

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: SJR 2

INTRODUCER: Senator Gaetz and others

SUBJECT: Class Size Requirements for Public Schools

DATE: March 3, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Favorable
2.	Hamon	Coburn	WPSC	Favorable
3.				
4.				
5.				
6.				

I. Summary:

This Senate Joint Resolution (SJR) proposes amending Section 1, Article IX of the State Constitution to revise the maximum class size requirements. Beginning with the 2010-2011 school year, maximum class size would be the school level average number of students who can be assigned to each teacher in the following grade categories:

- 18 students in prekindergarten through grade 3;
- 22 students in grades 4 through 8; and
- 25 students in grades 9 through 12.

Also, the joint resolution requires the maximum number of students who may be assigned to a teacher (while not exceeding the school level average) be as follows:

- 21 students in prekindergarten through grade 3;
- 27 students in grades 4 through 8; and
- 30 students in grades 9 through 12.

The joint resolution also:

- Retains the application of the class size amendment to core-curricula classes;
- Repeals the requirement for a reduction of an average of two students in each classroom per year; and
- Provides that the constitutional class size requirements do not apply to virtual classes.

II. Present Situation:

Constitutional Amendment

In November 2002, s. 1, Art. IX of the State Constitution was amended to provide that by the beginning of the 2010 school year the maximum number of students assigned to a teacher who teaches core-curricula courses in public school classrooms shall be as follows:

- Prekindergarten through grade 3, the number of students may not exceed 18;
- Grades 4 through 8, the number of students may not exceed 22; and
- Grades 9 through 12, the number of students may not exceed 25.

The amendment required that beginning with the 2003-2004 fiscal year, the Legislature must provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the number of students per classroom does not exceed the maximum required by the beginning of the 2010 school year.

Implementation

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

- 2003-2004 through 2005-2006 at the district level;
- 2006-2007 through 2009-2010¹ at the school level; and
- 2010-2011 and thereafter, at the classroom level.

To implement the class size reduction provisions of the constitutional amendment, the Legislature created an operating categorical fund for the following purposes:²

- If the district has not met the constitutional maximums specified, or has not reduced its class size by the required average two students per year toward the constitutional maximums, the categorical funds must be used to reduce class size; and
- If the district has met the constitutional maximums or has successfully made the average two student reduction towards meeting those maximums, the funds may be used for any lawful operating expenditure. Priority, however, shall be given to increase salaries of classroom teachers and to implement the differentiated pay provisions in s. 1012.22, F.S.

In addition, in order to provide capital outlay funds to school districts for school construction for class size reduction, the Legislature created the Classrooms for Kids program to allocate funds appropriated for this purpose.³ A district is required to spend these funds only on the construction, renovation, remodeling, or repair of educational facilities, or the purchase or lease-purchase of relocatables that are in excess of the projects and relocatables identified in the district's five-year work program adopted before March 15, 2003.⁴

¹ Ch. 2009-59, L.O.F.

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

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

⁴ *Id.*

To date, the Legislature has appropriated over \$13 billion in the Class Size Reduction categorical for operations and \$2.5 billion for facilities funding for the Classrooms for Kids program.⁵ The following provides historical funding amounts appropriated by the Legislature for operations and school construction to meet the constitutional class size requirements:

Year	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Operating Funds	\$ 468,198,634	\$ 972,191,216	\$1,507,199,696	\$2,108,529,344	\$2,640,719,730	\$2,729,491,033	\$2,845,578,849
Facilities Funds	\$ 600,000,000	\$ 100,000,000	\$ 83,400,000	\$1,100,000,000	\$ 650,000,000	\$0	\$0
Total	\$1,068,198,634	\$1,072,191,216	\$1,590,599,696	\$3,208,529,344	\$3,290,719,730	\$2,729,491,033	\$2,845,578,849

A district must consider specific options to implement the class size requirements and the average two-student-per-year reduction, including: adopting policies to encourage students to take dual enrollment courses and courses from the Florida Virtual School; repealing district school board policies that require students to have more than 24 credits to graduate from high school; maximizing the use of instructional staff; using innovative methods to reduce the cost of school construction; adopting alternative methods of class scheduling, such as block scheduling; and redrawing school attendance zones to better utilize under-capacity schools.⁶

Accountability and Compliance

If a school district has not reduced average class size by two students as required in s. 1003.03 (2), F.S., at the time of the third Florida Education Finance Program (FEFP) calculation, 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.⁷ This calculated amount is then transferred from the district's operating budget to the district's fixed capital outlay account. In a year when appropriations are reduced, the Commissioner of Education may recommend a waiver of up to 50 percent of the transfer of funds from operating to facilities appropriations for districts that fail to meet the class size limitation.⁸

Before a transfer occurs, a district may appeal to the DOE for a waiver.⁹ The Commissioner may subsequently recommend an adjustment to the transfer calculations if the district demonstrates a valid reason for its inability to comply. Appeals and adjustments that have been recommended by the Commissioner include: district reporting errors; an inability to hire teachers; unexpected student enrollment growth; and the impact of budget cuts on reducing class size.¹⁰ The Legislative Budget Commission may then approve an alternate amount of funds to be transferred, if the Commissioner and the State Board of Education determine that a district is unable meet the class size reduction requirements despite appropriate efforts to do so.¹¹

During fiscal years 2003-2004 through 2007-2008, after district appeals, a cumulative total of \$6,660,001 has been transferred from the class size reduction operating categorical to district

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

⁶ s. 1003.03(3), F.S.

⁷ s. 1003.03 (4), F.S.

⁸ Ch. 2009-3, L.O.F.

⁹ DOE presentation to the Senate Pre-K-12 Education Committee, February 16, 2010, received on February 12, 2010, on file with the committee.

¹⁰ DOE bill analysis of SJR 1828, March 6, 2009, on file with the committee.

¹¹ s. 1003.03(4)(a)2., F.S.

class size reduction fixed capital outlay.¹² The greatest level of funding transferred in any one year was \$3,273,943 in FY 2006-2007. For 2008-2009, the DOE determined that prior to appeals, 39 traditional public schools (1.26 percent) in 17 school districts had not reduced their school level average by two students.¹³ There were no traditional public schools out of compliance after the appeals process; no funds were transferred from the class size reduction operating categorical to fixed capital outlay in 2008-2009.¹⁴ For 2009-2010, the DOE determined that prior to appeals, 72 traditional public schools had not reduced their school level average by two students. There were 16 traditional public schools out of compliance after the appeals process. Nine school districts had at least one school out of compliance.¹⁵ On February 9, 2010, the State Board of Education approved the Commissioner of Education's recommendation to transfer \$267,263 from the class size reduction operating categorical to fixed capital outlay.¹⁶ The transfer was reviewed and approved by the Legislative Budget Commission on February 18, 2010.

For the 2009-2010 school year,¹⁷ the percentage of traditional schools over the school average class size was 2.04 percent in prekindergarten through grade 3, 0.23 percent in grades 4 through 8, and 0.28 percent in grades 9 through 12.

The 2009 Legislature revised the accountability provisions by changing the calculation for district accountability beginning in 2010-2011 and thereafter. The revised accountability requirement provides that the class size reduction operating categorical funds may not be provided for students who are over the allowed number of students assigned to a teacher.¹⁸

Challenges and Considerations

The law requires the DOE to provide the Legislature and school districts with a simulated 2010-2011 class size reduction calculation for noncompliance.¹⁹ Based on the simulation, the following reflects the number and percentage of individual classrooms in traditional schools with students over the constitutional class size maximums:

- 100,440 classrooms or 32.43 percent in prekindergarten through grade 3;
- 77,607 classrooms or 28.59 percent in grades 4 through 8; and
- 56,564 classrooms or 37.02 percent in grades 9 through 12.

¹² DOE presentation to the Senate Pre-K-12 Education Committee, February 16, 2010, received on February 12, 2010, on file with the committee. This calculation applies to traditional public schools.

¹³ DOE bill analysis of SJR 1828 (2009), March 6, 2009, on file with the committee.

¹⁴ DOE presentation to the Senate Pre-K-12 Education Committee, February 16, 2010, received on February 12, 2010, on file with the committee.

¹⁵ *Id.*

¹⁶ Telephonic conference with DOE, February 15, 2010.

¹⁷ DOE presentation to the Senate Pre-K-12 Education Committee, February 16, 2010, received on February 12, 2010, on file with the committee.

¹⁸ s. 14, ch. 2009-59, L.O.F., codified in s. 1003.03(4), F.S.

¹⁹ s. 1003.03(4)(e), F.S. The simulation must occur at the time of the third Florida Education Finance Program (FEFP) calculation.

The DOE estimates that \$131,451,874 in district funds would revert to General Revenue based on calculations at the classroom level:²⁰

- \$50,305,492 for classrooms out of compliance in prekindergarten through grade 3;
- \$39,324,970 for classrooms out of compliance in grades 4 through 8; and
- \$41,821,412 for classrooms out of compliance in grades 9 through 12.

This suggests that school districts would have a significant challenge in meeting the constitutional maximum class size requirements by the beginning of the 2010-2011 school year.

As indicated by a number of practitioners, even if some districts are able to achieve the required maximum class sizes by 2010-2011, logistical concerns would potentially still exist. For example, if a school would have all classrooms in each grade at the maximum class size at the beginning of the school year, and then one additional student would enroll one month after the start of the school year, to continue to meet the constitutional requirement, the district would need to hire a new teacher for an additional class of students. This would potentially cause significant disruption for displaced and reassigned students, parents, teachers, and would potentially contribute to facility utilization problems and other planning issues.

Charter schools are not exempt from the constitutional class size requirement. However, on March 14, 2008, two charter schools challenged the authority of the DOE to apply the maximum class size statute to charter schools in the absence of a rule. On December 17, 2008, a final order was issued determining that the class size statute did not to apply to charter schools pursuant to the provisions in s. 1002.33(16), F.S., which exempts charter schools from all provisions of the School Code with certain exceptions.²¹ Because of this ruling, no funding transfers were calculated for non-compliant charter schools for 2008-2009 and 2009-10, even though charter schools receive full funding from the state for the class size reduction categorical.

III. Effect of Proposed Changes:

Subject to voter approval, this Senate Joint Resolution would make changes to the class size reduction requirements. The joint resolution requires that the maximum class size is to be the school level average number of students who can be assigned to each teacher. By the beginning of the 2010-2011 school year, the school level average number of students per teacher may not exceed the following limits:

- Prekindergarten through the 3rd grade, 18 students;
- 4th grade through the 8th grade, 22 students; and
- 9th grade through the 12th grade, 25 students.

Also, the joint resolution provides that the maximum number of students who can be assigned to a teacher in an individual classroom shall not exceed the following:

²⁰ DOE presentation to the Senate Pre-K-12 Education Committee, February 16, 2010, received on February 12, 2010, on file with the committee.

²¹ *The Renaissance Charter School, Inc., and the Lee Charter Foundation, Inc., v. Department of Education*, DOAH Case No. 08-1309RU.

- Prekindergarten through the 3rd grade, the number of students may not exceed 21;
- 4th grade through the 8th grade, the number of students may not exceed 27; and
- 9th grade through the 12th grade, the number of students may not exceed 30.

Amending the class size requirement to the school level average class size for 2010-2011 and thereafter provides districts with the flexibility to meet the class size requirements and reduces the likelihood that districts would have to implement the options required in s. 1003.03(3), F.S., to reduce class size in accordance with the current, more rigid requirements. However, it should be noted that there remains a maximum number of students who can be assigned to a teacher (i.e., three students in prekindergarten through grade 3 and five students in grades 4 through 8 and grades 9 through 12 and not exceed the school level average number of students assigned to each teacher).

The joint resolution also:

- Repeals the requirement for funding the annual average two-student-per-year reductions to class size to achieve the constitutional class size limits; and
- Provides that the constitutional class size requirements do not apply to virtual classes.

The joint resolution does not address the issue of reconciling the constitutional class size requirements in the beginning of the 2010-2011 school year with the submission of the resolution to the voters in November 2010. There could be several months in which the current constitutional class maximums apply before the joint resolution, if approved, is implemented. This may affect a school district's ability to effectively and efficiently budget for the 2010-2011 school year. An implementing bill may be appropriate in the 2010 regular session to address this issue.

Other Potential Implications:

The current constitutional class size provisions significantly reduce the operating flexibility of school districts. The joint resolution, if approved by the voters, would restore this flexibility.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Joint Resolutions to Amend the State Constitution

Under Section 1, Article XI, of the State Constitution, constitutional amendments may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment must then 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. Submission of the amendment at an earlier special election requires an affirmative vote of three-fourths of the membership of each house of the Legislature and limitation to a single amendment or revision, pursuant to Section 5 of Article XI of the State Constitution.

Regarding the standard of review for amendments that are proposed by the Legislature, the Florida Supreme Court has typically applied a presumption of validity to these amendments.²²

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Currently, in order to comply with Section 1, Article IX of the State Constitution, some school districts will need to exercise their authority to reach the current class size requirement by taking actions such as the following:

- Reducing or eliminating the number of non-core courses offered for students, such as music, art, and physical education;
- Limiting the availability of certain courses for students;
- Reducing a student's flexibility to schedule certain required or elective courses;
- Eliminating courses that have small enrollments;
- Changing student attendance zones and requiring students to be moved from their current home school, in some cases to a school outside the community;
- Revising and restructuring classes, students, and teachers in mid-semester if additional students enroll;

²² Thomas R. Rutherford, *The People Drunk Or The People Sober? Direct Democracy Meets the Supreme Court of Florida*, 15 STTLR 61, 75 (2002).

- Reassigning teachers to different courses and different grades;
- Transferring teachers to schools that have excess classroom space;
- Moving district employees with certification back into the classroom;
- Increasing the number of classrooms utilizing team teaching and co-teaching;
- Making significant reductions in non-classroom staffing and programs;
- Increasing the number of students enrolled in virtual instruction;
- Using facilities not currently used for student instruction;
- Increasing the number of students in exceptional student education classrooms;
- Recruiting and employing additional teachers; and
- Using double sessions or year-round schools.

Implementing such actions prior to the beginning of the 2010-2011 school year may be burdensome for students, parents, teachers and others, and may adversely affect student learning. While the costs to implement these changes are indeterminate, the actions taken by individual school districts to meet the current constitutional maximum class size requirements beginning with the 2010-2011 school year may be substantial.

However, if the Senate Joint Resolution **is approved** and the amendment is approved by the voters, based on the near-compliance by school districts at the school level average class size for the 2008-2009 and 2009-2010 fiscal years, school districts will have less difficulty meeting the revised maximum class size requirement, and will be less likely to have to take the disruptive and possibly costly actions if the resolution is not approved.

The Division of Elections within the Department of State (DOS) is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. According to the DOS, the average cost per word to advertise an amendment is \$94.68. The DOS estimates that the nonrecurring cost for advertising this constitutional amendment is \$79,436.52.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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