

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EPC 10-03 Class Size

SPONSOR(S): Education Policy Council

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Education Policy Council		White	Lowell
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The proposed council bill presents a House Joint Resolution that would allow voters to amend Section 1, Article IX of the State Constitution, relating to class size. Currently, the State Constitution specifies that the maximum number of students who may be assigned to a teacher in public school classrooms, by the beginning of the 2010 school year, is: (a) 18 students in prekindergarten (PreK) through grade three; (b) 22 students in grades four through eight; and (c) 25 students in grades nine through 12.

The joint resolution proposes modifying the class size requirements so that compliance, beginning with the 2010-2011 school year, would be calculated as follows:

- PreK – Grade 3: The maximum number of students who may be assigned to each teacher in an individual classroom is raised from 18 to 21, *but the average number of students assigned per class to each teacher within each public school may not exceed 18 students.*
- Grades 4 – 8: The maximum number of students that may be assigned to each teacher in an individual classroom is raised from 22 to 27, *but the average number of students assigned per class to each teacher within each public school may not exceed 22 students.*
- Grades 9 – 12: The maximum number of students that may be assigned to each teacher in an individual classroom is raised from 25 to 30, *but the average number of students assigned per class to each teacher within each public school may not exceed 25 students.*

Additionally, the joint resolution:

- Clarifies that full compliance with class size is required by the “beginning of the 2010-2011 school year,” rather than “the beginning of the 2010 school year” as currently provided in the constitution.
- Clarifies that virtual schools are exempt from class size requirements.
- Requires the Legislature to provide sufficient funding to maintain the average number of students required by the amendment and deletes obsolete language requiring the Legislature, beginning 2003-2004, to fund class size reductions by at least two students annually.
- Contains a ballot summary that notifies voters of the contents of the proposed amendment.

The joint resolution must be adopted by a three-fifths vote of the membership of each house of the Legislature. If passed, the proposed amendments would be placed on the ballot at the November 2, 2010, general election. Sixty percent voter approval is required for adoption. If adopted by the voters, the amendment would take effect retroactively to the beginning of the 2010-2011 school year.

The joint resolution should have a positive, but indeterminate, fiscal impact on state and school district expenditures for education. The Department of State has projected a non-recurring fiscal impact of \$79,436 to comply with the constitutional publication requirements for the joint resolution. (See the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT section in this analysis.)

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb03.EPC.doc
DATE: 2/8/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Constitutional Requirement

In November 2002, voters approved the constitutional Class Size Reduction Amendment.¹ The amendment requires the Legislature to provide for: (1) a sufficient number of classrooms by the beginning of the 2010 school year so that no more than a specified maximum number of students may be assigned to each teacher; and (2) the reduction of the average number of students in each classroom by at least two students per year until the number of students per classroom does not exceed the maximum allowed.

The maximum number of students that may be assigned to each teacher is as follows:

- 18 students in PreK through grade three.
- 22 students in grades four through eight.
- 25 students in grades nine through 12.

The amendment does not apply to extracurricular classes.²

Implementation

In 2003, the Legislature enacted legislation to implement the class size amendment.³ The law specifies that the class size requirements apply to students in core-curricula courses.⁴ Core-curricula courses are defined as: mathematics, language arts/reading, science, social studies, foreign languages, English for Speakers of Other Languages, exceptional student education, and courses taught in traditional self-contained elementary school classrooms. The definition further states that virtual instruction courses under ss. 1002.37, 1002.415, and 1002.45, F.S., are not included within the term "core-curricula courses."⁵

¹ Section 1, Article IX, Fla. Constitution.

² *Id.*

³ Chapter 2003-391, s. 2, L.O.F.

⁴ Section 1003.03, F. S.

⁵ Section 1003.01(14), F.S.

The law sets forth an implementation schedule for the amendment. It provides that class size for purposes of determining district compliance with class size reduction goals and maximums for each of the three grade groupings shall be calculated:

- At the district level average for Fiscal Years (FYs) 2003-2004 through 2005-2006.
- At the school level average for FYs 2006-2007 through 2009-2010.⁶
- At the individual classroom level for FY 2010-2011 and thereafter.⁷

To meet class size requirements, school districts are authorized to implement options that include, but are not limited to, the following:

- Adopting policies to encourage qualified students to take dual enrollment and Florida Virtual School courses.
- Repealing district policies requiring more than 24 credits to graduate from high school.
- Maximizing use of instructional staff, e.g., modifying required teaching loads and planning periods and deploying district employees who have professional certification.
- Using innovative methods to reduce school construction costs.
- Utilizing joint-use facilities through partnerships with postsecondary institutions.
- Adopting alternative methods of class scheduling, such as block scheduling.
- Redrawing school attendance zones to maximize use of facilities.
- Operating schools beyond the normal operating hours and using year-round schools and other non-traditional calendars.
- Amending collective bargaining contracts that hinder the implementation of class size reduction.
- Using any other approach not prohibited by law.⁸

Since adoption of the class size reduction amendment, average class sizes have been reduced as follows:

District Average Class Size ⁹								
	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Grades PK-3	23.07	20.54	18.98	18.16	17.01	16.28	15.95	16.39
Grades 4-8	24.16	22.43	21.30	20.48	19.45	18.76	18.60	18.91
Grades 9-12	24.10	24.06	23.65	22.96	22.22	21.39	21.49	21.94

Funding

Statute establishes an operating categorical fund for class size reduction. This funding must be used by districts to reduce class size as required by s. 1003.03, F.S., or may be used for any lawful operating expenditure with priority to be given to increasing salaries of classroom teachers.¹⁰ For FYs 2003-2004 through 2009-2010, the Legislature appropriated a total of \$13.3 billion in class size reduction operating funds with \$2.8 billion of that amount most recently appropriated for FY 2009-2010.¹¹

Statute also establishes the Classrooms for Kids Program which authorizes appropriated fixed capital outlay funds to be distributed to districts based on a specified formula. In order to increase capacity to reduce class size, districts must spend these funds only on the construction, renovation, remodeling, or

⁶ Section 1003.03(2)(b)4., F.S.

⁷ Beginning with FY 2006-2007, each teacher assigned to any classroom is included in the compliance calculation. Section 1003.03(2)(b), F.S.

⁸ Section 1003.03(3), F.S.

⁹ Florida Department of Education, 2010 Legislative Information Request, December 2009.

¹⁰ Section 1011.685, F.S.

¹¹ Florida Department of Education, 2010 Legislative Information Request, December 2009.

repair of educational facilities or the purchase or lease-purchase of specified relocatables.¹² For FYs 2003-2004 through 2007-2008, the Legislature appropriated a total of \$2.5 billion in fixed capital outlay funds to the program with \$650 million of that amount most recently appropriated for FY 2007-2008.¹³ No fixed capital outlay funds have been appropriated to the program since FY 2007-2008.

The State Board of Education's (SBE's) Legislative Budget Request for FY 2010-2011 contains a \$3.2 billion appropriation request for the class size reduction operating categorical fund. It does not contain an appropriation request for fixed capital outlay funding for the Classrooms for Kids Program.¹⁴

Compliance

Compliance measures for FYs 2003-2004 through 2009-2010: Since FY 2003-2004, the DOE has been required to review district compliance with the class size reduction requirements. When the DOE determines, at the time of the third Florida Education Finance Program (FEFP) calculation, that a district has not complied with the reduction requirements for that year, the DOE must calculate an amount from the district's class size reduction operating funds which is proportionate to the amount of class size reduction not accomplished. The amount is to be transferred by the Executive Office of the Governor to the district's fixed capital outlay appropriation and used for class size reduction requirements.¹⁵

A school district may appeal the DOE's finding that the district has not complied with the class size reduction requirements. If the Commissioner of Education and SBE determine that a district has been unable to meet the requirements despite appropriate efforts, the Commissioner may recommend a budget amendment, subject to the approval of the Legislative Budget Commission, to transfer an alternative amount of funds from class size operating to fixed capital outlay.^{16 17} Factors that have been considered by the Commissioner and SBE when recommending such an amendment have included:

- Unexpected student enrollment growth.
- District reporting errors.
- Inability to hire teachers.
- Impact of budget cuts on ability to reduce class size.¹⁸

During the six FYs between 2003-2004 and 2008-2009, almost \$6.7 million has been transferred after appeals from the district class size reduction operating funds to district class size reduction fixed capital outlay for traditional public schools.^{19 20}

¹² Section 1013.735, F.S.

¹³ Florida Department of Education, 2010 Legislative Information Request, December 2009.

¹⁴ State Board of Education, Legislative Budget Request, October 2009.

¹⁵ Section 1003.03(4)(a), F.S.

¹⁶ Section 1003.03(4)(a)2., F.S.

¹⁷ Additionally, beginning with FY 2007-2008 and thereafter, the Commissioner of Education may reduce the amount of class size reduction operating funds required to be transferred to fixed capital outlay by 50 percent if the amount of those operating funds as established in the General Appropriations Act for the relevant FY are reduced by a subsequent appropriation. Section 1003.03(4)(a)3., F.S.

¹⁸ Florida Department of Education, 2010 Legislative Information Request, December 2009.

¹⁹ Florida Department of Education, House PreK-12 Appropriations Committee Update on the Class Size Amendment PowerPoint, January 12, 2010.

²⁰ This amount reflects only the amount transferred for traditional public schools. The total amount transferred for charter and traditional public schools is approximately \$8.8 million. See Florida Department of Education, 2010 Legislative Information Request, December 2009. Prior to FY 2008-2009, the compliance requirements for class size reduction set forth in s. 1003.03, F.S., had been interpreted by the Legislature and DOE as applying to both traditional and charter schools; however, on December 17, 2008, the Division of Administrative Hearings (DOAH) issued an order holding that the DOE may not require charter schools to comply s. 1003.03, F.S., because: (1) charter schools are exempt from that section under s. 1002.33(17)(a), F.S., which states that charter schools are not subject to provisions of the School Code unless specifically required by statute; and (2) the DOE violated ch. 120, F.S., by failing to adopt its regulatory policy for traditional and charter school compliance with class size requirements as a rule. See *Renaissance Charter School, Inc., and the Lee Charter Foundation, Inc. v. Department of Education*, DOAH Case No. 08-1309RU (Final Order dated Dec. 17, 2008). As a result of the DOAH order, there is currently no means for enforcing charter school compliance with class size requirements.

For the 2009-2010 school year, 72 traditional public schools in 26 school districts were initially determined by the DOE to not be in compliance with the constitutional class size requirements when measured at the school level. The amount of class size reduction operating funds to be transferred based on that level of noncompliance totaled \$1,912,030. After appeals, the Commissioner recommended that only 16 traditional public schools in nine school districts be found noncompliant and that the amount to be transferred be reduced to \$267,263. The SBE is to consider the Commissioner's post-appeal recommendation at its February 15, 2010, meeting.²¹

Compliance Measures for FY 2010-2011 and thereafter: Legislation adopted during the 2009 Regular Session established new compliance measures that begin in FY 2010-2011 when class size must be calculated at the individual classroom level.²² Beginning in that year, if the DOE determines, at the time of third FEFP calculation, that the number of students assigned to any individual classroom exceeds the permitted class size maximum, the district's class size reduction operating funds must be reduced by the lesser of: (a) the amount equaling the number full-time equivalent (FTE) students in excess of the maximum for each class multiplied by the district's per-FTE amount for class size reduction funds; or (b) the amount of the district's undistributed balance of class size reduction operation funds.²³ The Commissioner of Education, subject to approval by the Legislative Budget Commission, may recommend an alternate reduced amount.²⁴ The Executive Office of the Governor is required place funds from the reductions in reserve by March 1st of each year and the undistributed funds are to revert to the General Revenue Fund unallocated at the end of the FY.²⁵

The 2009 legislation also required the DOE, at the time of the third FEFP calculation in 2009, to prepare a simulated calculation based on FY 2009-2010 using the new compliance measures applicable to the FY 2010-2011.²⁶ The simulation results are as follows:

- PreK – Grade 3: A total of 34,565.56 FTE would be in excess of the class size maximums in 100,440 classrooms (32.43 percent of classrooms in state).
- Grades 4 – 8: A total of 42,806.46 FTE would be in excess of the class size maximums in 77,607 classrooms (28.59 percent of classrooms in state).
- Grades 9 – 12: A total of 43,623.76 FTE would be in excess of the class size maximums in 56,564 classrooms (37.02 percent of classrooms in state).²⁷

Based on the simulation, the DOE projected that the total reversion of class size reduction operating funds to the General Revenue Fund would be \$131,451,874 = \$50,305,492 (PreK – grade 3) + \$39,324,970 (grades 4 – 8) + \$41,821,412 (grades 9 – 12).²⁸

Effect of Proposed Changes

Class Size Constitutional Requirements: Beginning with the 2010-2011 school year, the amendment proposed by the joint resolution would modify class size requirements so that compliance would be calculated as follows:

- PreK – Grade 3: The maximum number of students who may be assigned to each teacher in an individual classroom would be raised from 18 to 21, *but the average number of students assigned per class to each teacher within each public school may not exceed 18 students.*

²¹ Florida Department of Education, House PreK-12 Appropriations Committee Update on the Class Size Amendment PowerPoint, January 12, 2010.

²² Chapter 2009-59, s. 14, L.O.F.

²³ Section 1003.03(4)(b), F.S.

²⁴ Section 1003.03(4)(d), F.S.

²⁵ Section 1003.03(4) (c), F.S.

²⁶ Section 1003.03(4)(e), F.S.

²⁷ Florida Department of Education, House PreK-12 Appropriations Committee Update on the Class Size Amendment PowerPoint, January 12, 2010.

²⁸ *Id.*

- Grades 4 – 8: The maximum number of students who may be assigned to each teacher in an individual classroom would be raised from 22 to 27, *but the average number of students assigned per class to each teacher within each public school may not exceed 22 students.*
- Grades 9 – 12: The maximum number of students who may be assigned to each teacher in an individual classroom would be raised from 25 to 30, *but the average number of students assigned per class to each teacher within each public school may not exceed 25 students.*

Additionally, the joint resolution:

- Clarifies that full compliance with class size is required by the “beginning of the 2010-2011 school year,” rather than “the beginning of the 2010 school year” as currently provided in the constitution.
- Clarifies that virtual schools are exempt from class size requirements. Currently, statute specifies that virtual instruction courses are not included within the term “core-curricula courses” which are subject to the class size requirements.²⁹
- Requires the Legislature to provide sufficient funds to maintain the average number of students required in each classroom and deletes obsolete language that required the Legislature, beginning 2003-2004, to fund class size reductions by at least two students per year in order to meet the class size limits. Such funding has already been appropriated.
- Contains a ballot summary that notifies voters of the contents of the proposed amendment.

Implementation Schedule: The joint resolution, if adopted by three-fifths vote of the membership of each house of the Legislature, would place the proposed amendments on the ballot of the next general election on November 2, 2010.³⁰ If approved by 60 percent of the voters, the amendments would take effect retroactively to the beginning of the 2010-2011 school year.

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend Section 1 of Article IX of the Florida Constitution, relating to class size.

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 State Constitution requires the proposed amendment to 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.³¹ The Department of State executes this requirement and has projected a non-recurring fiscal impact of \$79,436.52 for the publication.

The joint resolution should have a positive, but indeterminate, fiscal impact on state expenditures for education. See FISCAL COMMENTS section below.

²⁹ Section 1003.01(14), F.S.

³⁰ Florida Division of Elections, Calendar of Election Dates *available at* <http://election.dos.state.fl.us/calendar/elecdate.shtml>.

³¹ Article XI, s. 5(d) of the State Constitution

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The joint resolution should have a positive, but indeterminate, fiscal impact on local expenditures for education. See FISCAL COMMENTS section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The joint resolution should have a positive, but indeterminate, fiscal impact on state and school district expenditures because the proposed constitutional amendment would allow some flexibility in meeting the class size requirements by calculating compliance at the average number of students assigned per class to each teacher within each public school, rather than calculating compliance at the number of students in each classroom.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution 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 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 by the Legislature, 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.³² 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.³³ 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.³⁴

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

³² Article XI, s. 5(a) of the State Constitution.

³³ Article XI, s. 5(d) of the State Constitution

³⁴ Article XI, s. 5(a) of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES