employment
 133 needs, the people hereby establish a system of governance for
 134 the Florida college system.

135 (b) FLORIDA COLLEGE SYSTEM. There shall be a single
 136 Florida college system comprised of two-year and four-year
 137 public postsecondary educational institutions that grant

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BILL ORIGINAL YEAR

138 academic degrees at the undergraduate level as provided by law.
 139 An institution within the Florida college system may not offer
 140 graduate degree programs.

141 (c) LOCAL BOARDS OF TRUSTEES. Each institution within the
 142 Florida college system shall be governed by a local board of
 143 trustees as provided by law. The membership of each local board
 144 of trustees shall be as provided by law.

145 (d) FLORIDA COLLEGE BOARD. The Florida college board
 146 shall oversee and coordinate the Florida college system as
 147 provided by law. The governor shall appoint to the board six
 148 citizens dedicated to the purposes of the Florida college
 149 system. The appointed members shall be confirmed by the senate
 150 and serve staggered terms of four years as provided by law. The
 151 commissioner of education shall also be a member of the board.

152 ARTICLE XII

153 SCHEDULE

154 Cabinet, state board of education, elected commissioner of
 155 education, state university system, and Florida college
 156 system.--

157 (a) The amendments to Section 4 of Article IV and Sections
 158 2 and 7 of Article IX and the creation of Section 8 of Article
 159 IX, which create a cabinet position for an elected commissioner
 160 of education to supervise the public education system as
 161 provided by law, revise the membership of the state board of
 162 education to consist of the governor and the cabinet, revise the
 163 manner of appointment for members of the local boards of
 164 trustees for the state university system, revise the membership,
 165 terms, and duties of the statewide board of governors, and

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BILL ORIGINAL YEAR

166 establish the Florida college system, and this section, if
 167 submitted to the electors of this state for approval or
 168 rejection at the next general election and if approved, shall
 169 take effect July 1 of the year following such general election.

170 (b) On the effective date of these amendments, the terms
 171 of the members serving on the state board of education, the
 172 statewide board of governors, and the local boards of trustees
 173 and the term of the commissioner of education shall expire.

174 (c) On the effective date of these amendments, the
 175 governor and cabinet shall appoint a commissioner of education
 176 to serve until a commissioner of education is elected in the
 177 next general election following the adoption of these
 178 amendments.

179 BE IT FURTHER RESOLVED that the following statement be
 180 placed on the ballot:

181 CONSTITUTIONAL AMENDMENTS

182 ARTICLE IV, SECTION 4

183 ARTICLE IX, SECTIONS 2, 7, AND 8

184 ARTICLE XII

185 RESTRUCTURING THE STATE CABINET; ELECTED COMMISSIONER OF
 186 EDUCATION; RESTRUCTURING THE LOCAL BOARDS OF TRUSTEES AND THE
 187 STATEWIDE BOARD OF GOVERNORS OF THE STATE UNIVERSITY SYSTEM;
 188 ESTABLISHING THE FLORIDA COLLEGE SYSTEM.--Proposing amendments
 189 to the State Constitution which will create an elected
 190 Commissioner of Education who will be a member of the Cabinet
 191 and will be responsible for the supervision of public education
 192 as provided by law; include the Commissioner of Education with
 193 other Cabinet members as a trustee of the Internal Improvement

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<p>194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221</p>	<p>Trust Fund and the Land Acquisition Trust Fund and as agency head of the Department of Law Enforcement; eliminate an appointed State Board of Education and replace the board with the Governor and the Cabinet; provide that the State Board of Education will be responsible for the supervision of public education as provided by law; revise the membership of the local boards of trustees by eliminating the authority of the statewide Board of Governors to appoint members; limit the authority and duties of the local boards of trustees as provided by law; revise the membership of the statewide Board of Governors by reducing the number of appointed members and their terms; limit the authority of the statewide Board of Governors to administer the State University System as provided by law; establish the Florida College System comprised of 2-year and 4-year public postsecondary educational institutions that grant academic degrees at the undergraduate level as provided by law; provide for the governance of each institution within the Florida College System by a local board of trustees as provided by law; provide that the Florida College Board, which shall be comprised of the Commissioner of Education and six citizens appointed by the Governor and confirmed by the Senate, shall oversee and coordinate the Florida College System as provided by law; provide that the terms of the currently appointed members of the State Board of Education, local boards of trustees, and the statewide Board of Governors and the term of the currently appointed Commissioner of Education shall expire July 1 of the year following the adoption of these amendments in the next general election; provide for the appointment of a Commissioner</p>	

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BILL

ORIGINAL

YEAR

222 of Education by the Governor and Cabinet until a Commissioner of
223 Education is elected in the next general election following the
224 adoption of these amendments; and provide that these amendments
225 shall take effect July 1 of the year following the next general
226 election.

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Schools & Learning Council
2 Representative(s) Pickens offered the following:

3
4 **Amendment (with ballot amendment)**

5 Remove lines 171-173 and insert:

6 of the members serving on the state board of education and the
7 statewide board of governors and the term of the commissioner of
8 education shall expire. The term of a member of a local board of
9 trustees shall not expire on the effective date of these
10 amendments, but the term shall expire at the end of the term for
11 which the member was originally appointed.

12
13
14
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16 -----
17 **B A L L O T A M E N D M E N T**

18 Remove lines 217-221 and insert:

19 State Board of Education and the statewide Board of Governors
20 and the term of the currently appointed Commissioner of
21 Education shall expire July 1 of the year following the adoption
22 of these amendments in the next general election; provide that

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 the term of a member of a local board of trustees shall expire
24 at the end of the term for which the member was originally
25 appointed; provide for the appointment of a Commissioner

Biography

F. Philip Blank is President of Blank & Meenan, P.A. He is an A.V. rated lawyer in the Martindale Hubbell law directory. Mr. Blank spent more than six years with the Florida House of Representatives and was its first full-time General Counsel. He also served as staff counsel to numerous House committees.

Mr. Blank received a Bachelor of Arts degree from the University of South Florida and a Juris Doctor from Florida State University. He is admitted to practice before all Florida courts; the Federal Circuit Courts, Fifth and Eleventh Circuits; and the United States Supreme Court.

He served as Vice Chairman of the Governor's Commission on the Division of Administrative Hearings in 1985-86, the Judicial Nomination Commission for the Second Judicial Circuit 1987-1991 and as its Chairman in 1990, was appointed by the Speaker of the House to the Taxation and Budget Reform Commission in 1990.

He has represented numerous state agencies as general and/or litigation counsel, including the Florida Patient's Compensation Fund, Florida Prepaid College Board, the Neurological Injury Compensation Association, the Florida Department of Health and Rehabilitative Services, the Agency for Health Care Administration, and the Florida Healthy Kids Corporation.

Presentation before the
Florida House of Representatives

Schools & Learning Council
212 Knott Building

March 7, 2008

F. Philip Blank
Blank & Meenan, P.A.

I. The Commissioner of Education's Historical Role in the Florida Constitution

Article V, Section 17. The Governor shall be assisted by a Cabinet of administrative officers, consisting of a Secretary of State, Attorney General, Comptroller, Treasurer, Surveyor General, **Superintendent of Public Instruction**, Adjutant General, and Commissioner of Immigration. Such officers shall be appointed by the Governor and confirmed by the Senate, and shall hold their offices the same time as the Governor, or until their successors shall be qualified.

Art. V, § 17 Fla. Const. (1868)

Section 4. Cabinet.—

(a) There shall be a cabinet composed of a secretary of state, an attorney general, a comptroller, a treasurer, a commissioner of agriculture and **a commissioner of education.**

Art. IV, § 4, Fla. Const. (1968)

Section 4. Cabinet.—

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture.

Art. IV, § 4, Fla. Const. (1998)

II. The Role of the Legislature in Florida's Appropriations Process in Florida

The Florida Constitution

ARTICLE II General Provisions

Section 3. Branches of government.—

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

ARTICLE III Legislature

Section 19. State Budgeting, Planning and Appropriations Processes.--

(a) Annual Budgeting.

(1) General law shall prescribe the adoption of annual state budgetary and planning processes and require that detail reflecting the annualized costs of the state budget and reflecting the nonrecurring costs of the budget requests shall accompany state department and agency legislative budget requests, the governor's recommended budget, and appropriation bills.

* * *

(3) As prescribed by general law, each state department and agency shall be required to submit a legislative budget request that is based upon and that reflects the long-range financial outlook adopted by the joint legislative budget commission or that specifically explains any variance from the long-range financial outlook contained in the request.

(4) For purposes of this section, the terms department and agency shall include the judicial branch.

* * *

(b) APPROPRIATION BILLS FORMAT. Separate sections within the general appropriation bill shall be used for each major program area of the state budget; ... spending authorizations for operations; and spending authorizations for capital outlay. Additionally, appropriation bills passed by the legislature shall include an itemization of specific appropriations that exceed one million dollars (\$1,000,000.00) in 1992 dollars. For purposes of this subsection, "specific appropriation," "itemization," and "major program area" shall be defined by law. This itemization threshold shall be adjusted by general law every four years

...

Florida Statutes

215.31 State funds; deposit in State Treasury.--Revenue, including licenses, fees, imposts, or exactions collected or received under the authority of the laws of the state by each and every state official, office, employee, bureau, division, board, commission, institution, agency, or undertaking of the state or the judicial branch shall be promptly deposited in the State Treasury, ... and no money shall be paid from the State Treasury except as appropriated and provided by the annual General Appropriations Act, or as otherwise provided by law.

215.32 State funds; segregation.—

(1) All moneys received by the state shall be deposited in the State Treasury unless specifically provided otherwise by law and shall be deposited in and accounted for by the Chief Financial Officer within the following funds, which funds are hereby created and established:

- (a) General Revenue Fund.
- (b) Trust funds.
- (c) Budget Stabilization Fund.

(2) The source and use of each of these funds shall be as follows:

(a) The General Revenue Fund shall consist of all moneys received by the state from every source whatsoever, except as provided in paragraphs (b) and (c). ...

1011.91 Additional appropriation.—

(1) **Except as otherwise provided in the General Appropriations Act, all moneys received by universities, from student fees authorized in s. 1009.24, from federal sources, from private sources, and from vending machine collections, are hereby appropriated to the use of the respective universities collecting same, to be expended as the university board of trustees may direct;** however, the funds shall not be expended except in pursuance of detailed budgets filed with the Board of Governors and shall not be expended for the construction or reconstruction of buildings except as provided under s. 1013.74.

Originally s. 240.091 (1953)

III. The 2002 Amendment Creating the Board of Governors

SECTION 7. State University System.—

* * *

d. Statewide Board of Governors. The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. ... The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law.

Art. IX, § 7, Fla. Const.

Petition Filed August 6, 2002.

Approved November 5, 2002.

“... the chosen amendment language imposes a clear limitation on the university system’s governance, making it impossible for the management of the executive branch to alter or perform the legislature’s exclusive power.”

“The drafters of the proposed amendment realized that the governance system specified for the State University System would be located within the executive branch. The only descriptive terms used in the Title (“manage”), Ballot Summary (“administer,” “operation”), and Text (“administer,” “administered,” “operate, regulate, control,” “management”) of the proposed amendment are those calling for the exercise of executive responsibility.”

“In contrast, the power to appropriate is clearly a legislative function.”

“Also, unlike other initiatives approved by this Court, the instant proposal does not mandate or compel any legislative actions, whether regulatory or fiscal.”

Initial Brief of the Sponsor, Education Excellence for Florida, pp. 8-9, 17, 19 --
In re: Advisory Opinion to the Attorney General ex rel.
Local Trustees and Statewide Governing Board to Manage Florida’s University System– Case No. SC02-449

“The Attorney General and FER assert that the proposed amendment substantially alters or performs the functions of multiple branches of government. Specifically, they contend that the proposed amendment substantially affects the executive and the legislative branches of government in two ways: (1) it creates a system of governance for the state university system located within the executive branch of government; and (2) it elevates the university board of trustees to a constitutional office and removes a significant portion of the Legislature’s authority to enact legislation regulating the duties and responsibilities of the university boards of trustees and the state board of governors. We disagree.”

* * *

“Because we find that the proposed amendment does not substantially affect or alter any provision in the state constitution, the ballot summary is not defective in this regard.”

In re: Advisory Opinion to the Attorney General ex rel.
Local Trustees and Statewide Governing Board to Manage Florida’s University System,
819 So. 2d 725 (Fla. 2002)
(May 23, 2002)

“Under the present statutory system, the legislature has ultimate control over all aspects of university funding. The adoption of the amendment will provide the universities with a measure of control over that part of funding that is deemed to be within the executive power to manage the university system. This control will extend to private funds and to a degree of control over funds appropriated by the legislature from general revenue.”

“First, private funds. The legislative power of appropriation will continue to extend to public monies from general revenue but **will not extend to private funds** received by universities which are restricted by law, trust agreement or contract. Those funds will become the responsibility of the universities and will be beyond the legislative appropriation power. **Private funds** are monies coming from sources outside the public treasury. These funds include fees (such as tuition and student fees), federal contracts and grants, and private money contributed to foundations.”

Education Excellence of Florida's Response to
Questions from the Florida Board of Education, p. 7 (August 23, 2002).

IV. The Courts Become Involved

“The plain language of the provision clearly contemplates that the Board of Governors’ exercise of its powers is subject only to the legislature’s authority to appropriate funds, to confirm the Board’s appointed members, and to set members’ staggered terms.”

“... the Board of Governors’ power to adopt rules regarding university admissions flows directly from the Florida Constitution.”

NAACP, Inc. v. Florida Bd. Of Regents,
876 So. 2d 636 (Fla. 1st DCA 2004)
(June 18, 2004)

The First Lawsuit

“The relief sought is a declaration answering the following disputed questions ...:

a. Whether ... the State Board of Education, established by Article IX, Section 2; Florida Constitution, may lawfully be designated as the administrator of any state education function other than supervision over the system of free public schools;

b. Whether ... the Commissioner of Education may lawfully perform any functions other than administrator of the system of free public schools and ex officio member of the Board of Governors of higher education, as provide in Article IX, Section 7, Florida Constitution;

c. Whether ... the Board of Governors of the State University System, as an independent and freestanding constitutional board, may lawfully be subjected to the supervisory authority of any other agency of the state, including the State Board of Education; and

d. **What are the exclusive responsibilities, duties, and supervisory powers of the Board of Governors in carrying out the governance of the State University System including the determination of the authority and responsibilities of the individual boards of trustees for each university, the establishment of new programs, and the exclusive ability to approve budgets and expenditures of the system member institutions, and to set tuition for each state university.”**

Second Amended Complaint, pp. 7-8 (July 11, 2005)

Floridians for Constitutional Integrity, Inc., et al. v. State Board of Education, et al.

Case No. 2004 CA 003040

The Trial Court's Decision

“In Count IV, the Plaintiffs questioned the Legislature’s authority to determine tuition rates at state universities. Plaintiffs voluntarily dismissed Count IV on February 8, 2007.”

* . * *

“The Parties have also agreed ... that Article IX, Section 7, ... vests the Board of Governors with full control and authority over the State University System.

“Sections 1001.74 and 1001.75, Florida Statutes (2006), are hereby declared unconstitutional. Sections 1001.02, 1001.03, 1004.03, 1004.22, 1006.71, 1008.32, 1008.46, and 1009.21(11), Florida Statutes (2006), are hereby declared unconstitutional to the extent that they purport to give the State Board of Education control and authority over the State University System.”

Amended Summary Final Judgment, p. 2, 5
Floridians for Constitutional Integrity, Inc., et al. v. State Board of Education, et al.
Case No. 2004 CA 003040 (March 28, 2007)

The Second Lawsuit

Third Amended Complaint for Declaratory Judgment, p. 10-12, 13, 20, 21
Graham, et al. v. Pruitt, et al., Case No. 2007-CA-1818 (February 4, 2008)

“In creating a statewide Board of Governors, the framers and voters intended to vest the Board with broad authority to operate, regulate, control and be fully responsible for the management of the State University System, including the ability to establish tuition and fees.”

“A key component of funding is derived from tuition and fees. **The ability of the Board of Governors to establish the amount of tuition and fees is an essential component of its constitutional authority** to ensure the well-planned operation of the State University System. ... Absent this authority, especially in light of the declining state revenues, the Board of Governors cannot increase total funding to the level necessary ...”

The legislation “... prevent(s) the Board from implementing these measures in the exercise of its constitutional authority ... by maintaining legislative authority over the establishment of tuition, and by locking in an undergraduate tuition rate that is substantially lower than the amount required to provide students with a high quality education.”

“A present controversy exists as to whether the Legislature has exceeded its power of appropriation under Article IX, section 7 and Article VII, section 1 (c) by appropriating funds in Specific Appropriation 156 that are outside the State Treasury and within the Board's constitutional authority to establish and control, and also exceeded the separation of powers limitations imposed by Article 11, section 3.”

“To the extent section 1011.91 purports to appropriate funds generated by the operations of the State University System and within the Board of Governors' constitutional authority to manage and control, **a present controversy exists as to whether the Legislature has exceeded its power of appropriation ...**”

The Question of Intent

In determining the meaning of article IX, section 7, it is the voters' intent that governs, not the individual intentions of the ballot proponents.

Advisory Opinion to Governor—1996 Amendment 5, 706 So. 2d 278 (Fla. 1997)
Williams v. Smith, 360 So. 2d 417 (Fla. 1978)

The voters' intent is to be gleaned from the text of the amendment or, if necessary, by examining information put broadly before the voters about the proposed amendment.

Fla. Hospital Waterman, Inc. v. Buster, 932 So. 2d 344 (Fla. 5th DCA 2006)

Brown v. Firestone 382 So.2d 654 (1980)

“The... Legislature is vested with authority to enact appropriations and reasonably to direct their use... (and)... may attach qualifications or restrictions to the use of appropriated funds.”

“... (A)n appropriations bill must not change or amend existing law on subjects other than appropriations.”

“(The Constitution) will (support) a qualification or restriction only if it directly and rationally relates to the purpose of an appropriation and... if the qualification or restriction is a major motivating factor behind enactment of the appropriation.”

“Has the legislature ... determined that the appropriation is worthwhile or advisable only if contingent upon a certain event or fact, or is the qualification or restriction being used merely as a device to further a legislative objective unrelated to the fund appropriated?”

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL
CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

BOB GRAHAM; LOU FREY, JR.;
TALBOT "SANDY" D'ALEMBERTE;
JOAN RUFFIER; BOARD OF
GOVERNORS OF THE STATE
UNIVERSITY SYSTEM OF FLORIDA,
a Florida public corporation; BRUCE W.
HAUPTLI; JAMES P. JONES; HOWARD
B. ROCK; ERIC H. SHAW; MANOJ
CHOPRA and FREDERICK R. STROBEL,

Case No. 2007-CA-1818

Plaintiffs,

v.

KEN PRUITT, President of the Florida
Senate; and MARCO RUBIO, Speaker of
the Florida House of Representatives, on
behalf of the Florida Legislature,

Defendants.

**MOTION BY KEN PRUITT,
AS PRESIDENT OF THE FLORIDA SENATE,
AND MARCO RUBIO,
AS SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES,
TO DISMISS THE THIRD AMENDED COMPLAINT**

Defendants Ken Pruitt, as President of the Florida Senate, and Marco Rubio, as
Speaker of the Florida House of Representatives, pursuant to Florida Rule of Civil
Procedure 1.140, respond to the Third Amended Complaint as set forth below.

INTRODUCTION

By its order of January 3, 2008, the Court dismissed the Second Amended
Complaint, but gave Plaintiffs "a final chance" to amend their complaint again. Plaintiffs
filed and served their Third Amended Complaint on February 4, 2008. The Third
Amended Complaint challenges fewer laws than the previous complaint, and, in part, it

does so in separate counts, but it does not comply with the Court's order of January 3, 2008, in many respects. It should be dismissed for that reason, as well as others discussed below.¹

In addition to claims based on article IX, section 7 of the Florida Constitution, in some counts of the Third Amended Complaint Plaintiffs also attempt to state causes of action under other constitutional provisions:

- Article II, section 3 (separation of powers);
- Article III, section 12 (appropriations "single subject"); and, curiously,
- Article VII, section 1(c), which provides that "[n]o money shall be drawn from the treasury except in pursuance of appropriation made by law."

The Third Amended Complaint (the "Complaint") is, once again, a legally insufficient pleading. The Complaint again fails to allege a legally sufficient cause of action to declare any of the laws in question unconstitutional. It again fails to allege facts sufficient to establish Plaintiffs' standing. It again fails to plead facts showing a justiciable controversy as to certain counts of the Complaint.

¹ The January 3, 2008 Order gave the Individual Plaintiffs "a final chance to file an amended complaint which specifically and separately addresses each Individual Plaintiff's 'special injury' resulting from a specific statutory enactment or identifies a challenge to a specific appropriation or unlawful expenditure of public funds; each and all such challenges shall be set forth in separate counts by Plaintiff, by challenged enactment or appropriation, and containing only allegations of ultimate fact." (Italics in original.)

It gave BOG "a final chance to file an amended complaint *alleging with specificity, ultimate facts as to how each challenged enactment, set forth in a separate count as to each, prevents the Board of Governors from performing its constitutional duties or exercising its constitutional powers. Furthermore, the amended complaint . . . shall contain specific allegations of ultimate fact as to how each challenge constitutes a present controversy*, showing there is a 'bona fide, actual, present, practical need for the declaration.'" (Italics in original.)

A review of the Third Amended Complaint reveals that none of the Individual Plaintiffs complied with the Court's order respecting their allegations and challenges, and that BOG did not comply, at least with respect to counts V through VII.

Defendants therefore move that the Third Amended Complaint be dismissed with prejudice. If not entirely dismissed with prejudice, Defendants move that the Court strike certain allegations discussed in Defendant's Motion to Strike, which is being filed and served contemporaneously.

MOTION TO DISMISS

The Complaint should be dismissed on the following grounds, which are discussed in detail in the Memorandum of Law below.

I. Count I

Count I challenges statutes regulating tuition and fees - - sections 1001.705(1)(c)3., 1001.706(3)(c), 1009.24(4)(a)-(c),(16), Florida Statutes. It should be dismissed because it does not allege a legally sufficient cause of action to declare any of these laws unconstitutional under article II, section 3, or article IX, section 7, Florida Constitution. It should also be dismissed as to the Individual Plaintiffs because they fail to allege facts establishing standing and a justiciable controversy as to themselves, as discussed below.

II. Count II

Count II likewise challenges statutes regulating tuition and fees - - sections 1001.705(1)(c)3., 1001.706(3)(c), 1009.24, Florida Statutes. It should be dismissed because it does not allege a legally sufficient cause of action to declare any of the laws in question unconstitutional under article II, section 3, or article IX, section 7, Florida Constitution. It should also be dismissed as to the Individual Plaintiffs because they fail to allege facts establishing standing and a justiciable controversy as to themselves, as discussed below.

III. Count III

Count III challenges a statute governing appropriations and correlative tuition and fees (section 1011.41, Florida Statutes) and a provision of the 2007 General Appropriations Act (Ch. 2007-72, § 2, subsection 156, Laws of Florida). It should be dismissed because it does not allege a legally sufficient cause of action to declare these laws unconstitutional under article II, section 3, article III, section 12, or article IX, section 7, Florida Constitution. Insofar as the Individual Defendants seek to challenge section 1011.41, it should also be dismissed as to the Individual Plaintiffs because they fail to allege facts establishing standing and a justiciable controversy as to themselves, as discussed below.

IV. Count IV

Count IV likewise challenges a statute governing appropriations and correlative tuition and fees (section 1011.4106, Florida Statutes) and the same provision of the 2007 General Appropriations Act challenged in Count III (Ch. 2007-72, § 2, subsection 156, Laws of Fla.). It should be dismissed because it does not allege a legally sufficient cause of action to declare these laws unconstitutional under article II, section 3, article III, section 12, or article IX, section 7, Florida Constitution. Insofar as the Individual Defendants seek to challenge section 1011.4106, it should also be dismissed as to the Individual Plaintiffs because they fail to allege facts establishing standing and a justiciable controversy as to themselves, as discussed below.

V. Count V

Count V challenges section 1001.74, Florida Statutes, which governs various non-spending, non-tuition university activities. It should be dismissed because, on the

facts alleged, no Plaintiff has standing to challenge this law and the Complaint alleges no justiciable controversy sufficient to invoke the Court's jurisdiction under the Declaratory Judgment Act.

Alternatively, Count V should be dismissed because it does not allege a legally sufficient cause of action to declare this law unconstitutional under article II, section 3, or article IX, section 7, Florida Constitution.

VI. Count VI

Count VI challenges section 1001.74(1)(e), Florida Statutes, which governs university rulemaking for functions granted by law and not within BOG's constitutional purview.² It should be dismissed because, on the facts alleged, no Plaintiff has standing to challenge this law and the Complaint alleges no justiciable controversy sufficient to invoke the Court's jurisdiction under the Declaratory Judgment Act.

Alternatively, Count VI should be dismissed because it does not allege a legally sufficient cause of action to declare this law unconstitutional under article II, section 3, or article IX, section 7, Florida Constitution.

VII. Count VII

Count VII challenges section 1001.706, Florida Statutes, which governs BOG rulemaking for functions granted by law and not within BOG's constitutional purview.³ It

² Section 1001.74(1)(e) provides: "Each board of trustees shall adopt rules pursuant to chapter 120 when acting pursuant to statutory authority derived from the Legislature. Each board of trustees may adopt rules pursuant to chapter 120 when exercising the powers, duties, and authority granted by s. 7, Art. IX of the State Constitution." (Emphasis added.)

³ Section 1001.706(1)(b) provides: The Board of Governors shall adopt rules pursuant to chapter 120 when acting pursuant to statutory authority derived from the Legislature. The Board of Governors may adopt rules pursuant to chapter 120 when exercising the powers, duties, and authority granted by s. 7, Art. IX of the State Constitution." (Emphasis added.)

should be dismissed because, on the facts alleged, no Plaintiff has standing to challenge this law and the Complaint alleges no justiciable controversy sufficient to invoke the Court's jurisdiction under the Declaratory Judgment Act.

Alternatively, Count VII should be dismissed because it does not allege a legally sufficient cause of action to declare this law unconstitutional under article II, section 3, or article IX, section 7, Florida Constitution.

VIII. COUNT VIII

Count VIII challenges the same provision of the 2007 General Appropriations Act which is the subject of Counts III and IV - - Ch. 2007-72. § 2, Subsection 156, Laws of Fla. It should be dismissed because it does not allege a legally sufficient cause of action to declare that provision unconstitutional under article II, section 3, article III, section 12, article VII, section 1(c), or article IX, section 7, Florida Constitution.

IX. COUNT IX

Count IX challenges a statute governing appropriations and correlative tuition and fees - - section 1011.91, Florida Statutes. It should be dismissed because it does not allege a legally sufficient cause of action to declare this law unconstitutional under article II, section 3, article III, section 12, article VII, section 1(c), or article IX, section 7, Florida Constitution. Insofar as the Individual Defendants seek to challenge section 1011.91, it should also be dismissed as to the Individual Plaintiffs because they fail to allege facts establishing standing and a justiciable controversy as to themselves, as discussed below.

MEMORANDUM OF LAW

I. THE "TUITION AND FEE" COUNTS -- I, II, III, IV, VIII AND IX -- DO NOT STATE A LEGALLY SUFFICIENT CLAIM UNDER ARTICLE IX, SECTION 7, AND ARTICLE II, SECTION 3, FLORIDA CONSTITUTION, AS A MATTER OF LAW.

For the reasons detailed below, none of these Plaintiffs have the legal capacity or standing to maintain the affirmative constitutional challenges Plaintiffs allege in Counts I and II. Moreover, for reasons discussed below, the Individual Plaintiffs do not have standing to challenge the statutes alleged in Counts III, IV, and VIII, and IX, other than the alleged provision of the 2007 General Appropriations Act, since their allegations do not establish the required special injury as citizens or taxpayers to challenge these statutes, and show no justiciable controversy about these laws between the Individual Plaintiffs and the Defendants.

However, even if it is assumed that one or more of the Plaintiffs has the requisite standing and has shown the requisite justiciability, Counts I, II, III, IV, VIII and IX (collectively, the "tuition and fee counts") must be dismissed for an independent reason: As a matter of law, none of them states a legally sufficient cause of action for the unconstitutionality of the laws Plaintiffs seek to challenge.

The Supreme Court has held that, in an action seeking a declaratory judgment of facial unconstitutionality, the circuit court may properly grant a motion to dismiss the complaint if it does not state a viable cause of action for unconstitutionality as a matter of law. *Sullivan v. Askew*, 348 So.2d 312, 314 (Fla. 1977). The trial court in *Sullivan* granted a motion to dismiss the complaint for declaratory judgment on the grounds that the court lacked jurisdiction of the cause and that the complaint failed to state a cause of action. On appeal, the Supreme Court held as follows:

The trial judge was in error when he held that the court was without jurisdiction, but because, as explained below, the clemency power is exclusively in the executive branch, he was correct in determining that the complaint fails to state a cause of action.

* * *

Accordingly, the order of the trial court, insofar as it holds that it is without jurisdiction, is reversed. We affirm that portion of the order finding that the complaint fails to state a cause of action and ordering that the complaint be dismissed.

Id. at 314, 316 (emphasis added). See also, *Criterion Ins. Co. v. Department of Insurance*, 458 So. 2d 22, 25-26 (Fla. 1st DCA 1984) (proper to grant motion to dismiss a complaint alleging facial unconstitutionality of statute and seeking declaratory relief where no facts were necessary to decision, and complaint failed to state a cause of action as a matter of law).

A. PLAINTIFFS' ARTICLE IX, SECTION 7 AND ARTICLE II, SECTION 3 CLAIMS IN THE TUITION AND FEE COUNTS REST ON ERRONEOUS LEGAL PREMISES.

In the tuition and fee counts, Plaintiffs seek to challenge, under article IX, section 7, Florida Constitution, the facial validity of several statutes that regulate tuition and fees charged by state universities, and a provision in the 2007 General Appropriations Act that conditions and limits the expenditure of tuition and fee revenues by universities.⁴

⁴ §1001.705(1)(c)3., Fla. Stat. ("the Legislature has the following responsibilities Establishing tuition and fees."); §1001.706(3)(c), Fla. Stat (BOG "shall establish tuition and fees pursuant to ss. 1009.24 and 1009.26."); §1009.24, Fla. Stat. (establishing tuition, year-to-year indexing of tuition, prescribing tuition differentials among classes of state universities); §1011.41, Fla. Stat. ("Funds provided to state universities in the General Appropriations Act are contingent upon each university complying with the tuition and fee policies established in the proviso language and with the tuition and fee policies for state universities included in part II of chapter 1009."); §1011.91, Fla. Stat., (creating a continuing appropriation to local accounts of universities for moneys received from student fees, federal and private sources, and from vending machine collections," and establishing limitations on the uses to which such funds may be put); Ch. 2007-72, § 2, subsection 156, Laws of Fla., (and §1011.4106, Fla. Stat., to the same effect), providing that the expenditure of tuition and fee revenues from local accounts by each university shall not exceed authority legislatively granted.

All of their article IX, section 7 claims rest on premises that are invalid as a matter of law:

1. The assumption that, because from time to time the Legislature has permitted tuition and fee revenues to be maintained in accounts outside the state treasury proper (subject to continuing appropriations and conditions), tuition and fees somehow are not state funds, and are outside the Legislature's constitutional appropriations power. (Complaint, ¶¶ 21, 53, 56, 91, 93, 97)
2. The premise that article IX, section 7(d), Florida Constitution, displaced the Legislature's appropriation power over tuition and fee setting at public universities, and now gives BOG the power to impose such charges and direct their expenditure – *i.e.*, to appropriate. (Complaint, ¶¶ 16, 54, 92, 100)

As will be seen below, each of those notions is profoundly wrong, as a matter of law. Plaintiffs' article IX, section 7 claims in the tuition and fee counts therefore fail as a matter of law, and should be dismissed.

B. UNIVERSITY TUITION AND FEES ARE STATE FUNDS SUBJECT TO THE LEGISLATURE'S APPROPRIATIONS POWER.

Contrary to Plaintiffs' assumption, university tuition and fees are state funds, which are subject to the Legislature's control under the appropriation power. The fact that the Legislature, by certain continuing appropriations statutes, has permitted tuition and fees to be maintained in university accounts outside the state treasury does not alter their character as state funds, and does not deprive the Legislature of authority over them.

It has long been established that the "Constitution requires legislative appropriation or authorization for the use of any funds from whatever source by a public

agency or official”; that the Constitution and laws require that “all revenues received by any state officer from any source shall be promptly deposited in the State Treasury” unless otherwise provided by law; and that legislative authorization is required for expenditure by the Executive Branch. *Advisory Opinion to the Governor*, 200 So. 2d 534, 536 (Fla. 1967) (addressing art. IV, § 24 and art. IX, § 4, Fla. Const. (1885); see now, art. IV, § 4(c), art. VII, § 1, Fla. Const. (1968)) (emphasis added). See also, art. VII, § 1(e), FLA. CONST. (“state revenues” for revenue growth purposes includes fees charged by the BOG or trustees of universities, but not “fees, and charges by school district[s]”).

Consistent with those constitutional requirements, section 215.31, Florida Statutes, provides now, as it continuously has since that *Advisory Opinion*:

Revenue, including licenses, fees, imposts, or exactions collected or received under the authority of the laws of the state by each and every state official, office, employee, bureau, division, board, commission, institution, agency, or undertaking of the state or the judicial branch shall be promptly deposited in the State Treasury, and immediately credited to the appropriate fund as herein provided, properly accounted for by the Department of Financial Services as to source and no money shall be paid from the State Treasury except as appropriated and provided by the annual General Appropriations Act, or as otherwise provided by law. (Emphasis added.)

For a time, the Legislature has permitted tuition and fees to be maintained outside the state treasury in university accounts, while providing for a continuing appropriation of tuition and fee revenues maintained in those accounts. See § 1011.91, Fla. Stat.,⁵ see also, § 240.277, Fla. Stat. (2000). Such Legislative permission does not

⁵ § 1011.91(1), Fla. Stat.: “Except as otherwise provided in the General Appropriations Act, all moneys received by universities, from student fees authorized in s. 1009.24, from federal sources, from private sources, and from vending machine collections, are hereby appropriated to the use of the respective universities collecting same [H]owever, the funds shall not be expended except in pursuance of

change the character of tuition and fees as state funds, however. *Advisory Opinion to the Governor*, 200 So.2d 534; art. VII, § 1(e), FLA. CONST.

The Legislature having the right to establish such continuing appropriations, e.g., *In Re Opinion of the Justices*, 145 Fla. 375, 199 So. 350 (1940); § 215.31, Fla. Stat.; cf. *Brown v. Firestone*, 382 So.2d 654 (Fla. 1980), it is beyond question that the Legislature may revoke or modify a continuing appropriation, and may require that such funds be deposited back into the state treasury. E.g., § 216.011(1)(i), Fla. Stat. ("Continuing appropriation' means an appropriation automatically renewed without further legislative action, period after period, until altered or revoked by the Legislature."); *Advisory Opinion to the Governor*, 200 So. 2d 534, *supra*; § 215.31, Fla. Stat., *supra*; *In re Advisory Opinion to the Governor*, 239 So.2d 1, 10 (Fla. 1970) (general appropriations bill may substitute specific appropriations for prior continuing appropriations.)

Plaintiffs therefore are simply wrong as a matter of law when they assert that university tuition and fees are not state funds. They remain state funds, subject to the Legislature's appropriation power.

C. ARTICLE IX, SECTION 7 DOES NOT REMOVE THE LEGISLATURE'S APPROPRIATION AUTHORITY OVER TUITION AND FEES, AND DOES NOT GRANT BOG THE POWER TO SET SUCH FEES AND APPROPRIATE THEM.

1. THE APPROPRIATE TESTS FOR JUDGING THE LEGAL SUFFICIENCY OF PLAINTIFFS' ARTICLE IX, SECTION 7 CLAIMS.

Well established principles guide the Court in determining whether the tuition and fee counts state a cause of action based on article IX, section 7. The touchstone for

detailed budgets filed with the Board of Governors and shall not be expended for the construction or reconstruction of buildings except as provided under s. 1013.74."

determining meaning of a constitutional amendment adopted by ballot initiative, such as article IX, section 7, is intent of the voters who adopted it. The voters' intent should be ascertained, if possible, from the plain words of the amendment itself, interpreted according to their most usual and obvious meaning. *Advisory Opinion to Governor--1996 Amendment 5*, 706 So. 2d 278 (Fla. 1997). *Accord, Zingale v. Powell*, 885 So. 2d 277 (Fla. 2004); *Ecumenical Ministries of Oregon v. Oregon State Lottery Comm'n*, 871 P.2d 106 (Or. 1994); *Roseburg Sch. Dist. v. City of Roseburg*, 851 P.2d 595 (Or. 1993); *Tivolino Teller House, Inc. v. Fagan*, 926 P.2d 1208 (Colo. 1996).

If the words of the amendment are ambiguous, the Court may then refer to explanatory materials placed broadly before the voters -- such as the ballot summary -- to aid in ascertaining their intent. *E.g., Fla. Hosp. Waterman, Inc. v. Buster*, 932 So. 2d 344, 349-50 (Fla. 5th DCA 2006), *appeal pending*; *Ecumenical Ministries of Or.*, 871 P.2d at 110. It is still the voters' intent, however, that governs when construing a citizens' ballot initiative amendment, not the thought processes and subjective intent of the drafting sponsor. *Williams v. Smith*, 360 So. 2d 417, 419, n.5 (Fla. 1978):

In analyzing a constitutional amendment adopted by initiative rather than by legislative or constitution revision commission vote, the intent of the framers should be accorded less significance than the intent of the voters as evidenced by materials they had available as a predicate for their collective decision. An absence of debate and recorded discussion marks the development of an initiative proposal. To accord the same weight to evidences of the intent of an amendment's framer as is given to debates and dialogue leading a proposal adopted from diverse sources would allow one person's private documents to shape constitutional policy as persuasively as the public's perception of the proposal. This we cannot permit.

Finally, article IX, section 7 must be construed *in pari materia* with other constitutional provisions bearing on the subject to ensure a consistent and logical

meaning that gives effect to each constitutional provision. *E.g.*, *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006); *Advisory Opinion to Governor--1996 Amendment 5*, 706 So. 2d at 281; *Askew v. Fla. Game & Fresh Water Fish Comm'n*, 336 So. 2d 556, 560 (Fla. 1976).

In judging the legal sufficiency of Plaintiffs' tuition / fee claims, the Court should be guided by the foregoing principles, and should put aside the immaterial allegations of the Complaint regarding the drafters' supposed intent.⁶

2. PLAINTIFFS' ARTICLE IX, SECTION 7 CLAIMS ARE INVALID AS A MATTER OF LAW.

Judged under the correct legal tests, Plaintiffs state no legally sufficient claim under article IX, section 7 in the tuition and fee counts. The plain language of article IX, section 7 discloses no hint of an intention on the part of the voters to remove the Legislature's historic revenue-raising and spending authority over tuition and fees at public universities granted in article III, section 1, article VII, section 1(c),(d), and article IX, section 1, of the Florida Constitution.⁷ In fact, the plain language of article IX,

⁶ The allegations of the framers' intentions in paragraphs 16, 92, and 98 of the Complaint are not alleged to have been put before the voters when they voted on the ballot initiative for article IX, section 7. They therefore are immaterial and extraneous surplusage, which Defendant Pruitt has moved to strike.

The allegations about needed funding and intended BOG dispositions of tuition and fee revenues in paragraphs 26, 27, 30, 35, 36, 44, 45 are likewise extraneous and immaterial to the issues before the Court. They deal with the wisdom of education funding policy. However, that is immaterial to the issue before the Court. The constitutional issue is: Who has the constitutional authority to make funding decisions?

⁷ Article IX, section 1(a), Florida Constitution, provides in part: "Adequate provision shall be made by law . . . for the establishment, maintenance, and operation of institutions of higher learning . . . that the needs of the people may require." (Emphasis added.)

As is the case in Florida, when educational institutions are funded by a combination of general taxes and tuition, tuition is a revenue raising measure, substituting in part for funds that would otherwise come from general taxes to support the institutions. *E.g.*, *United States v. Onslow County Bd. of Ed.*, 728 F.2d 628, 636 (4th Cir. 1984). Accordingly, as historically recognized in Florida, settling the relative proportion of public university funding from general taxes and tuition falls under the appropriation power lodged with the Legislature by the Florida Constitution.

section 7 denotes exactly the opposite. It expressly states that the powers granted by that article to BOG are subject to the Legislature's appropriation power. It provides, where pertinent:

The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. (Emphasis added.)

If the amendment's language were not clear enough on its face, the ballot access opinion the Florida Supreme Court for article IX, section 7, and the ballot summary for this amendment settle the issue. In approving placement of the amendment on the ballot, the Supreme Court held -- based on the amendment's language and the ballot summary - - that "[b]ecause we find that the proposed amendment does not substantially affect or alter any provision in the state constitution, the ballot summary is not defective" *Advisory Opinion to the Attorney General Re Local Trustees*, 819 So. 2d 725, 732 (Fla. 2002) (emphasis added). The Supreme Court's opinion was a representation to the voters by the state's highest court that, if adopted, article IX, section 7, would not substantially affect, among other things, then-existing appropriations provisions of the Florida Constitution, which under-girded by a century of precedent, lodge power over university tuition and fees with the Legislature. See, e.g., *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 267 (Fla. 1991) ("[I]t is the legislature's constitutional duty to determine and raise the appropriate revenue to defray the expenses of the state.").

Indeed, the ballot summary placed before the voters discloses not even a whisper of the monumental and unprecedented displacement of the Legislature's appropriation power that Plaintiffs now seek to attribute to article IX, section 7. In its entirety, the ballot summary merely states as follows:

A local board of trustees shall administer each state university. Each board shall have thirteen members dedicated to excellence in teaching, research, and service to community. A statewide governing board of seventeen members shall be responsible for the coordinated and accountable operation of the whole university system. Wasteful duplication of facilities or programs is to be avoided. Provides procedures for selection and confirmation of board members, including one student and one faculty representative per board.

To gain access to the ballot for voters' consideration, the ballot summary could not "fly under false colors" or "hide the ball" as to the amendment's true effect. *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000); *Smith v. Am. Airlines, Inc.*, 606 So. 2d 618 (Fla. 1992); *Fla. Ass'n of Realtors v. Smith*, 825 So. 2d 532 (Fla. 1st DCA 2002). Article IX, section 7 was approved by the voters based on a ballot summary that contained no hint of the vast changes to the scope of the Legislature's appropriation power these Plaintiffs now attribute to article IX, section 7. Plaintiffs, the proponents of the ballot summary, may not now belatedly attribute such sweeping effects to article IX, section 7. Under the correct legal tests, article IX, section 7 cannot be held to displace the Legislature's appropriation authority over university tuition and fees.

That conclusion is apparent when article IX, section 7 is read *in pari materia* with related constitutional provisions, as it must be. See, e.g., *Bush*, 919 So. 2d at 406; *Advisory Opinion to Governor--1996 Amendment 5*, 706 So. 2d at 281; *Askew*, 336 So. 2d at 560. The appropriations power is generally vested in the Legislature by article III, section 1, and article VII, section 1(c),(d), Florida Constitution. In addition, article IX,

section 1(a) of the Florida Constitution specifically provides that “adequate provision shall be made by law for the establishment, maintenance, and operation of institutions of higher learning that the needs of the people may require.” (Emphasis added.) To “maintain” means to “bear the expense of” or to “furnish means for subsistence or existence of”⁸ -- in other words, to fund.

Article IX, section 1(a) therefore vests the power and constitutional responsibility to determine funding for institutions of higher learning in the Legislature. See, e.g., *Bush*, 919 So. 2d at 405 (“This Court has long recognized the constitutional obligation that Florida’s education article [article IX, § 1(a)] places upon the Legislature.”)

In contrast, article IX, section 7 vests power in BOG to “operate, regulate, control, and be fully responsible for the management of” the university system. Those powers do not include the power to raise revenue or determine funding. “Management” means to superintend and administer. *Black’s Law Dictionary*, 960 (6th Ed. 1990). Similarly, “control” means the power to manage, direct, superintend, administer, or oversee. *Black’s Law Dictionary*, 329 (6th Ed. 1990).

Moreover, the construction principle of ejusdem generis applies to the interpretation of article IX, section 7. See *State ex rel. Winton v. Town of Davie*, 127 So. 2d 671, 673 (Fla. 1961) (“[ejusdem generis] may be applied to the construction of constitutional provisions”). See generally, *In re Henson*, 913 So. 2d 579, 587 (Fla. 2005). See also *Bush*, 919 So. 2d at 400; *Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004); *City of Jacksonville v. Continental Can Co.*, 151 So. 488, 489 (Fla. 1933) (“General principles governing the construction of statutes are applicable to the construction of Constitutions with some modifications.”). Applying that principle of

⁸ *Black’s Law Dictionary*, 953 (6th Ed. 1990).

construction, it must be observed that, after describing the general powers of BOG, article IX, section 7(d) provides examples of the sort of power intended for BOG. It states as follows:

These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs.

It is thus obvious that the generally described powers given to BOG by article IX, section 7 (to "operate, regulate, control, and be fully responsible for the management" of the university system) are limited to the sort of executive authority described in the foregoing passage -- the authority required to efficiently manage the operational activities of the various constituent universities. These are classic executive powers. See art. IV, § 1(a), FLA. CONST. ("The governor shall be the chief administrative officer of the state . . .") (Emphasis added). They are not legislative powers.

Simply put, article IX, section 1(a) and article IX, section 7 explicitly distinguish between powers vested in the Legislature and powers granted to BOG. The Legislature is vested with the legislative appropriation power over university funding, art. IX, § 1(a), FLA. CONST.; art. IX, § 7(d), FLA. CONST., while BOG is granted executive power -- the power to manage and operate the university system. Art. IX, § 7(d), FLA. CONST.

Accordingly, all of Plaintiffs' article IX, section 7 claims in the tuition and fee counts are invalid as a matter of law.⁹

⁹ Plaintiffs also invoke article II, section 3, Florida Constitution (the separation of powers provision) in the tuition and fee counts. However, that claim is merely derivative of Plaintiffs' article IX, section 7 claim. Legislative appropriation and regulation of tuition and fees would violate the separation of powers clause only if article IX, section 7 in fact displaced the Legislature's historic appropriation power and gave it to BOG. For the reasons discussed above, that is not the case.

II. THE ARTICLE III, SECTION 12 CLAIMS IN COUNTS III, IV, VIII, AND IX DO NOT STATE A CAUSE OF ACTION, AS A MATTER OF LAW.

In Counts III, IV, VIII and IX, Plaintiffs also attempt to bring facial challenges under article III, section 12, Florida Constitution, which provides: "Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." Each of these article III, section 12 claims is invalid as a matter of law for the reasons discussed below.

A. PLAINTIFFS' ARTICLE III, SECTION 12 CHALLENGES TO SECTIONS OF THE FLORIDA STATUTES ARE LEGALLY INVALID.

Plaintiffs seek to challenge the following statutes based on article III, section 12:

- Section 1011.41, Florida Statutes (Count III), which provides where pertinent:

Funds for the general operations of universities shall be requested and appropriated as Aid to Local Governments Grants and Aids, subject to provisions of the General Appropriations Act. Funds provided to state universities in the General Appropriations Act are contingent upon each university complying with the tuition and fee policies established in the proviso language and with the tuition and fee policies for state universities included in part II of chapter 1009. However, the funds appropriated to a specific university shall not be affected by the failure of another university to comply with this provision.

- Section 1011.4106, Florida Statutes (Count IV), which provides where pertinent:

Any appropriations provided in the General Appropriations Act from the Education/General Student and Other Fees Trust Fund are the only budget authority for the fiscal year to the named universities to expend tuition and out-of-state fees that are collected during the fiscal year and carried forward from the prior fiscal year. The expenditure of tuition and fee revenues from local accounts by each university shall not exceed the authority provided in the General Appropriations Act unless approved pursuant to the provisions of chapter 216. If a court of competent jurisdiction finds that the restriction in this subsection is invalid, the moneys described in this section shall be deposited in the State Treasury.

- Section 1011.91, Florida Statutes (Count IX), which provides where pertinent:

(1) Except as otherwise provided in the General Appropriations Act, all moneys received by universities, from student fees authorized in s. 1009.24, from federal sources, from private sources, and from vending machine collections, are hereby appropriated to the use of the respective universities collecting same, to be expended as the university board of trustees may direct; however, the funds shall not be expended except in pursuance of detailed budgets filed with the Board of Governors and shall not be expended for the construction or reconstruction of buildings except as provided under s. 1013.74.

* * *

(3)(c) No new state appropriation shall be obligated as a source of matching funds for potential federal or private contracts or grants. Upon the termination of any federal or private contracts or grants, the state shall not be obligated to provide continued funding for personnel or project costs related to such contracts or grants.

From even a cursory reading of these statutes and article III, section 12, it is obvious that Plaintiffs' article III, section 12 challenges to these statutes are without legal merit.

Article III, section 12 applies only to General Appropriations Acts. It does not govern the validity of other laws, adopted apart from the General Appropriations Act, that condition appropriations or regulate the expenditure of funds. *Division of Admin. Hrgs. v. School Bd. of Collier County*, 634 So.2d 1127, 1129 (Fla. 1st DCA 1994) ("At the outset, the trial court mistakenly applied article III, section 12 to laws that were not part of the General Appropriations Act. The 'single subject' requirement for appropriations bills applies only to appropriations bills.") Indeed, there can be no dispute that these statutes were properly enacted under the procedure intended by the constitution. They were enacted in the manner that any general law is enacted: subject to full debate apart from the general appropriations act, and thus avoiding the possibility of log-rolling influences in the general appropriations process.

Moreover, even if one could possibly view these statutes as laws governed by article III, section 12, the result would not change. Qualifications or restrictions that rationally relate to the purpose of an appropriation do not offend article III, section 12. See *Division of Admin. Hrgs. v. School Bd. of Collier County*, 634 So.2d at 1129; *In re Advisory Opinion to the Governor*, 239 So. 2d 1, 10-11 (Fla. 1970) (“The Constitution expressly recognizes the power of the Legislature to make appropriations subject to qualifications and restrictions. . . . [which] may limit or qualify the use to which the moneys appropriated may be put and may specify reasonable conditions precedent to their use”) (emphasis supplied).

Florida universities are funded by a combination of general revenues, tuition, and fees. Accordingly, decisions about the amount of general revenue to appropriate for the universities necessarily involves deciding the relative proportion of public university funding that will come from general revenue, tuition, and fees - - which requires specification of the level of tuition and fees that will be complemented by other funding sources. The appropriation of general revenue to support university operations is necessarily intertwined with tuition and fee levels. Accordingly, the Legislature has constitutional authority to condition appropriations of general revenues on the requirement that universities accept the tuition and fee specifications on which the general revenue appropriations are based, as it has done in sections 1011.41 and 1011.4106.¹⁰

Likewise, the Legislature has the constitutional authority to condition expenditures for buildings in section 1011.91 upon use of such funds for proper capital

¹⁰ This would be true even if tuition and fees were not state funds subject to appropriation by the Legislature. Tuition and fees are state funds, however, as demonstrated above.

outlay projects, to preclude obligating new appropriations as a source of matching funds for potential contracts or grants, and to condition expenditures on proper budgeting and accounting. *See id.* *See also*, art. IX, § 7(d), FLA. CONST. (BOG to account for expenditures as provided by law.)

B. PLAINTIFFS' ARTICLE III, SECTION 12 CHALLENGES TO THE 2007 GENERAL APPROPRIATIONS ACT IN COUNTS III, IV, VIII AND IX ARE LEGALLY INVALID.

In Counts III, IV, VIII, and IX, Plaintiffs also purport to facially challenge a portion of the 2007 General Appropriations Act (Ch. 2007-72, § 2, subsection 156, Laws of Florida) based on article III, section 12. The challenged provision reads as follows where pertinent (bracketed numeration of clauses added for clarity of discussion below):

[1] The appropriations provided in Specific Appropriations from the Education and General Student and Other Fees Trust Fund are the only budget authority provided in this act for the 2007-2008 fiscal year to the named universities to expend tuition and fees that are collected during the 2007-2008 fiscal year and carried forward from the prior fiscal year and that are appropriated into local accounts pursuant to section 1011.4106, Florida Statutes. The expenditure of tuition and fee revenues from local accounts by each university shall not exceed the authority provided by these specific appropriations, unless approved pursuant to the provisions of chapter 216, Florida Statutes. If a court of competent jurisdiction finds that the restriction above is invalid, the appropriation made by section 1011.4106, Florida Statutes, is hereby repealed for the 2007-2008 fiscal year and the monies described in that section shall be deposited in the state treasury for expenditure only pursuant to appropriations made by law.

[2] General revenue funds provided in Specific Appropriations 156 through 162 to each of the named universities are contingent upon each university complying with the tuition and fee policies established in the proviso language attached to Specific Appropriation 156, and with the tuition and fee policies for state universities included in Part II of chapter 1009, Florida Statutes.

[3] Funds in Specific Appropriation 156 may not be used to supplement university student health centers that employ at least one

physician working at least 30 hours per week unless the university accepts students' private health insurance.

Clauses [1] and [2] quoted above are rationally related to the purpose of the appropriation, for the reasons discussed under Point II.A. above. They therefore do not offend article III, section 12, as a matter of law.

Plaintiffs characterize these clauses as "substantive in nature." (Complaint, ¶ 94.) That premise, however, depends on Plaintiffs' legally invalid underlying proposition: that article IX, section 7 grants authority to BOG to set tuition and fees and to direct their expenditure. On the contrary, as demonstrated above, the Legislature has constitutional appropriation authority regarding university funding - - including tuition and fee levels -- under article IX, section 7 and under related constitutional provisions. Plaintiffs point to no substantive law that clauses [1] and [2] modify.

Moreover, even if Plaintiffs' "substantive" characterization of these clauses had legal merit (which it does not), any constitutional infirmity under article III, section 12 that would arise from including clauses [1] and [2] in the General Appropriations Act is cured by sections 1011.41 and 1011.4106, Florida Statutes. Those statutes - - which are not general appropriations acts and therefore are not constrained by article III, section 12's "single subject" limitation - - contain the same conditions and limitations as clauses [1] and [2]. See *Division of Admin. Hrgs. v. School Bd. of Collier County*, 634 So.2d 1127. Therefore, regardless of whether the placement clauses [1] and [2] in the General Appropriations Act would offend article III section 12, these provisions are validly and independently imposed by sections 1011.41 and 1011.4106, Florida Statutes.

Nor does clause [3] quoted above violate article III, section 12. It merely provides that the cost of funding operations of student health clinics staffed by full-time

physicians will be shared between available insurance and state funds, so that state funds do not bear the full cost of such operations where other funding sources are available. Plaintiffs point to no substantive law that clause [3] modifies. It is rationally related to the appropriation in question and therefore valid. See *Division of Admin. Hrgs. v. School Bd. of Collier County*, 634 So.2d 1127; *In re Advisory Opinion to the Governor*, 239 So. 2d 1.

III. THE CLAIMS UNDER ARTICLE VII, SECTION 1(c) IN COUNTS VIII AND IX DO NOT STATE A CAUSE OF ACTION, AS A MATTER OF LAW.

In Counts VIII and IX, Plaintiffs include the curious allegation that the portions of the 2007 General Appropriations Act quoted above facially violate article VII, section 1(c), Florida Constitution. For the reasons discussed below, this claim lacks legal merit, as well.

Article VII, section 1(c) has no bearing on the validity of those provisions of the General Appropriations Act. It merely states: "No money shall be drawn from the treasury except in pursuance of appropriation made by law." It cannot and does not invalidate the portions of the General Appropriations Act Plaintiffs allege in Counts VIII and IX. Indeed, the General Appropriations Act is, itself, the very sort of legislative act demanded by article VII, section 1(c) to authorize drawing money from the treasury to fund universities.

From their erroneous premise that tuition and fees are not state funds, Plaintiffs apparently infer that the Legislature has improperly appropriated monies "from the treasury" that are not held in the state treasury. That inference is legally invalid for a number of reasons.

First, the premise that tuition and fees are not state funds is itself invalid, as discussed above. Therefore, Plaintiffs' inference from that invalid premise is likewise legally incorrect.

Moreover, article VII, section 1(c) is immediately juxtaposed to article VII, section 1(d), which states: "Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period." Section 1(d) does not limit the Legislature to appropriating "from the treasury" when the Legislature provides by law for revenue to defray state expenses. The Legislature is authorized by section 1(d) to defray the state's expenses from funds in the state treasury and from other funds under legislative control.

Furthermore, article VII section 1(c) is also juxtaposed to article VII, section 1(e). Section 1(e) makes it clear that state revenues encompass not only general revenues, but also fees charged by the BOG or trustees of the universities.

Accordingly, by force of the plain terms of article VII, the Legislature does not violate section 1(c) when it provides under section 1(d) for defraying "the expenses of the state" by appropriating some revenues from the state treasury proper, and specifying the level of university tuition and fees that will be used to cover some university system expenses.

IV. PLAINTIFFS LACK STANDING AND LEGAL CAPACITY TO MAINTAIN THE NON-TUITION-OR-FEE CLAIMS IN COUNTS V - VII.

None of the non-tuition-or-fee-laws challenged in Counts V – VII involves the exercise of the Legislature's taxing and spending power, or dictates the control or disbursement of public funds. That is centrally important to the Court's standing

analysis. Plaintiffs' purported challenges in these counts therefore are subject to special-injury standing requirements, which Plaintiffs fail to meet.

A. THE INDIVIDUAL PLAINTIFFS LACK STANDING.

The individual Plaintiffs have no standing to challenge these laws. To the extent they claim standing based on their status as public employees or officers, they are subject to the same standing prohibition as BOG itself, discussed below. They may not affirmatively challenge these laws in their capacities as public employees or officials.

To the extent they claim standing in their capacities as citizens and taxpayers, it is well settled that a citizen - taxpayer lacks standing to challenge governmental action unless the citizen plaintiff alleges facts showing that he suffers a special injury distinct from the general public; *i.e.*, that the plaintiff "has been damaged as a private citizen [in a manner] differing from the general public." *United States Steel Corp. v. Save Sand Key, Inc.*, 303 So. 2d 9, 12 (Fla. 1974). *Accord*, *School Bd. of Volusia County v. Clayton*, 691 So. 2d 1066 (Fla. 1997); *North Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154 (Fla. 1985); *Alachua County v. Scharps*, 855 So. 2d 195, 198 (Fla. 1st DCA 2003); *Williams v. Howard*, 329 So. 2d 277 (Fla. 1976).

The individual plaintiffs allege no such special injury. None of them is injured as a private citizen in a manner differing from the general public. Indeed, their allegations are bereft of facts showing they will suffer any injury at all from the operation of these non-tuition-or-fee-setting laws, much less the distinct, special injury required to confer standing on them.

Williams v. Howard, 329 So. 2d 277 (Fla. 1976) considered and rejected similar standing claims by individual plaintiffs who, like the individual Plaintiffs in this case,

alleged themselves to be employees of a state agency affected by legislation, or affiliated with it:

Appellees assert that a dispute exists as to whether the Legislature can constitutionally make the proposed transfer [of Parole Commission functions], and then they assert the legal conclusion that said dispute affects their legal rights under the Florida Career Service System as individuals and as employees of the Parole and Probation Commission. They do not allege that their rights will be adversely affected, much less the nature or type of injury which they might sustain. The allegations fall short of constituting the sort of ultimate facts required by the rule to sustain appellees' standing to attack the Act.

* * *

The bare assertion that their legal rights will be affected under the Career Service System without alleging how or why is simply not sufficient to demonstrate that any question now exists which requires an answer through operation of the Declaratory Judgment Act.

Appellees maintain that the possibility exists that they will be directly injured through (i) job reclassification, (ii) loss of Career Service status or (iii) termination of their employment. . . . [E]ven if the assertions made were a matter of proof before us, they, at best, only represent speculation and conjecture as to events which may or may not occur at some future date.

Although it is possible that reclassification could occur, there is no evidence that such will be the case. Additionally, in the event of a change in the classification system, appellees might receive a lower classification. On the other hand, they may receive the same or higher classification, resulting in equal or enhanced compensation.

The argument that [appellees] will lose their Career Service status by being named Regional Directors likewise is conjectural.

Id., at 281.

The individual Plaintiffs here fail to show standing for the same reasons. Neither the university professors nor the other citizen-plaintiffs (Graham, Frey and D'Alemberte) make any factual allegation showing that their personal legal rights or status – as citizens or even as faculty members – are or will be adversely affected by any of the

non-tuition-or-fee-setting laws. They do not allege, for example, facts showing that the directive to BOG to maintain a personnel system will change their status in any way to their detriment. Similarly, none of them allege facts showing that directing accounting procedures; regulating acquisition, use, or disposition of property; providing for the safety of instructors and students; or directing the establishment of codes of conduct for students will harm their legal status or interests; or, indeed, that any of the matters addressed these laws will do so. The Complaint shows nothing more than conjecture by the individual Plaintiffs, which is both insufficient to confer standing on them, and insufficient to state a justiciable claim by them.

In sum, as to these non-tuition-or-fee-setting laws, the individual Plaintiffs have no standing, and their request for declaratory relief as to the non-tuition-or-fee-setting laws, seeks declaratory relief that would be merely advisory to them, based on mere conjecture and academic interest.¹¹

B. BOG LACKS STANDING AND LEGAL CAPACITY TO MAINTAIN THESE CLAIMS.

It is settled law that public officers and bodies - - including those created by the Constitution, such as BOG - - lack standing to affirmatively challenge the constitutionality of legislation, with one narrow exception: challenges to a law regulating

¹¹The Individual Plaintiffs also lack standing to challenge the statutes regulating tuition and fees in Counts I – IV, VIII, and IX (other than the challenged provisions of the 2007 General Appropriations Act). The individuals do not demonstrate any special injury from these statutes, for the same reasons discussed in text above. Nor do the individuals' claims about these tuition and fee statutes fall within the narrow exception for individuals to challenge the exercise of the spending power on constitutional grounds. Any such "citizen – taxpayer" challenge must allege specific limitations on the taxing and spending power. *E.g., Williams v. Howard, supra*, at 279-80. Moreover, the Individual Plaintiffs must allege facts showing that they, as individuals, are concretely and immediately harmed by these statutes, in order to make out a justiciable claim between them and the Defendants. *Id. See also, Bryant v. Gray*, 70 So. 2d 581; *Martinez v. Scanlan*, 582 So. 2d 1167; *Department of Ins. v. Guarantee Trust Life Ins. Co.*, 812 So.2d 459. The Court's January 3, 2008 Order therefore specifically required them to "*specifically and separately address[] each Individual Plaintiff's 'special injury' resulting from a specific statutory enactment or identify[] a challenge to a specific appropriation or unlawful expenditure of public funds.*" The Individual Plaintiffs fail to do so.

the public officer's control or disbursement of public funds. *E.g., Fuchs v. Robbins*, 818 So. 2d 460 (Fla. 2002) (Property Appraiser, a constitutionally created officer under article 8, § 1(d), Fla. Const., lacks standing to affirmatively challenge the constitutionality of law affecting his official duties). *See also, Department of Ed. v. Lewis*, 416 So. 2d 455 (Fla. 1982). Public officers and agencies may challenge the constitutionality of such non-revenue laws, if at all, only in defense to an action commenced against them by another. *Fuchs v. Robbins, supra*.

V. PLAINTIFFS ALLEGE NO JUSTICIABLE CLAIM AS TO THE NON-TUITION-OR-FEE-SETTING LAWS (COUNTS V – VII).

A. BOG STATES NO JUSTICIABLE CLAIM.

To state a justiciable claim, BOG at a minimum must allege that it has the present intention or desire to act contrary to the policies set out in these non-tuition-and-fee laws. Without such a present intention, there is no present and practical need for the declaration BOG seeks; instead, the Complaint merely seeks declaratory relief based on a speculative state of affairs and mere academic interest. *Bryant v. Gray*, 70 So. 2d 581, 583-84 (Fla. 1954). *See also, Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991) (trial court lacked jurisdiction to consider claims alleging unconstitutionality of various statutory amendments where claimants were not presently being harmed by amendments). *Accord, Department of Ins. v. Guarantee Trust Life Ins. Co.*, 812 So.2d 459, 460-61 (Fla. 1st DCA 2002) (“Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the *possibility* of legal injury on the basis of a hypothetical state of facts which have not arisen and are only contingent [and] uncertain. . .”) (internal quotation marks omitted).

There is still no such allegation in the Complaint, even though this point has been made in prior motions and was addressed in the Court's order dismissing the Second Amended Complaint. See January 3, 2008 Order at 4-5. For all that appears in the Complaint's allegations, BOG does not disagree with the policies enunciated in any of the non-tuition-or-fee-setting laws, and intends to govern its affairs in harmony with them. As to these laws, the Complaint is devoid of factual allegations showing any present, concrete controversy. BOG therefore states no justiciable claim as to these non-tuition-or-fee-setting laws. *E.g., Bryant v. Gray; Martinez v. Scanlan; Department of Ins. v. Guarantee Trust Life Ins. Co.*

B. THE INDIVIDUAL PLAINTIFFS LIKEWISE ALLEGE NO JUSTICIABLE CLAIM AS TO THE NON-TUITION-OR-FEE-SETTING LAWS.

The Complaint is likewise devoid of any factual allegation that a personal right or property right of any individual Plaintiff is adversely affected by these laws, and of any facts showing non-conjectural harm to such an interest. Counts V - VII thus fail to allege a justiciable claim by the individual Plaintiffs. *E.g., Williams v. Howard; Bryant v. Gray; Martinez v. Scanlan; Department of Ins. v. Guarantee Trust Life Ins. Co.*

The lack of standing in these Plaintiffs and the conjectural nature of their claims about these laws is starkly illustrated in their putative challenge to sections 1001.74(1)(e)1001 and 706(1)(b), Florida Statutes, in Counts VI and VII. Those laws direct that, "when acting pursuant to statutory authority derived from the Legislature," BOG and the universities are to adopt rules in accordance with the Administrative Procedure Act, Chapter 120, Florida Statutes.

Reduced to their essence, Counts VI and VII ask the Court to assume: (1) the Legislature has delegated additional authority or functions to BOG or a university

beyond those in article IX, section 7; (2) BOG or the university may undertake such functions; (3) in discharging such functions BOG or the university may engage in rulemaking; (4) BOG or the university may not follow APA rulemaking procedures to adopt such rules pertaining to such functions; and (5) a party affected by proposed rulemaking might challenge the rulemaking action. That is a purely conjectural set of circumstances. Plaintiffs thus fail to state a present, ripe, justiciable claim.

Should this speculative chain of events actually come to pass, the persons with standing to challenge the rulemaking decision would be the individuals who are at that time in fact concretely injured by the proposed rulemaking procedure. That is not these Plaintiffs.

This same conjectural defect inheres in the Plaintiffs' putative challenges to the rest of these non-tuition-or-fee setting laws. Since neither BOG nor the individual Plaintiffs demonstrate a justiciable claim and all Plaintiffs lack standing to assert these claims, Plaintiffs allegations concerning the non-tuition-or-fee-setting laws must be dismissed.

VI. IN ANY EVENT, COUNT V DOES NOT STATE A LEGALLY SUFFICIENT CLAIM UNDER ARTICLE IX, SECTION 7, AND ARTICLE II, SECTION 3, FLORIDA CONSTITUTION, AS A MATTER OF LAW.

In Count V, Plaintiffs facially challenge section § 1001.74, Florida Statutes, claiming that it intrudes on BOG's authority to manage the university system under article IX, section 7. Section 1001.74 provides where pertinent:

- For university boards to act as procurement agents for professional services under Chapter 287, Florida Statutes (§1001.74(2)(a)).
- For default hours of coursework for baccalaureate degree programs unless BOG establishes other standards (§1001.74(2)(c)).

- "To the extent delegated by the Board of Governors," university boards are authorized to develop antihazing policies, uniform codes of conduct, guidelines and procedures related to data and technology, to create divisions of sponsored research, and to establish personnel programs for university employees (§1001.74(2)(e),(f),(g),(i); (5)(a)).
- For university boards to develop and produce work products relating to educational endeavors that are subject to trademark, copyright, or patent statutes (§1001.74(2)(h)).
- For regulation of campus traffic (§1001.74(2)(j)).
- For certification of direct-support organizations and university health services support organizations to use university property and services, and supervision of supervising faculty practice plans for the academic health science centers, pursuant to "guidelines of the Board of Governors" (§1001.74(2)(k),(l)).
- For regulation of accounting, budgeting, and audit functions (§1001.74(3)(a),(b)).
- For establishment of tuition and fees pursuant to sections 1009.24 and 1009.26 (§1001.74(3)(c)).¹²
- For participation in state insurance programs (§1001.74(3)(d),(e)).
- For authorization to accept credit card payments (§1001.74(3)(f)).
- For the Department of Management Services to retain authority over employee insurance and retirement programs established in sections 110.123, 110.1232, 110.1234, 110.1238, and 110.161 and in chapters 121, 122, and 238. (§1001.74(5)(b)).
- For university powers regarding acquisition, maintenance, and disposal of real and personal property and the regulation of same (§1001.74(6)).
- For university boards' responsibility to comply with state and federal laws, rules, regulations, and requirements. (§1001.74(7)).
- That university boards shall "perform such other duties as are provided by law or at the direction of the Board of Governors" (§1001.74(8)).

Contrary to Plaintiffs' claims, this law does not intrude at all on powers granted to BOG by article IX, section 7. In each instance where this law relates to a subject

¹² As discussed above, articles III, VII, article IX, section 1 (a), and article IX, section 7(d), Florida Constitution, vest the control of tuition and fees in the Legislature, not in BOG.

arguably within BOG's article IX section 7 authority, the law makes clear that its provisions are subject to BOG's power to direct or change policy.

This law also legislates in a number of fields over which BOG is not granted constitutional authority, and over which the Legislature clearly has authority. These provisions therefore do not offend the Constitution, as a matter of law, for the reasons discussed below.

Article III, section 1 of the Florida Constitution vests the Legislature with the power to legislate rules for the general governance of society, and the exercise of the state's sovereignty powers, such as: health, safety, and welfare laws; state personnel systems and programs;¹³ laws governing public contracting; laws governing the acquisition and disposal of public property and how title will be held; laws governing budgeting and accounting,¹⁴ and a myriad of similar subjects.

Moreover, article IX, section 1(a) of the Florida Constitution explicitly provides that "adequate provision shall be made by law for the operation of institutions of higher learning " It thereby expressly vests the Legislature with legislative power over the operation of state universities. In contrast, article IX, section 7(d) vests BOG with executive power – the power to manage the university system.

¹³ In addition to the general legislative power conferred in article III, article III, section 14 expressly provides that "[b]y law there shall be created a civil service system for state employees, except those expressly exempted" (Emphasis added).

¹⁴ Article III, section 19(a)(3) expressly provides that "[a]s prescribed by general law, each state department and agency shall be required to submit a legislative budget request that is based upon and that reflects the long-range financial outlook adopted by the joint legislative budget commission" (Emphasis added). Moreover, article IX, section 7 itself expressly affirms the Legislature's authority to regulate BOG's accounting and budgeting: "[BOG's] management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and [BOG] shall account for such expenditures as provided by law."

Neither the plain language of article IX, section 7 nor the ballot summary placed before the voters discloses any hint of an intention to oust the Legislature's general police power authority to enact laws that affect the operation of universities. Nevertheless, Plaintiffs now assert the premise that the passage of article IX, section 7 has rendered BOG and the university system an "autonomous" entity, with wholesale immunity from virtually any exercise of the police power by the Legislature, or other branches of government – effectively constituting BOG as a fourth branch of government.

Based on that astonishing and unsupported premise, Plaintiffs now claim that BOG is immune from virtually all general legislation affecting the state universities. If that was the true intent of article IX, section 7, then the ballot title and ballot summary drafted and promoted by the amendment's sponsors – including several of these Plaintiffs – clearly "[flew] under false colors" and "[hid] the ball" as to the amendment's true intended effect. See *Armstrong v. Harris, supra*; *Smith v. American Airlines, supra*. Under the correct legal tests, article IX, section 7 cannot be held to have the broad effects on legislative police power now asserted by these Plaintiffs.

Therefore, as a matter of law, section 1001.74 is constitutional, and Count V must be dismissed.

VII. IN ANY EVENT, COUNTS VI AND VII DO NOT STATE LEGALLY SUFFICIENT CLAIMS UNDER ARTICLE IX, SECTION 7, AND ARTICLE II, SECTION 3, FLORIDA CONSTITUTION, AS A MATTER OF LAW.

In Counts VI and VII, Plaintiffs claim sections 1001.74(1)(e) and 1001.706 facially intrude on BOG's article IX, section 7 authority in the area of rulemaking. This claim,

however, rests once again on a fundamental misapprehension of the purpose and effect of these laws, and lacks legal merit. Section 1001.74(1)(e) provides:

Each [university] board of trustees shall adopt rules pursuant to chapter 120 when acting pursuant to statutory authority derived from the Legislature. Each board of trustees may adopt rules pursuant to chapter 120 when exercising the powers, duties, and authority granted by s. 7, Art. IX of the State Constitution. (Emphasis added.)

Section 1001.706(1)(b) similarly provides:

The Board of Governors shall adopt rules pursuant to chapter 120 when acting pursuant to statutory authority derived from the Legislature. The Board of Governors may adopt rules pursuant to chapter 120 when exercising the powers, duties, and authority granted by s. 7, Art. IX of the State Constitution.. (Emphasis added.)

Plaintiffs appear to assume, mistakenly, that state universities and BOG itself may only perform the educational functions that article IX, section 7 addresses. To the contrary, universities are authorized by law from time to time to perform functions that do not involve the higher education mission addressed by article IX, section 7 - - functions that broadly affect persons, organizations, and interests outside the university system, as the following example illustrates.

Section 377.705(4), Florida Statutes, creates the Florida Solar Energy Center, which is administratively housed at the University of Florida. The statute provides where pertinent:

(a) The center shall develop and promulgate standards for solar energy systems manufactured or sold in this state (b) The center shall establish criteria for testing performance of solar energy systems (d) All solar energy systems manufactured or sold in the state must meet the standards established by the center

As is apparent, the statutory functions of the Solar Energy Center do not affect university academic courses, university faculty or students, and the like. The center's

functions do affect solar energy system manufacturers and vendors, and consumers of such systems.

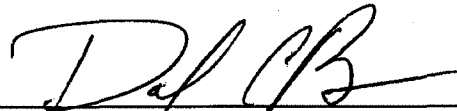
It is therefore altogether appropriate - - and constitutional - - for the Legislature to provide that such non-educational, legislatively-created instrumentalities, although administratively housed in a university, will adopt rules in accord with the generally prescribed procedures in Chapter 120, Florida Statutes, when fulfilling functions that broadly affect interests lying outside the university system. That is precisely what sections 1001.74(1)(e) and 1001.706(1)(b) do. They do not impinge on BOG's rulemaking authority over functions committed to BOG by article IX, section 7.

Therefore, as a matter of law, sections 1001.74(1)(e) and 1001.706(1)(b) are constitutional, and Counts VI and VII must be dismissed.

CONCLUSION

All counts of the Third Amended Complaint fail to state claims of unconstitutionality that have legal merit. The Third Amended Complaint therefore should be entirely dismissed. In addition, the Third Amended Complaint should be dismissed for lack of standing and/or lack of a justiciable controversy. Plaintiffs have had multiple opportunities to state a legally sufficient claim, but have failed to do so. This action therefore should be dismissed with prejudice.

Respectfully submitted,



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of the Florida Senate*

and

*Marco Rubio, Speaker of the Florida
House of Representatives*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished by U.S. Mail to **Robin Gibson**, Gibson & Valenti, 212 E. Stuart Avenue, Lake Wales, Florida 33853; **Vikki R. Shirley**, General Counsel, Florida Board of Governors, 325 West Gaines Street, Suite 1614, Tallahassee, Florida 32399-0400, and **Stephen H. Grimes**, Holland & Knight, LLP, P.O. Drawer 810, Tallahassee, Florida 32302, on February 26, 2008.





Daniel C. Brown

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 491 Certification of Public School Educators

SPONSOR(S): Carroll and others

TIED BILLS: IDEN./SIM. BILLS: SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Schools & Learning Council		Gillespie 	Cobb 
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 491 establishes inservice requirements for teachers of English for Speakers of Other Languages (ESOL). The bill specifies that a teacher providing ESOL instruction must comply with the following inservice requirements:

- Primary teacher of English/language arts: 300 inservice hours or the equivalent;
- Teacher of basic subject areas of reading, mathematics, science, social studies, or computer literacy: 60 inservice hours or the equivalent;
- Teacher of non-basic subject areas: 18 inservice hours or the equivalent.
- School administrator or guidance counselor: 60 inservice hours or the equivalent.

The bill in effect reduces the ESOL inservice requirements for most reading teachers from 300 inservice hours to 60 inservice hours. In addition, according to the Department of Education, the bill may have the effect of increasing the required number of inservice hours for a teacher passing the ESOL subject area examination from 120 inservice hours to 300 inservice hours (see III. COMMENTS).

In 2007, Governor Charlie Crist vetoed a substantially similar bill, CS/SB 2512.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

In 1984, the Legislature required that English language instruction be provided for a student whose native language is other than English and specified that the instruction be designed to develop the student's mastery of four language skills: listening, speaking, reading, and writing.¹

In 1989, attorneys representing Multicultural Education, Training, and Advocacy, Inc. (META) advised the Florida Department of Education (DOE) of META's intention to sue the State of Florida on behalf of eight minority rights advocacy groups in the state, including the League of United Latin American Citizens (LULAC). META claimed violations of federal and state provisions concerning the education of Florida's limited English proficient (LEP) students.²

In response, the 1990 Legislature required school districts, among other things, to:³

- Identify LEP students through assessment;
- Provide LEP students with instruction in English using strategies for teaching English for Speakers of Other Languages (ESOL);
- Provide LEP students with ESOL instruction or home-language instruction in the basic subject areas of mathematics, science, social studies, and computer literacy; and
- Provide qualified teachers.

Instead of pursuing litigation, META and DOE negotiated a settlement agreement, which on August 14, 1990, was approved by a Consent Order issued by a federal district judge.⁴ Under the 1990 Consent Order, DOE agreed to the equal treatment of LEP students; proper identification and assessment of LEP students; and adequate placement and programming, certified staff, and supplemental services when needed, for LEP students.⁵ Section IV of the Consent Order,⁶ among other things, created four categories of school personnel and established separate ESOL training requirements for each of the four categories. In September 2003, DOE and META approved a joint stipulation modifying the 1990

¹ Section 2, ch. 84-336, L.O.F.; former §§ 228.041(30) & 233.058, F.S.

² Rosa Castro Feinberg, *Preparing Mainstream Classroom Teachers to Teach Potentially English Proficient Students, Proceedings of the First Research Symposium on Limited English Proficient Student Issues, U.S. Department of Education, Office of Bilingual Education & Minority Languages Affairs* (1990), at <http://www.ncela.gwu.edu/pubs/symposia/first/preparing-dis.htm> (last visited Mar. 5, 2008).

³ Section 41, ch. 90-288, L.O.F.; former § 233.058, F.S.

⁴ *League of United Latin American Citizens (LULAC) et al. vs. Florida Board of Education et al.*, No. 90-1913 (S.D. Fla. Aug. 13, 1990), available from Office of Academic Achievement through Language Acquisition, Florida Department of Education, at <http://www.fldoe.org/aala/lulac.asp> (last visited Mar. 5, 2008) [hereinafter *LULAC*].

⁵ National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, at <http://www.ncela.gwu.edu/expert/faq/07court.html> (last visited Mar. 5, 2008).

⁶ *LULAC*, supra note 4; available from Office of Academic Achievement through Language Acquisition, Florida Department of Education, at <http://www.fldoe.org/aala/lulac.asp#four> (last visited Mar. 5, 2008).

Consent Order.⁷ The training requirements for the four categories of school personnel, as modified by the 2003 stipulation, are:

- Category I. Teachers of English/language arts must have:
 - ESOL certification through earning a bachelor's or higher degree in Teaching ESOL (TESOL) and passing the ESOL subject area examination of the Florida Teacher Certification Examinations (FTCE);⁸
 - ESOL certification through passing the ESOL subject area examination and 120 inservice hours within 3 years after certification;⁹ or
 - ESOL endorsement through completing 15 semester hours of college credit or 300 inservice hours (3 semester hours or 60 inservice hours within 2 years after assignment of an LEP student and 3 semester or 60 inservice hours each subsequent year that the teacher is assigned an LEP student until completing 15 semester hours or 300 inservice hours).¹⁰
- Category II. Teachers of mathematics, science, social studies, and computer literacy must have, within 1 year of assignment of an LEP student, ESOL endorsement through completing 3 semester hours of college credit or 60 inservice hours.¹¹
- Category III. Teachers of other subjects not listed in Category I or Category II must have, within 1 year of assignment of an LEP student, ESOL endorsement through completing 3 semester hours of college credit or 18 inservice hours.¹²
- Category IV. School administrators and guidance counselors must have 3 semester hours of college credit or 60 inservice hours.

The required competencies of the ESOL training (college credit or inservice hours) include methods of teaching ESOL, ESOL curriculum and materials development, cross-cultural communication and understanding, and testing and evaluation of ESOL.¹³ The training competencies for Category I ESOL teachers also include applied linguistics.¹⁴

As a term of the Consent Order, the Miami Division of the United States District Court for the Southern District of Florida retains jurisdiction for purposes of overseeing implementation of the Consent Order. As occurred in 2003, changes to the state's ESOL policies which are inconsistent with the Consent Order require modification of the Consent Order by court order after DOE negotiates the change with META.

⁷ Stipulation Modifying Consent Decree, *LULAC* (No. 90-1913) (Sept. 3, 2003), available at <http://www.fldoe.org/aala/pdf/stipulation.pdf> (last visited Mar. 5, 2008).

⁸ Office of Academic Achievement through Language Acquisition, Florida Department of Education, *Options for Obtaining ESOL Certification* (Dec. 2006), available at http://www.fldoe.org/aala/pdf/esol_cert.pdf (last visited Mar. 5, 2008) [hereinafter *ESOL Certification Options*]; see rule 6A-4.0245, F.A.C.

⁹ *ESOL Certification Options*, *supra* note 8; see also *infra* note 38 and accompanying text.

¹⁰ *ESOL Certification Options*, *supra* note 8; see rule 6A-4.0244, F.A.C.

¹¹ See rule 6A-6.0907(1) and (2), F.A.C.

¹² See rule 6A-6.0907(3), F.A.C.

¹³ See rules 6A-4.0244(1)(b) & 6A-6.0907, F.A.C.

¹⁴ Rule 6A-4.0244(1)(b)4., F.A.C.

Requirements for Reading Teachers:

In 2002, following the establishment of the *Just Read, Florida!* initiative¹⁵ and passage of the federal *No Child Left Behind Act of 2001*,¹⁶ the State Board of Education established specialization requirements for a reading endorsement.¹⁷ The reading endorsement requires 15 semester hours of college credit or 300 inservice hours in reading coursework based upon scientifically based reading research with a focus on both the prevention and remediation of reading difficulties.¹⁸

The certification requirements for a teacher to teach a course are listed in *Course Code Directory and Instructional Personnel Assignments*, which DOE updates annually.¹⁹ By June 30, 2006, DOE required reading teachers to have a reading certification or endorsement.²⁰ The 2007-2008 course code directory reflects that a teacher who teaches English, language arts, reading, or intensive reading must be certified in reading or have the reading endorsement.²¹

In 2004, DOE created a crosswalk that allows a teacher to receive 80 inservice hours of credit for the reading endorsement based on earning the 300 inservice hours required for the ESOL endorsement.²² The crosswalk awards the 80 inservice hours based on the competencies of the reading inservice training which are addressed by competencies covered in the ESOL inservice training. Thus, a teacher with the ESOL endorsement is required to earn 220 inservice hours in reading to complete the reading endorsement.²³

Intersection of ESOL and Reading Requirements:

According to DOE, reading courses reported for ESOL funding must be assigned a teacher that has ESOL Category I training (300 inservice hours), and reading courses reported as non-ESOL may be assigned a teacher with ESOL Category III training (18 inservice hours).²⁴

In 2001, as part of the *Just Read, Florida!* initiative, DOE was directed to recommend statewide standards for reading programs based on the latest scientific research, instructional strategies, and reading course requirements for middle school and high school students who are not reading at grade

¹⁵ On September 7, 2001, former Governor Jeb Bush issued Executive Order 01-260, which created the *Just Read, Florida!* initiative.

¹⁶ On January 8, 2002, President George W. Bush signed into law the federal *No Child Left Behind Act of 2001*. Pub. L. 107-110 (2002). The act, among other things, requires states to ensure that all teachers teaching core academic subjects ("English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography," 115 Stat. 1958 (codified at 20 U.S.C. § 7801(11))) in public schools are highly qualified. 115 Stat. 1505 (codified at 20 U.S.C. § 6319(a)(2)).

¹⁷ Rule 6A-4.0292, F.A.C.

¹⁸ *Id.*

¹⁹ Rule 6A-1.09441, F.A.C.

²⁰ Florida Department of Education, Memorandum from Jim Warford & Mary Laura Openshaw to District School Superintendents, No. 2005-82, 3 (June 23, 2005), available at http://info.fldoe.org/docushare/dsweb/Get/Document-3062/k12_05-82.pdf (last visited Mar. 5, 2008).

²¹ Florida Department of Education, *2007-2008 Course Code Directory and Instructional Personnel Assignments* (Feb. 1997), available at <http://www.fldoe.org/bii/curriculum/CCD> (last visited Mar. 5, 2008).

²² Florida Department of Education, *ESOL Endorsement to Reading Endorsement Crosswalk* (2004), available at <http://www.fldoe.org/aala/pdf/esolendorsement.pdf> (last visited Mar. 5, 2008).

²³ *Id.*; see also Florida Department of Education, Memorandum from Jim Warford & Mary Laura Openshaw to District School Superintendents, No. 2005-26 (Mar. 4, 2005), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-2802/reesol.pdf> (last visited Mar. 5, 2008).

²⁴ Florida Department of Education, *Timelines for Completion of the ESOL Training Requirements*, nn. 1 & 3 (July 2004), available at http://info.fldoe.org/docushare/dsweb/Get/Document-3063/k12_05-82a.pdf (last visited Mar. 5, 2008).

level.²⁵ In 2002, the Legislature added “reading” to the list of basic subject areas requiring ESOL instruction or home-language instruction.²⁶

Beginning with the 2005-2006 school year, DOE requires that all students in grades 6-12, scoring at the two lowest achievement levels (levels 1 and 2) on the reading portion of the Florida Comprehensive Assessment Test (FCAT), must enroll in an intensive reading course.²⁷ Before this requirement for intensive reading, according to DOE, most reading instruction for LEP students was provided by the students’ ESOL teacher, not a reading teacher. Since LEP students, by definition, score lower on the reading portion of the FCAT, LEP students are among the students required to enroll in the intensive reading courses.

Before the requirement of intensive reading for students with low FCAT reading scores, most reading teachers taught supplemental reading courses reported as non-ESOL, which consequently required the teacher to have ESOL Category III training (18 inservice hours). As reading teachers are increasingly assigned to teach intensive reading courses containing LEP students reported for ESOL funding, the teachers are required to meet Category I ESOL training requirements (300 inservice hours).

On March 30, 2007, the Department of Education issued a “reverse crosswalk” that allows a teacher to receive 120 inservice hours of credit for the ESOL endorsement based on earning the 300 inservice hours required for the reading endorsement.²⁸ The reverse crosswalk awards 120 inservice hours based on the competencies of the ESOL inservice training which are addressed by competencies covered in the reading inservice training.²⁹ Thus, a teacher with a reading endorsement is required to earn 180 inservice hours in ESOL to complete the ESOL endorsement.

According to DOE, as of 2006, there were approximately 49,085 teachers with an ESOL certification or endorsement, 7,837 teachers with a reading certification or endorsement, and 7,132 teachers who have certification or endorsement in both ESOL and reading.³⁰

Prior Legislation:

In 2007, the Legislature enacted CS/SB 2512,³¹ which is substantially similar to HB 491. On June 28, 2007, Governor Charlie Crist vetoed CS/SB 2512, which he returned to the Legislature with the following veto message:

²⁵ Executive Order 01-260 (Sept. 7, 2001).

²⁶ At the 2002 Special Session “E,” the Legislature enacted a general revision to the Florida K-20 Education Code. Within the revision, current § 1003.56, F.S., was created and a substantially similar § 233.058, F.S., was repealed. Sections 150 and 1058, ch. 2002-387, L.O.F. As previously discussed, former § 233.058, F.S., required school districts to provide LEP students with ESOL instruction in English and ESOL or home-language instruction in the basic subject areas of mathematics, science, social studies, and computer literacy. When creating § 1003.56, F.S., the education code revision added “reading” to the list of basic subject areas requiring ESOL instruction or home-language instruction.

²⁷ Florida Department of Education, *supra* note 20, at 1; §§ 1003.4156(1)(b) & 1003.428(2)(b)2.c., F.S.

²⁸ Florida Department of Education, *Reading to English for Speakers of Other Languages (ESOL) – Reverse Crosswalk* (Feb. 2007), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-4338/k12-07-24att.pdf> (last visited Mar. 5, 2008); see also Florida Department of Education, *infra* note 29, at 1 (although the reverse crosswalk is dated February 2007, it was issued with the Chancellor’s memorandum on March 30, 2007).

²⁹ Florida Department of Education, Memorandum of Cheri Pierson Yecke to District Superintendents, No. 2007:24, 1 (Mar. 30, 2007), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-4337/k12-07-24memo.pdf> (last visited Mar. 5, 2008).

³⁰ Florida Department of Education, *2007 Agency Bill Analysis of HB 129*, 3 (Mar. 8, 2007).

³¹ Florida Senate, *CS/SB 2512, Enrolled (2007)*, available at <http://www.flsenate.gov/data/session/2007/Senate/bills/billtext/pdf/s2512er.pdf> (last visited Mar. 5, 2008).

This bill will reduce the required professional development from 300 hours to 60 hours for reading teachers who teach students who speak English as a second language. I am concerned that this reduction may impede these students' academic, social, and cultural progress. The Florida Hispanic Legislative Caucus has also unanimously expressed similar concerns about this bill in a recent letter to me.

Florida holds high academic standards for its students. Reading is the cornerstone of learning, and reading teachers are the foundation through which students achieve these standards. It is imperative that our students learn to read English from the highest-quality instructors so that they can succeed more readily in other subjects. Accordingly, I cannot justify lower standards for these teachers.

For these reasons, I withhold my approval of Committee Substitute for Senate Bill 2512, and do hereby veto the same.³²

Proposed Changes:

The bill establishes inservice requirements for ESOL teachers. The bill specifies that teachers providing ESOL instruction must comply with the following inservice requirements:

- Primary teacher of English/language arts: 300 inservice hours or the equivalent;
- Teacher of basic subject areas of reading, mathematics, science, social studies, or computer literacy: 60 inservice hours or the equivalent;
- Teacher of non-basic subject areas: 18 inservice hours or the equivalent.
- School administrator or guidance counselor: 60 inservice hours or the equivalent.

The bill in effect reduces the ESOL inservice requirements for most reading teachers from 300 inservice hours to 60 inservice hours.

The effect of the bill is unclear in three aspects. First, the bill does not specify whether the "reverse crosswalk" for awarding a teacher with a reading endorsement credit against the ESOL endorsement requirements continues to apply. Since the reverse crosswalk awards credit for 120 inservice hours, the bill may eliminate the ESOL inservice requirement altogether for a teacher with a reading endorsement.

Second, the bill requires 300 inservice hours for a primary English instructor who is an English/language arts teacher. The bill does not specify, however, whether this inservice requirement applies to teachers with ESOL certification through:

- Earning a bachelor's or higher degree in Teaching ESOL (TESOL) and passing the ESOL subject area examination of the Florida Teacher Certification Examinations (FTCE); or
- Passing the ESOL subject area examination and 120 inservice hours within 3 years after certification.³³

Thus, the bill may increase the inservice hours required for these two groups of Category I ESOL teachers.

³² The Honorable Charlie Crist, Governor of Florida, Letter to Kurt S. Browning, Secretary of State (June 28, 2007), available at http://www.flgov.com/leg_actions/2007/2007_VETOSB2512.pdf (last visited Mar. 5, 2008).

³³ See also *infra* text accompanying note 39 (according to DOE, the bill may have the effect of increasing the required number of inservice hours for a teacher passing the ESOL subject area examination from 120 inservice hours to 300 inservice hours).

Finally, the bill establishes inservice requirements for ESOL teachers, but does not specify any requirements for the contents of the inservice training. Thus, the bill is unclear whether inservice hours earned in subjects other than ESOL would count toward the inservice requirements for ESOL teachers.

Although the Consent Order does not specify whether reading is a Category I, II, or III subject area, the modifications of the inservice requirements proposed by the bill may require DOE to negotiate modifications to the Consent Order with final approval in federal court.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Creates s. 1012.587, F.S., which establishes ESOL inservice requirements.

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Education estimates that the bill may create a negative fiscal impact to state expenditures of approximately \$100,000.³⁴ According to DOE, the bill may require changes to current inservice programs, causing DOE to incur costs in contracting for changes to online programs and training facilitators on the programs in each school district.³⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

³⁴ Florida Department of Education, Government Relations, *2008 Agency Bill Analysis of HB 491*, at 3 (Jan. 23, 2008).

³⁵ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create new authority for rulemaking; however, in effect it requires the State Board of Education to amend several rules concerning specialization requirements for certification or endorsements in ESOL and reading.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires a primary English/language arts teacher of basic ESOL to earn 300 inservice hours or the equivalent. According to DOE, the department's traditional interpretation of equivalency establishes the number of inservice hours which is equivalent to a college credit (i.e., 20 inservice hours per college credit).³⁶ As previously discussed, a teacher is currently authorized to earn ESOL certification through passing the ESOL subject area examination and completing 120 inservice hours within 3 years after certification.^{37,38} According to DOE, the bill may have the effect of increasing the required number of inservice hours for a teacher passing the ESOL subject area examination from 120 inservice hours to 300 inservice hours.³⁹

D. STATEMENT OF THE SPONSOR

Waived by sponsor due to time constraints.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

³⁶ See, e.g., § 1012.585(3)(a), F.S. (establishes that a teacher is required to earn "a minimum of 6 college credits or 120 inservice [hours] or a combination thereof" and "at least 3 of the required credit hours or equivalent inservice [hours] in the specialization area" (emphasis added) for recertification).

³⁷ See *supra* text accompanying note 9.

³⁸ The 2003 Stipulation Modifying Consent Decree specifies that teachers passing the ESOL subject matter examination are required to complete 120 inservice hours within 3 years after certification:

A certified teacher may obtain ESOL subject area coverage by virtue of passing a state approved ESOL certification examination. Any teacher who receives coverage in ESOL through this option shall be required to obtain 120 hours of in-service training or continuing education ESOL-approved courses within a three (3) year period of the date of their receipt of ESOL certification. This requirement includes those who have already been certified on the proficiency test method. Any ESOL-approved in-service hours and course work taken prior to gaining ESOL certification may be counted toward the required 120 post-certification hours. See *supra* note 7, at 2.

³⁹ Florida Department of Education, Government Relations, 2008 Agency Bill Analysis of HB 491, at 2 (Jan. 23, 2008).

1 A bill to be entitled
 2 An act relating to the certification of public school
 3 educators; creating s. 1012.587, F.S.; specifying
 4 inservice requirements for educators who provide
 5 instruction in English for Speakers of Other Languages;
 6 providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 1012.587, Florida Statutes, is created
 11 to read:

12 1012.587 Inservice requirements for educators of English
 13 for Speakers of Other Languages (ESOL).--To ensure the most
 14 conducive learning environment and the use of appropriate
 15 teaching strategies for students who have limited English
 16 proficiency, inservice requirements for educators who provide
 17 instruction in English for Speakers of Other Languages (ESOL)
 18 shall be as follows:

19 (1) For the primary English instructor (basic ESOL) who is
 20 an English/language arts teacher, 300 inservice hours or the
 21 equivalent.

22 (2) For an instructor teaching the basic subject areas of
 23 reading, mathematics, science, social studies, or computer
 24 literacy, 60 inservice hours or the equivalent.

25 (3) For an instructor teaching subject areas other than
 26 basic ESOL or basic subject areas, 18 inservice hours or the
 27 equivalent.

28 (4) For a school administrator or guidance counselor, 60

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2008

29 | inservice hours or the equivalent.

30 | Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 491**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Schools & Learning

2 Representative(s) Carroll offered the following:

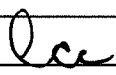
3
4 **Amendment**

5 Remove line(s) 21 and insert:

6 equivalent, or, if the teacher demonstrates mastery of subject
7 area knowledge of English for Speakers of Other Languages
8 through achievement of passing scores on subject area
9 examinations required by state board rule, 120 inservice hours
10 or the equivalent.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 653 Corporate Income Tax Credit Scholarship Program
SPONSOR(S): Traviesa and others
TIED BILLS: IDEN./SIM. BILLS: SB 1440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation & Career Preparation</u>	<u>(ref. removed)</u>	<u>Beagle</u>	<u>White</u>
2) <u>Schools & Learning Council</u>	<u></u>	<u>MA Heflin/White</u>	<u>Cobb</u> 
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Corporate Income Tax Credit Scholarship Program (CITC Program) provides an income tax credit for corporations making eligible contributions to nonprofit scholarship funding organizations (SFOs). SFOs award scholarships to students from families with limited financial resources. This bill revises the CITC Program by:

- Providing legislative findings and revising the program's purpose.
- Revising first-time scholarship eligibility criteria for the sibling of a renewing scholarship recipient.
- Increasing the \$88 million maximum tax credit by \$30 million annually for five years.
- Deleting provisions that reserve at least one percent of the maximum tax credit for small businesses.
- Requiring a SFO to annually expend at least 75%, rather than obligate 100%, of the eligible contributions received in that fiscal year.
- Authorizing SFOs to retain up to three percent of contributions for administrative expenses.
- Requiring SFOs to verify each scholarship student's attendance at a private school for each period covered by a scholarship payment, rather than obtaining verification prior to each payment.
- Increasing the maximum scholarship award amount from \$3,750 to \$4,500 for the 2008-2009 school year.
- Requiring the State Board of Education (SBE) for the 2009-2010 school year and thereafter to annually adjust the maximum scholarship award amount to reflect 62% of the unweighted Florida Education Finance Program (FEFP) per student funding amount.
- Revising the allowable uses of scholarship funds from "tuition or textbook expenses" to "tuition and fees" and deleting the requirement that at least 75% of scholarship funding be used for tuition.
- Establishing a \$200 premium payment for scholarship students who take the Florida Comprehensive Assessment Test (FCAT) and attend a private school where 95% of scholarship students take the FCAT.
- Deleting provisions placing responsibility on parents for transportation to FCAT testing sites and providing that the premium payment shall be used for transportation, test preparation, or other school fees.
- Requiring the Department of Education (DOE) to determine if 95% of a private school's scholarship students take the FCAT and to provide private schools with FCAT-test preparation materials.
- Clarifying that a taxpayer who has made or who makes an eligible contribution to a SFO will not lose the tax credit retroactively if a court holds any provision of s. 220.187(5), F.S., unconstitutional.

The bill is estimated to have a net negative fiscal impact on state revenues and expenditures in Fiscal Years 2008-2009 and 2009-2010. In Fiscal Year 2010-2011 and thereafter, however, the bill is projected to have a positive fiscal impact on state expenditures due to a reduction in FEFP costs. Public school districts will incur additional costs for the administration of the FCAT to scholarship recipients if the bill's \$200 premium payment increases the number of scholarship recipients taking the FCAT. **(See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT).**

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty-- The bill provides parents of low-income students with greater opportunity to exercise educational choice by increasing scholarship award amounts and by revising the scholarship eligibility provisions for the sibling of a renewing scholarship recipient.

Empower Families-- The bill provides parents of low-income students with greater opportunity to exercise educational choice by increasing scholarship award amounts and by revising the scholarship eligibility provisions for the sibling of a renewing scholarship recipient.

B. EFFECT OF PROPOSED CHANGES:

Corporate Income Tax Credit Scholarship Program

The 2001 Legislature passed the CITC Program¹ with an implementation date of January 1, 2002. The program's purpose is to expand educational opportunities for families that have limited financial resources and enable Florida's children to achieve a greater level of excellence in their education. The CITC Program provides an income tax credit for corporations that make eligible contributions to nonprofit SFOs. SFOs award scholarships to students from families with limited financial resources as demonstrated by the student qualifying for free or reduced-price school lunches (FFRL) under the National School Lunches Act.²

According to the DOE, \$59.3 million in scholarships were awarded during the 2006-2007 school year to more than 17,800 students. As of February 2008, 20,076 scholarship recipients are enrolled in 910 participating private schools. Eighty-five percent of participating private schools are religious, whereas 15% of such schools are non-religious.³

Findings and Purpose: The bill includes legislative findings and revises the purpose of the CITC Program. The findings provide that the Legislature has the inherent power to determine subjects of taxation for general or particular public purposes. Thus, the Legislature may promote the following valid public purposes: expanding educational opportunities; improving the quality of educational services within the state; and ensuring that parents may exercise and enjoy their basic right to educate their children as they see fit. Further, the legislative findings provide that per-student funding in Florida public schools has risen each year since the inception of programs that provide educational opportunities and that these opportunities are critical to improving Florida's quality of education and ensuring that all children receive the high quality education to which they are entitled.

The bill revises the purpose of the program to enable taxpayers to make private, voluntary contributions to SFOs in order to promote the general welfare and to financially help parents with limited resources exercise their basic right to educate their children as they see fit. Also, the bill provides that the purpose of the CITC Program is to improve Florida's quality of education, both by expanding educational opportunities and by creating incentives for schools to achieve excellence.

Student Eligibility: A student is eligible for a first-time CITC scholarship if he or she qualifies for free or reduced-priced school lunches under the National School Lunch Act,⁴ and:

¹ Section 220.187, F.S.

² 42 U.S.C.A. 1758(b)(1).

³ Florida Department of Education, Office of Independent Education and Parental Choice, *Corporate Tax Credit Scholarship Program* (February 2008) available at http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.

⁴ Eligibility for free or reduced-price school lunches under the National School Lunch Act is dependent upon the household size and income of a student's family. If the family's income is: (a) equal to or less than 130% of the federal poverty guidelines for the relevant

- Was counted as a full-time student during the previous state fiscal year for purposes of state per-student funding;
- Received a scholarship from an eligible SFO or the State of Florida during the previous school year; or
- Is eligible to enter kindergarten or first grade.

In order to qualify for free or reduced-priced school lunches, a student's parents must document that their household income does not exceed 185% of Federal Poverty Level.

In subsequent years, a scholarship recipient may be eligible for a renewal scholarship, contingent upon available funds, if the student's parents document that their household income does not exceed 200% of the Federal Poverty Level.⁵ In the event a sibling of a scholarship student wishes to qualify for a first-time scholarship, the parents must document that their income does not exceed 185% of the Federal Poverty Level for the sibling's eligibility. Thus, a household's income could meet the renewing scholarship income guideline, but exceed the first-time scholarship income guideline.

Under the bill, the sibling of a renewing scholarship recipient who resides in the same household as the renewing student will be eligible as a first-time CITC scholarship recipient as long as the household income does not exceed 200% of Federal Poverty Level.

Tax Credits: Currently, the maximum amount of tax credits that may be granted per state fiscal year under the CITC Program is \$88 million.⁶ A taxpayer is allowed a tax credit of 100% of his or her eligible contribution. However, the credit may not exceed 75% of taxes owed by the taxpayer during the year of the contribution. At least one percent of the maximum tax credit amount must be reserved for small businesses as defined in s. 288.703(1), F.S., that make scholarship contributions.⁷

The bill provides for \$30 million annual increases to the maximum tax credit amount for five years until 2013. Thus, under the bill, the maximum tax credit is increased from \$88 million to:

- \$118 million on July 1, 2008;
- \$148 million on July 1, 2009;
- \$178 million on July 1, 2010;
- \$208 million on July 1, 2011; and
- \$238 million on July 1, 2012.

The bill also deletes provisions reserving at least one percent of the maximum tax credit amount for small businesses that make scholarship contributions.

Scholarships: Current law provides that the scholarship award provided to any child for any single school year by all eligible SFOs shall not exceed the following limits:

- \$3,750 for a scholarship awarded to a student to enroll in an eligible private school.

household size, the student is entitled to free lunches; or (b) more than 130%, but equal to or less than 185%, of the federal poverty guidelines for the relevant household size, the student is entitled to reduced-price lunches. *See* Federal Register, Wednesday, March 15, 2006, Child Nutrition Programs—Income Eligibility Guidelines, U.S. Department of Agriculture, 42 USC 1758(b)(1).

⁵ Additionally, the household must complete the renewal application, must be free of debt to the current private school for the prior school year, and must not have been disqualified by Florida P.R.I.D.E. for any reason, and the student must have taken an approved nationally recognized standardized test for students grade 3-10 and must have been actively using the scholarship for the prior school year. *See* <http://www.floridapride.org/index.cfm/fuseaction=about.Handbook#New> (parent handbook).

⁶ The maximum tax credit permissible under the CITC Program was increased by the Legislature effective July 1, 2003, from \$50 million to \$88 million. *See* Ch. 2003-391, s. 9, L.O.F.

⁷ Section 220.187(5), F.S.

- \$500 for a scholarship awarded to a student to enroll in a Florida public school that is located outside the district in which the student resides.

The bill increases the maximum, annual per student scholarship amount from \$3,750 to \$4,500. Beginning June 30, 2009, the bill requires the SBE to annually amend its rules to adjust the maximum amount for CITC scholarship awards to reflect 62% of the unweighted FEPF per student funding amount established in the annual appropriations act for the ensuing state fiscal year. Beginning July 1, 2009, and each year thereafter, adjusted amounts must be rounded downward to the nearest dollar and are effective for the following school year.

SFOs are also required to obtain verification from the private school of the scholarship student's *continued attendance prior to each scholarship payment* and to make such payments on no less than a quarterly basis. The bill revises this responsibility to require a SFO to obtain verification for *each period covered by a scholarship payment*.

FCAT Premium Payment: Statute requires the DOE to select nationally norm-referenced tests that participating private schools may use to assess scholarship students.⁸ The private school and student's parent must ensure that the student is subject to an assessment. The parent may choose to have the student take either the norm-referenced test offered by the private school or the FCAT. Parents that choose the FCAT option are responsible for transporting the student to the testing site.⁹ Currently, private schools must cooperate with scholarship students whose parents choose the FCAT option, but they are not explicitly required to provide FCAT preparation materials to such students.¹⁰

The bill establishes an annual premium payment of \$200 for scholarship students who take the FCAT. To be eligible for the premium, the student must take the FCAT and attend a private school where at least 95% of eligible scholarship students take the FCAT. For purposes of awarding the premium payment, the bill requires the DOE to determine whether at least 95% of the private school's scholarship students participate in the FCAT. The bill also requires the DOE to provide FCAT preparation and instructional materials to participating schools for use in preparing scholarship students for the FCAT. The bill deletes provisions making the student's parent responsible for transporting the student to the FCAT test site.

Under the bill, the SFO shall make the premium payment by warrant payable to a student's parent, who must restrictively endorse the warrant to the private school for deposit into the account of the private school. The bill requires the premium payment to be used for transportation and test preparation costs associated with participation in the FCAT, or any other school fees.

Obligations of SFOs: Currently, SFOs must provide scholarships from eligible contributions to eligible students for tuition, textbook expenses, or transportation to an eligible private school. At least 75% of the scholarship must be used for tuition expenses.¹¹ The bill deletes textbook and transportation expenses as an allowable use of private school scholarship funds and provides that such funds must cover "tuition and fees." It also deletes the requirement that at least 75% of the scholarship must be used for tuition.

Currently, statute requires SFOs to obligate, in the same fiscal year in which the contribution was received, 100% of the eligible contribution to provide annual or partial-year scholarships provided that up to 25% of the total contribution may be carried forward for scholarships to be granted in the following

⁸ Section 220.187(9)(i), F.S.; Rule 6A-6.0960, F.A.C., (authorizing private schools to use the following assessment tests to assess scholarship students: Basic Achievement Skills Inventory; Iowa Test of Basic Skills; Metropolitan Achievement Tests, 8th Edition; Stanford Achievement Test, 10th Edition; TerraNova Basic Battery; TerraNova, 2nd Edition; and the FCAT, and specifying that the DOE may authorize the use of other assessments that meet specified criteria).

⁹ Section 220.187(7)(e), F.S.

¹⁰ Section 220.187(8), F.S.

¹¹ Section 220.187(11), F.S.

state fiscal year. Statute prohibits SFOs from retaining any amount of scholarship funds for administrative expenses.¹²

Under the bill, a SFO is no longer required to *obligate* 100% of the contributions; instead, they are required to *expend* at least 75% of the eligible contributions on annual or partial-year scholarships during the fiscal year that the contributions are collected. The bill retains current law authorizing up to 25% of eligible contributions to be carried forward to the succeeding fiscal year. Additionally, the bill permits SFO's to retain up to three percent of eligible collected contributions for administrative expenses.

Preservation of Tax Credit: The bill clarifies that a taxpayer, who has made or who makes an eligible contribution¹³ to a SFO under s. 220.187(5), F.S., will not lose the tax credit retroactively if a court holds: (a) any provision or portion of s. 220.187(5), F.S., unconstitutional or invalid; or (b) the application of s. 220.187(5), F.S., to any person or circumstance unconstitutional or invalid. Further, the bill specifies that this "preservation of tax credit" provision may never result in the allowance of more than one dollar of credit for each dollar paid to a SFO.

C. SECTION DIRECTORY:

Section 1.: Amending s. 220.187, F.S.; providing Legislative findings; revising program purposes; revising first-time scholarship eligibility criteria for siblings of renewing scholarship recipients; revising the total annual tax credit limit; deleting reservation of at least one percent of total tax credit limit for contributing small businesses; revising authorized uses of scholarship funds; providing for premium payments for scholarship students who participate in FCAT; removing parent responsibility for transportation to test administration sites; requiring the DOE to provide FCAT preparation materials to participating schools; requiring the DOE to determine if 95% of a participating school's scholarship students participate in the FCAT; revising scholarship award amounts and providing amount and allowable uses of premium payment; requiring the SBE to annually adjust the scholarship award amount in rule; and providing for preservation of tax credit under certain circumstances.

Section 2.: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Beginning with Fiscal Year (FY) 2008-2009, the bill increases the amount of allowable tax credits under the CITC Program by \$30 million annually for five years, which diverts funds from the state GR fund to private SFOs. However, due to the difference in tax credits being granted on a tax year basis and the cap being increased on a state fiscal year basis, there will be a delay in the ability to collect the full amount of the increase in eligible contributions under the cap in the corresponding state fiscal year. Based on historical collection data, revenues would be impacted as follows:

¹² Section 220.187(6)(i), F.S.

¹³ Section 220.187(2)(b), F.S. ("Eligible contribution" is defined to mean a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible nonprofit scholarship funding organization).

Fiscal Year	Revenue Impact of Increase
2008-2009	(9,843,675)
2009-2010	(50,365,200)
2010-2011	(76,485,450)
2011-2012	(103,275,450)
2012-2013	(130,065,450)

Total revenue reductions would be offset by fewer students being served in the FEFP in future years and therefore a reduction in FEFP expenditures. Please see "2. Expenditures," below, for the calculation of the bill's impact on state expenditures.

2. Expenditures:

The combined effect of raising the cap on allowable tax credits, raising the maximum scholarship amount, providing \$200 premium payments for FCAT participation and allowing SFOs to retain three percent of total collections for administrative purposes will reduce the number of students served through the CITC scholarship program in FY 2008-2009. Additionally, the tax credit collections from a corporation for a specific tax year may be spread out over more than one of the state's fiscal years, thereby resulting in a delay in the availability of collections to be used by SFOs for scholarship awards and a corresponding delay in the decrease to FEFP enrollment. Therefore, the net fiscal impact in the affected fiscal years will be as follows:

Fiscal Year	Net (Cost)/Savings to State Expenditures ¹⁴
2008-2009	(19,317,675)
2009-2010	(6,534,614)
2010-2011	456,296
2011-2012	6,486,484
2012-2013	12,628,070

The bill requires the DOE to provide FCAT preparation and instructional materials to participating private schools. The DOE currently makes sample FCAT testing materials available on-line; therefore, the DOE estimates that additional costs will be minimal if these materials are sufficient to address the bill's requirement.¹⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Increasing the number of CITC scholarship recipients will decrease local government revenues generated through the FEFP. Local governments would not, however, incur expenditures associated with the decreased number of students served through the FEFP.

2. Expenditures:

In the 2007-2008 school year, 15 CITC scholarship recipients took the FCAT. It is anticipated that the bill's \$200 premium payment will encourage a significantly greater number of scholarship

¹⁴ In calculating the FEFP cost savings for the CITC program scholarship students, the amount of \$6,000 per student was used, based on House staff analysis.

¹⁵ DOE Analysis for HB 653, dated February 26, 2008.

recipients to take the FCAT. As a result, districts may incur increased FCAT administration costs. According to a survey of districts conducted by the DOE, these costs may include expenditures for additional testing space requirements, proctors to administer the test, and part-time district employees to work with the private schools on the planning and logistics of test administration.¹⁶

Districts would realize an indeterminate amount of savings in expenditures for facilities and other Fixed Capital Outlay purposes because of the reduction in the number of the students being served. In addition, by serving fewer students, districts may more easily comply with class size reduction requirements.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the individual annual scholarship amount from up to \$3,750 to up to \$4,500 for the 2008-2009 school year. Thus, parents of scholarship recipients may receive larger financial awards to pay for private school expenses.

The bill provides for \$30 million annual increases to the maximum tax credit amount for five years until 2013, i.e., the bill will increase the annual tax credit limit from \$88 million to \$238 million in 2013. These increases should enable a greater number of eligible tax payers to choose to take advantage of the corporate income tax credit.

The bill authorizes SFOs to use up to three percent of eligible contributions for administrative expenses. Depending on the maximum tax credit allowed for the FY and the amount of eligible contributions actually collected by the SFO, this authorization could provide up to the following amounts for administrative expenses:

Fiscal Year	Maximum Allowable Tax Credit	Maximum Three Percent for Administrative Purposes ¹⁷
2008-2009	118,000,000	3,540,000
2009-2010	148,000,000	4,440,000
2010-2011	178,000,000	5,340,000
2011-2012	208,000,000	6,240,000
2012-2013	238,000,000	7,140,000

D. FISCAL COMMENTS:

In order to generate a net positive fiscal impact on state revenues and expenditures for each fiscal year that the cap on the maximum tax credit is increased, the bill would need to be amended to:

- a) Remove the requirement for a \$200 premium payment for specified scholarship recipients participating in the FCAT;
- b) Reduce the amount of the scholarship increase from \$4,500 to \$3,950 in FY 2008-09; and
- c) Remove the requirement for the DOE to annually increase the award amount, and instead permit the award amount to annually increase to equal 60% of the unweighted FEFP per student funding amount in FY 2009-2010 and each FY thereafter.

¹⁶ *Id.*

¹⁷ Actual amounts allowed for administrative purposes would be based on the actual tax credits collected in any one FY.

If these amendments are adopted the net fiscal impact in the affected fiscal years will be as follows:

Fiscal Year	Revenue Impact of Increase	State Savings in FEFP	Net (Cost)/Savings to State Expenditures
2008-2009	(9,843,675)	10,929,600	1,085,925
2009-2010	(50,365,200)	51,758,721	1,393,521
2010-2011	(76,485,450)	83,985,507	7,500,057
2011-2012	(103,275,450)	115,908,297	12,632,847
2012-2013	(130,065,450)	147,899,992	17,834,542

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

Article I, s. 2 of the Florida Constitution, sets forth the guaranty of equal protection, which provides that:

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Equal protection, however, does not require that a statute apply equally and uniformly to all persons within the state. It is sufficient if the statute applies uniformly to all persons who are similarly situated. Furthermore, reasonable classifications, meaning a grouping of things because they agree with one another in certain particulars and differ from other things in those particulars, is permissible under the equal protection clause, so long as the classification is not arbitrary and is based on some difference in the classes having a substantial relation to the purpose of the legislation.

The bill provides a \$200 annual premium payment for the benefit of CITC scholarship students who take the FCAT and attend a private school where at least 95% of eligible scholarship students take the FCAT. Distinguishably, CITC scholarship recipients in private schools with less than 95% participation in the FCAT, and students in public schools, who take the FCAT are not beneficiaries of any such payment. As a result of these classifications among similarly situated students, the bill might be subject to a challenge on equal protection grounds.

B. RULE-MAKING AUTHORITY:

The bill requires the SBE to annually amend its rules to adjust the maximum scholarship award amount to reflect 62% of the unweighted FEFP per student funding amount established in the annual appropriations act for the ensuing state fiscal year.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Scholarship Amount: The bill amends s. 220.187(11), F.S., to increase the maximum scholarship award amount from \$3,750 to \$4,500 per year. The bill also requires the SBE beginning on June 30, 2009, and annually thereafter, to specify in rule a maximum scholarship amount that reflects 62% of the unweighted FEFP per student funding amount. The requirement that the SBE amend its rules each year may be burdensome, as rule development is a multi-stage process, subject to public notice, input, and hearing requirements.¹⁸ Additionally, the fact that statute will specify a maximum scholarship amount of \$4,500, while rule will specify the actual maximum scholarship amount may cause confusion. For clarity and to eliminate the necessity for annual SBE rule making, it may be desirable to amend the bill so that the statute will: (a) specify the exact dollar amounts by which the scholarship award will be permitted to annually increase; and/or (b) provide that the maximum scholarship amount shall be a specified percentage of the statewide average total funds per unweighted full-time equivalent student funding provided in the FEFP for that school year. For the 2007-2008 school year, this average amount is \$7,212.

Administrative fees: The bill authorizes SFOs to retain up to three percent of eligible contributions for administrative expenses incurred under the CITC Program. The term "administrative expenses" is undefined. Consideration may be given to clarifying the term's meaning.

FCAT Premium Payment: Under current law, the parent of a scholarship recipient may choose to have the student take either the norm-referenced test offered by the private school or the FCAT. Statute specifies that parents choosing the FCAT option are responsible for transporting the student to the testing site.

The bill removes current law requiring parents to transport students to the FCAT testing site. It also provides for an annual premium payment of \$200 for a scholarship student who takes the FCAT and attends a private school where at least 95% of eligible scholarship students take the FCAT. The premium payment is to be deposited into the private school's account and applied to transportation and test preparation costs associated with participation in the FCAT, or any other school fees. The DOE is required to provide FCAT preparation and instructional materials to participating schools for use in preparing scholarship recipients for the FCAT.

These provisions of the bill present a number of drafting, implementation, and policy issues that include the following:

- The bill requires the DOE to determine whether 95% of scholarship-recipients in a private school have participated in the FCAT, but does not specify a time frame for when this determination is to be made. Further, the bill does not identify when the \$200 premium payments are to be made by the SFO. Due to the fact that the FCAT is administered in the spring, the DOE would not be able to determine how many scholarship recipients qualify for the premium payments until late in the school year. This could pose accounting issues for a SFO as it will not know at the beginning of each school year how much to reserve for premium payments and how much is available for scholarships.
- The bill requires the \$200 premium payment to be applied to transportation and test preparation costs associated with participation in the FCAT, or any other school fees. It does not, however, provide an accounting mechanism to ensure that the payment is used in this manner.
- The bill deletes current provisions placing FCAT-related transportation responsibilities on the parent and does not transfer this responsibility to another entity. As such, the responsibility for FCAT-related transportation is unclear.
- The bill requires the DOE to provide FCAT preparation and instructional materials to participating schools. Current FCAT preparation materials available from the DOE are intended

¹⁸ Section 120.54, F.S.

for students who are being taught a curriculum based on the Sunshine State Standards (SSS). Private school curriculums are not SSS-based and, thus, available FCAT preparation materials may not be of adequate assistance to a scholarship recipient who takes the FCAT. If the DOE is required to develop alternative FCAT preparation curricula, there is likely to be a significant fiscal impact to the department.

- The bill's premium payment may result in a significant increase in the number of scholarship recipients electing to take the FCAT. As discussed above in the section entitled, "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," such an increase would: (a) reduce the number of scholarships that would otherwise be available; and (b) impose increased work load and fiscal burdens on school districts, which appear to implicitly be required to administer the FCAT for these students. Although the bill does not specifically state that school districts are required to administer the FCAT, this would be necessary as a practical matter in order to maintain testing security for the FCAT.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the Corporate Income Tax Credit
3 Scholarship Program; amending s. 220.187, F.S.; providing
4 legislative findings; revising program purposes; providing
5 that siblings of certain students are eligible for
6 participation in the program; revising provisions
7 authorizing the total amount of tax credits that may be
8 granted and deleting the reservation of a portion thereof;
9 revising authorized uses of scholarship funds and
10 providing for premium payments to certain students who
11 participate in statewide assessments; revising provisions
12 relating to expenditure of contributions received during a
13 fiscal year; removing parent responsibility for providing
14 transportation to certain assessment sites; providing
15 obligations of the Department of Education relating to
16 scholarship student participation in statewide
17 assessments; revising scholarship amounts and providing
18 amount of premium payments; requiring State board of
19 Education rule for adjustment of scholarship awards;
20 revising requirements relating to verification of student
21 attendance for purposes of scholarship payment; providing
22 for preservation of credits under certain circumstances;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsections (1) and (3), paragraph (b) of
28 subsection (5), paragraphs (d), (i), and (m) of subsection (6),

29 paragraph (e) of subsection (7), paragraph (c) of subsection
 30 (8), and paragraphs (a), (b), and (c) of subsection (11) of
 31 section 220.187, Florida Statutes, are amended, paragraphs (k)
 32 through (n) of subsection (9) are redesignated as paragraphs (m)
 33 through (p), respectively, new paragraphs (k) and (l) are added
 34 to that subsection, and a new subsection (14) is added to that
 35 section, to read:

36 220.187 Credits for contributions to nonprofit
 37 scholarship-funding organizations.--

38 (1) FINDINGS AND PURPOSE.--

39 (a) The Legislature finds that:

40 1. It has the inherent power to determine subjects of
 41 taxation for general or particular public purposes.

42 2. Expanding educational opportunities and improving the
 43 quality of educational services within the state are valid
 44 public purposes that the Legislature may promote using its
 45 sovereign power to determine subjects of taxation and exemptions
 46 from taxation.

47 3. Ensuring that all parents, regardless of means, may
 48 exercise and enjoy their basic right to educate their children
 49 as they see fit is a valid public purpose that the Legislature
 50 may promote using its sovereign power to determine subjects of
 51 taxation and exemptions from taxation.

52 4. The existence of programs that provide expanded
 53 educational opportunities in this state has not been shown to
 54 reduce funding to or otherwise harm public schools within the
 55 state, and, to the contrary, per-student funding in public

56 schools has risen each year since the inception of those
 57 programs in 1999.

58 5. Expanded educational opportunities and the healthy
 59 competition they promote are critical to improving the quality
 60 of education in the state and to ensuring that all children
 61 receive the high-quality education to which they are entitled.

62 (b) The purpose of this section is to:

63 1.-(a) Enable taxpayers to make ~~Encourage~~ private,
 64 voluntary contributions to nonprofit scholarship-funding
 65 organizations in order to promote the general welfare.

66 2. Provide taxpayers who wish to help parents with limited
 67 resources exercise their basic right to educate their children
 68 as they see fit with a means to do so.

69 3.-(b) Promote the general welfare by expanding ~~Expand~~
 70 educational opportunities for children of families that have
 71 limited financial resources.

72 4.-(e) Enable children in this state to achieve a greater
 73 level of excellence in their education.

74 5. Improve the quality of education in this state, both by
 75 expanding educational opportunities for children and by creating
 76 incentives for schools to achieve excellence.

77 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.--The Corporate
 78 Income Tax Credit Scholarship Program is established. A student
 79 is eligible for a corporate income tax credit scholarship if the
 80 student qualifies for free or reduced-price school lunches under
 81 the National School Lunch Act and:

82 (a) Was counted as a full-time equivalent student during
 83 the previous state fiscal year for purposes of state per-student
 84 funding;

85 (b) Received a scholarship from an eligible nonprofit
 86 scholarship-funding organization or from the State of Florida
 87 during the previous school year; or

88 (c) Is eligible to enter kindergarten or first grade.

89

90 Contingent upon available funds, a student may continue in the
 91 scholarship program as long as the student's household family
 92 income level does not exceed 200 percent of the federal poverty
 93 level. A sibling of a student who is continuing in the program
 94 and resides in the same household as the student shall also be
 95 eligible as a first-time corporate income tax credit scholarship
 96 recipient as long as the student's and sibling's household
 97 income level does not exceed 200 percent of the federal poverty
 98 level.

99 (5) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX

100 CREDITS; LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.--

101 (b) The total amount of tax credits and carryforward of
 102 tax credits which may be granted each state fiscal year under
 103 this section is:

- 104 1. Through June 30, 2008, \$88 million.
- 105 2. Through June 30, 2009, \$118 million.
- 106 3. Through June 30, 2010, \$148 million.
- 107 4. Through June 30, 2011, \$178 million.
- 108 5. Through June 30, 2012, \$208 million.
- 109 6. Beginning July 1, 2012, and thereafter, \$238 million.

110 ~~At least 1 percent of the total statewide amount authorized for~~
 111 ~~the tax credit shall be reserved for taxpayers who meet the~~
 112 ~~definition of a small business provided in s. 288.703(1) at the~~
 113 ~~time of application.~~

114 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING
 115 ORGANIZATIONS.--An eligible nonprofit scholarship-funding
 116 organization:

117 (d)1. Must provide scholarships, from eligible
 118 contributions, to eligible students for the cost of:

119 ~~a.1. Tuition and fees or textbook expenses for, or~~
 120 ~~transportation to, an eligible private school. At least 75~~
 121 ~~percent of the scholarship funding must be used to pay tuition~~
 122 ~~expenses; or~~

123 ~~b.2. Transportation expenses to a Florida public school~~
 124 ~~that is located outside the district in which the student~~
 125 ~~resides or to a lab school as defined in s. 1002.32.~~

126 2. Must provide a premium payment to a scholarship student
 127 who participates in the statewide assessments pursuant to s.
 128 1008.22 and who attends an eligible private school that has at
 129 least 95-percent participation of eligible scholarship students
 130 in the statewide assessments. This premium payment shall be
 131 applied to transportation costs related to participation in the
 132 statewide assessments, statewide assessment preparation costs,
 133 and other school fees incurred by a student that are not
 134 otherwise covered under this paragraph.

135 (i) Must expend for annual or partial-year scholarships an
 136 amount equal to or greater than 75 percent of the eligible
 137 contributions received during the fiscal year in which such

138 contributions are collected. No more than 25 percent of such
 139 eligible contributions may be carried forward to the following
 140 fiscal year. Any amounts carried forward shall be expended for
 141 ~~obligate, in the same fiscal year in which the contribution was~~
 142 ~~received, 100 percent of the eligible contribution to provide~~
 143 ~~annual or partial-year scholarships; however, up to 25 percent~~
 144 ~~of the total contribution may be carried forward for expenditure~~
 145 in the following ~~state~~ fiscal year. A scholarship-funding
 146 organization must, before granting a scholarship for an academic
 147 year, document each scholarship student's eligibility for that
 148 academic year. A scholarship-funding organization may not grant
 149 multiyear scholarships in one approval process. Up to 3 percent
 150 ~~No portion~~ of eligible collected contributions may be used for
 151 administrative expenses incurred by a scholarship-funding
 152 organization under this section. All interest accrued from
 153 contributions must be used for scholarships.

154 (m) Must prepare and submit quarterly reports to the
 155 Department of Education pursuant to paragraph (9) (o) ~~(m)~~. In
 156 addition, an eligible nonprofit scholarship-funding organization
 157 must submit in a timely manner any information requested by the
 158 Department of Education relating to the scholarship program.

159
 160 Any and all information and documentation provided to the
 161 Department of Education and the Auditor General relating to the
 162 identity of a taxpayer that provides an eligible contribution
 163 under this section shall remain confidential at all times in
 164 accordance with s. 213.053.

165 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM
 166 PARTICIPATION.--

167 (e) The parent shall ensure that the student participating
 168 in the scholarship program takes the norm-referenced assessment
 169 offered by the private school. The parent may also choose to
 170 have the student participate in the statewide assessments
 171 pursuant to s. 1008.22. ~~If the parent requests that the student~~
 172 ~~participating in the scholarship program take statewide~~
 173 ~~assessments pursuant to s. 1008.22, the parent is responsible~~
 174 ~~for transporting the student to the assessment site designated~~
 175 ~~by the school district.~~

176 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.--An
 177 eligible private school may be sectarian or nonsectarian and
 178 must:

179 (c) Be academically accountable to the parent for meeting
 180 the educational needs of the student by:

181 1. At a minimum, annually providing to the parent a
 182 written explanation of the student's progress.

183 2. Annually administering or making provision for students
 184 participating in the scholarship program to take one of the
 185 nationally norm-referenced tests identified by the Department of
 186 Education. Students with disabilities for whom standardized
 187 testing is not appropriate are exempt from this requirement. A
 188 participating private school must report a student's scores to
 189 the parent and to the independent research organization selected
 190 by the Department of Education as described in paragraph (9)(j).

191 3. Cooperating with the scholarship student whose parent
 192 chooses to have the student participate in the statewide

193 assessments pursuant to s. 1008.22 ~~1008.32~~. To encourage
 194 participation, a scholarship student who participates in the
 195 statewide assessments is eligible for a premium payment pursuant
 196 to subparagraph (6)(d)2. and subparagraph (11)(a)2.

197
 198 The inability of a private school to meet the requirements of
 199 this subsection shall constitute a basis for the ineligibility
 200 of the private school to participate in the scholarship program
 201 as determined by the Department of Education.

202 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.--The Department
 203 of Education shall:

204 (k) Provide participating schools with all preparation and
 205 instructional materials to prepare students for the statewide
 206 assessments pursuant to s. 1008.22.

207 (l) Determine if at least 95 percent of a private school's
 208 eligible scholarship students participate in the statewide
 209 assessments pursuant to s. 1008.22.

210 (11) SCHOLARSHIP AND PREMIUM AMOUNT AND PAYMENT.--

211 (a) 1. The amount of a scholarship provided to any student
 212 for any single school year by an eligible nonprofit scholarship-
 213 funding organization from eligible contributions shall be for
 214 total costs authorized under subparagraph (6)(d)1., not to
 215 exceed the following annual limits:

216 ~~a.1.~~ Four thousand five hundred ~~Three thousand seven~~
 217 ~~hundred fifty~~ dollars for a scholarship awarded to a student
 218 enrolled in an eligible private school.

219 ~~b.2.~~ Five hundred dollars for a scholarship awarded to a
 220 student enrolled in a Florida public school that is located

221 outside the district in which the student resides or in a lab
 222 school as defined in s. 1002.32.

223 2. The amount of an annual premium payment by an eligible
 224 nonprofit scholarship-funding organization from eligible
 225 contributions shall be \$200 for costs authorized under
 226 subparagraph (6)(d)2. provided to a student who takes the
 227 statewide assessments pursuant to s. 1008.22 if at least 95
 228 percent of the private school's eligible scholarship students
 229 participate in the statewide assessments.

230

231 By June 30, 2009, and annually thereafter, the State Board of
 232 Education shall, by rule, adjust the maximum amounts for the
 233 scholarship awards under this paragraph to reflect 62 percent of
 234 the unweighted FEFP student funding amount established in the
 235 annual appropriations act for the ensuing state fiscal year. The
 236 annually adjusted amounts shall be rounded downward to the
 237 nearest dollar and shall be effective for the following school
 238 year beginning July 1, 2009, and each year thereafter.

239 (b) Payment of the scholarship and premium by the eligible
 240 nonprofit scholarship-funding organization shall be by
 241 individual warrant made payable to the student's parent. If the
 242 parent chooses that his or her child attend an eligible private
 243 school, the warrant must be delivered by the eligible nonprofit
 244 scholarship-funding organization to the private school of the
 245 parent's choice, and the parent shall restrictively endorse the
 246 warrant to the private school. An eligible nonprofit
 247 scholarship-funding organization shall ensure that the parent to
 248 whom the warrant is made restrictively endorsed the warrant to

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249 the private school for deposit into the account of the private
 250 school.

251 (c) An eligible nonprofit scholarship-funding organization
 252 shall obtain verification from the private school of a student's
 253 continued attendance at the school for ~~prior to~~ each period
 254 covered by a scholarship payment.

255 (14) PRESERVATION OF CREDIT.--If any provision or portion
 256 of subsection (5) or the application thereof to any person or
 257 circumstance is held unconstitutional by any court or is
 258 otherwise declared invalid, the unconstitutionality or
 259 invalidity shall not affect any credit earned under subsection
 260 (5) by any taxpayer with respect to any contribution paid to an
 261 eligible nonprofit scholarship-funding organization before the
 262 date of a determination of unconstitutionality or invalidity.
 263 Such credit shall be allowed at such time and in such a manner
 264 as if a determination of unconstitutionality or invalidity had
 265 not been made, provided that nothing in this subsection by
 266 itself or in combination with any other provision of law shall
 267 result in the allowance of any credit to any taxpayer in excess
 268 of one dollar of credit for each dollar paid to an eligible
 269 nonprofit scholarship-funding organization.

270 Section 2. This act shall take effect June 30, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. HB 653

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Schools and Learning Council
2 Representative(s) Traviesa offered the following:

Amendment (with directory and title amendments)

Remove line(s) 52-250 and insert:

3
4 4. Expanded educational opportunities and the healthy
5 competition they promote are critical to improving the quality
6 of education in the state and to ensuring that all children
7 receive the high-quality education to which they are entitled.

(b) The purpose of this section is to:

8
9
10
11 1.-(a) Enable taxpayers to make Encourage private,
12 voluntary contributions to nonprofit scholarship-funding
13 organizations in order to promote the general welfare.

14 2. Provide taxpayers who wish to help parents with limited
15 resources exercise their basic right to educate their children
16 as they see fit with a means to do so.

17 3.-(b) Promote the general welfare by expanding Expand
18 educational opportunities for children of families that have
19 limited financial resources.

20 4.-(c) Enable children in this state to achieve a greater
21 level of excellence in their education.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 5. Improve the quality of education in this state, both by
23 expanding educational opportunities for children and by creating
24 incentives for schools to achieve excellence.

25 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.--The Corporate
26 Income Tax Credit Scholarship Program is established. A student
27 is eligible for a corporate income tax credit scholarship if the
28 student qualifies for free or reduced-price school lunches under
29 the National School Lunch Act and:

30 (a) Was counted as a full-time equivalent student during
31 the previous state fiscal year for purposes of state per-student
32 funding;

33 (b) Received a scholarship from an eligible nonprofit
34 scholarship-funding organization or from the State of Florida
35 during the previous school year; or

36 (c) Is eligible to enter kindergarten or first grade.

37
38 Contingent upon available funds, a student may continue in the
39 scholarship program as long as the student's household family
40 income level does not exceed 200 percent of the federal poverty
41 level. A sibling of a student who is continuing in the program
42 and resides in the same household as the student shall also be
43 eligible as a first-time corporate income tax credit scholarship
44 recipient as long as the student's and sibling's household
45 income level does not exceed 200 percent of the federal poverty
46 level.

47 (5) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX
48 CREDITS; LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.--

49 (b) The total amount of tax credits and carryforward of
50 tax credits which may be granted each state fiscal year under
51 this section is:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

- 52 1. Through June 30, 2008, \$88 million.
- 53 2. Through June 30, 2009, \$118 million.
- 54 3. Through June 30, 2010, \$148 million.
- 55 4. Through June 30, 2011, \$178 million.
- 56 5. Through June 30, 2012, \$208 million.
- 57 6. Beginning July 1, 2012, and thereafter, \$238 million.

58 ~~At least 1 percent of the total statewide amount authorized for~~
59 ~~the tax credit shall be reserved for taxpayers who meet the~~
60 ~~definition of a small business provided in s. 288.703(1) at the~~
61 ~~time of application.~~

62 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING
63 ORGANIZATIONS.--An eligible nonprofit scholarship-funding
64 organization:

65 (d) Must provide scholarships, from eligible contributions,
66 to eligible students for the cost of:

67 1. ~~Tuition and fees or textbook expenses for, or~~
68 ~~transportation to, an eligible private school. At least 75~~
69 ~~percent of the scholarship funding must be used to pay tuition~~
70 ~~expenses; or~~

71 2. ~~Transportation expenses to a Florida public school that~~
72 ~~is located outside the district in which the student resides or~~
73 ~~to a lab school as defined in s. 1002.32.~~

74 (i) May use up to 3 percent of eligible contributions
75 received during the state fiscal year in which such
76 contributions are collected for administrative expenses that are
77 incurred by the organization under this section. The
78 scholarship-funding organization must expend for annual or
79 partial-year scholarships an amount equal to or greater than 75
80 percent of the net eligible contributions remaining after
81 administrative expenses during the state fiscal year in which

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

82 such contributions are collected. No more than 25 percent of
83 such net eligible contributions may be carried forward to the
84 following state fiscal year. Any amounts carried forward shall
85 be expended for ~~Must obligate, in the same fiscal year in which~~
86 ~~the contribution was received, 100 percent of the eligible~~
87 ~~contribution to provide annual or partial-year scholarships,~~
88 ~~however, up to 25 percent of the total contribution may be~~
89 ~~carried forward for expenditure~~ in the following state fiscal
90 year. A scholarship-funding organization must, before granting a
91 scholarship for an academic year, document each scholarship
92 student's eligibility for that academic year. A scholarship-
93 funding organization may not grant multiyear scholarships in one
94 approval process. ~~No portion of eligible contributions may be~~
95 ~~used for administrative expenses.~~ All interest accrued from
96 contributions must be used for scholarships.

97
98 Any and all information and documentation provided to the
99 Department of Education and the Auditor General relating to the
100 identity of a taxpayer that provides an eligible contribution
101 under this section shall remain confidential at all times in
102 accordance with s. 213.053.

103 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.--An
104 eligible private school may be sectarian or nonsectarian and
105 must:

106 (c) Be academically accountable to the parent for meeting
107 the educational needs of the student by:

108 1. At a minimum, annually providing to the parent a
109 written explanation of the student's progress.

110 2. Annually administering or making provision for students
111 participating in the scholarship program to take one of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

112 nationally norm-referenced tests identified by the Department of
113 Education. Students with disabilities for whom standardized
114 testing is not appropriate are exempt from this requirement. A
115 participating private school must report a student's scores to
116 the parent and to the independent research organization selected
117 by the Department of Education as described in paragraph (9)(j).

118 3. Cooperating with the scholarship student whose parent
119 chooses to have the student participate in the statewide
120 assessments pursuant to s. 1008.22 ~~1008.32~~.

121
122 The inability of a private school to meet the requirements of
123 this subsection shall constitute a basis for the ineligibility
124 of the private school to participate in the scholarship program
125 as determined by the Department of Education.

126 (11) SCHOLARSHIP AMOUNT AND PAYMENT.--

127 (a) The amount of a scholarship provided to any student
128 for any single school year by an eligible nonprofit scholarship-
129 funding organization from eligible contributions shall be for
130 total costs authorized under subparagraph (6)(d)1., not to
131 exceed the following annual limits:

132 1. ~~Three thousand seven hundred fifty dollars~~ For a
133 scholarship awarded to a student enrolled in an eligible private
134 school:

135 a. Three thousand nine hundred fifty dollars during the
136 2008-2009 state fiscal year.

137 b. Sixty percent of the statewide average total funds per
138 unweighted full-time equivalent student funding
139 amount as annually calculated in the General Appropriations Act
140 Conference Report of the Florida Education Finance Program or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

141 any subsequent appropriations act for the 2009-2010 state fiscal
142 year and each state fiscal year thereafter.

143 2. Five hundred dollars for a scholarship awarded to a
144 student enrolled in a Florida public school that is located
145 outside the district in which the student resides or in a lab
146 school as defined in s. 1002.32.

147 -----

D I R E C T O R Y A M E N D M E N T

148 Remove line(s) 28-34 and insert:
149 subsection (5), paragraphs (d) and (i) of subsection (6),
150 paragraph (c) of subsection (8), and paragraphs (a) and (c) of
151 subsection (11) of section 220.187, Florida Statutes, are
152 amended, and a new subsection (14) is added to that
153

154 -----

T I T L E A M E N D M E N T

155 Remove line(s) 9-19 and insert:
156 revising authorized uses of scholarship funds; revising
157 provisions relating to expenditure of contributions received by
158 a scholarship-funding organization during a state fiscal year;
159 authorizing expenditure of contributions for administrative
160 expenses; revising a cross-reference; revising scholarship
161 amounts and providing for adjustments in future scholarship
162 amounts;
163

164