



Committee on 21st Century Competitiveness

**Tuesday, March 11, 2008
10:00 AM - 12:00 PM
404 HOB**

**Marco Rubio
Speaker**

**David Simmons
Chair**

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Implementation Flexibility and its Analysis



The Florida House of Representatives

Schools and Learning Council

Committee on 21st Century Competitiveness

Marco Rubio
Speaker

David Simmons
Chair

March 11, 2008

MEETING AGENDA

March 11, 2008

10:00 AM – 12:00 PM

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- I. Call to Order
- II. Chairman's Remarks
- III. Consideration of recommendations of Proposed Council Bill relating to Class Size Reduction Implementation Flexibility
- IV. Closing Comments
- V. Adjournment

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1 A bill to be entitled
2 An act relating to maximum class size; amending s.
3 1003.03, F.S.; revising the implementation schedule by
4 providing compliance calculations for fiscal years 2008-
5 2009 through 2010-2011; requiring the Department of
6 Education to determine which school districts do not meet
7 the class size requirements and report such districts to
8 the Legislature; providing State Board of Education
9 enforcement authority to ensure district compliance with
10 class size requirements; revising accountability
11 provisions to require the department to reduce the class
12 size reduction operating categorical funds for
13 noncompliance; deleting accountability provisions relating
14 to the transfer of funds, the requirement that
15 noncompliant districts implement certain policies, and the
16 development of compliance plans; creating a flexibility
17 exception to class size requirements for school districts;
18 requiring school districts to make assignments no later
19 than the October student membership survey; requiring
20 school districts with unexpected student enrollment growth
21 to consider alternatives to comply with class size
22 requirements; defining unexpected student enrollment
23 growth; authorizing a district school board to determine
24 the need for a flexibility exception; requiring a public
25 hearing with notice; providing conditions for a
26 flexibility exception; requiring rulemaking; amending s.
27 1011.685, F.S.; revising requirements for use of class
28 size reduction operating categorical funds; amending s.

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29 216.292, F.S.; deleting provisions authorizing the
 30 transfer of appropriations for public school operations to
 31 a fixed capital outlay appropriation for class size
 32 reduction; amending s. 1002.63, F.S.; deleting provisions
 33 relating to school district eligibility to deliver the
 34 Voluntary Prekindergarten Education Program based on class
 35 size; amending ss. 1002.53, 1002.61, and 1002.73, F.S.;
 36 conforming provisions and cross-references; providing an
 37 effective date.

38
 39 WHEREAS, the Florida Supreme Court held in its Advisory
 40 Opinion to the Attorney General regarding Florida's Amendment to
 41 Reduce Class Size that, rather than restricting the Legislature,
 42 the class size amendment in Article IX, Section 1 of the Florida
 43 Constitution gives the Legislature latitude in designing ways to
 44 reach the class size goal articulated in the amendment and
 45 places the obligation to ensure compliance on the Legislature,
 46 not the local school boards, and

47 WHEREAS, disruptions in learning in the middle of the
 48 school year, such as the breakup of a classroom, being
 49 reassigned to a new teacher, or being transferred to another
 50 class or school, are educationally unsound and distressing to
 51 educators, parents, and students, NOW, THEREFORE,

52
 53 Be It Enacted by the Legislature of the State of Florida:

54
 55 Section 1. Section 1003.03, Florida Statutes, as amended
 56 by chapter 2007-328, Laws of Florida, is amended to read:

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57 1003.03 Maximum class size.--

58 (1) CONSTITUTIONAL CLASS SIZE MAXIMUMS.--Pursuant to s. 1,
 59 Art. IX of the State Constitution, beginning in the 2010-2011
 60 school year:

61 (a) The maximum number of students assigned to each
 62 teacher who is teaching core-curricula courses in public school
 63 classrooms for prekindergarten through grade 3 may not exceed 18
 64 students.

65 (b) The maximum number of students assigned to each
 66 teacher who is teaching core-curricula courses in public school
 67 classrooms for grades 4 through 8 may not exceed 22 students.

68 (c) The maximum number of students assigned to each
 69 teacher who is teaching core-curricula courses in public school
 70 classrooms for grades 9 through 12 may not exceed 25 students.

71 (2) IMPLEMENTATION.--

72 (a) 1. Beginning with the 2003-2004 fiscal year through the
 73 2007-2008 fiscal year, each school district that is not in
 74 compliance with the maximums in subsection (1) shall reduce the
 75 average number of students per classroom in each of the
 76 following grade groupings: prekindergarten through grade 3,
 77 grade 4 through grade 8, and grade 9 through grade 12, by at
 78 least two students each year.

79 2. In the 2008-2009 fiscal year, each school district that
 80 has individual classrooms exceeding the constitutional class
 81 size maximums in subsection (1) by more than four students shall
 82 use its class size reduction operating categorical allocation in
 83 accordance with s. 1011.685(2) until the constitutional class
 84 size maximums are met.

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85 3. In the 2009-2010 fiscal year, each school district that
 86 has individual classrooms exceeding the constitutional class
 87 size maximums in subsection (1) by more than two students shall
 88 use its class size reduction operating categorical allocation in
 89 accordance with s. 1011.685(2) until the constitutional class
 90 size maximums are met.

91 4. Beginning with the October student membership survey of
 92 the 2010-2011 school year and at the October student membership
 93 survey of each school year thereafter, each individual classroom
 94 shall be in compliance with the constitutional class size
 95 maximums in subsection (1) except as otherwise authorized under
 96 subsection (6).

97 (b) Determination of the number of students per classroom
 98 in paragraph (a) shall be calculated as follows:

99 1. For fiscal years 2003-2004 through 2005-2006, the
 100 calculation for compliance for each of the 3 grade groupings
 101 shall be the average at the district level.

102 2. For fiscal years 2006-2007 through 2007-2008, the
 103 calculation for compliance for each of the 3 grade groupings
 104 shall be the average at the school level.

105 3. For fiscal year years 2008-2009, ~~2009-2010,~~ and
 106 ~~thereafter,~~ the calculation for compliance shall be the average
 107 at the school level. However, each district should strive in
 108 every practical way to achieve the goal that the constitutional
 109 class size maximums in subsection (1) be exceeded by no more
 110 than four students at the individual classroom level.

111 4. For fiscal year 2009-2010, the calculation for
 112 compliance shall be the average at the school level. However,

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113 each district should strive in every practical way to achieve
 114 the goal that the constitutional class size maximums in
 115 subsection (1) be exceeded by no more than two students at the
 116 individual classroom level.

117 5. Beginning with the October student membership survey of
 118 the 2010-2011 school year and at the October student membership
 119 survey of each school year thereafter, compliance shall be
 120 calculated at the individual classroom level based on the
 121 constitutional class size maximums in subsection (1).

122 6.4- For fiscal years 2006-2007 through 2009-2010 and
 123 thereafter, each teacher assigned to any classroom shall be
 124 included in the calculation for compliance.

125 (c) The Department of Education shall annually calculate
 126 ~~each of the three average class size measures defined in~~
 127 ~~paragraphs (a) and (b) based upon the October student membership~~
 128 ~~survey and annually report to the Legislature by February 1~~
 129 ~~those districts that are not in compliance. For fiscal year~~
 130 ~~2008-2009, the department shall also report, by each grade~~
 131 ~~grouping, those districts with individual classrooms exceeding~~
 132 ~~the constitutional class size maximums in subsection (1) by more~~
 133 ~~than four students. For fiscal year 2009-2010, the department~~
 134 ~~shall also report, by each grade grouping, those districts with~~
 135 ~~individual classrooms exceeding the constitutional class size~~
 136 ~~maximums in subsection (1) by more than two students. For~~
 137 ~~purposes of determining the baseline from which each district's~~
 138 ~~average class size must be reduced for the 2003-2004 school~~
 139 ~~year, the department shall use data from the February 2003~~

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140 ~~student membership survey updated to include classroom~~
 141 ~~identification numbers as required by the department.~~

142 (d) The State Board of Education may use the enforcement
 143 authority provided in s. 1008.32 to ensure that school districts
 144 comply with the provisions of this subsection. ~~Prior to the~~
 145 ~~adoption of the district school budget for 2004-2005, each~~
 146 ~~district school board shall hold public hearings to review~~
 147 ~~school attendance zones in order to ensure maximum use of~~
 148 ~~facilities while minimizing the additional use of transportation~~
 149 ~~in order to comply with the two student per year reduction~~
 150 ~~required in paragraph (a). School districts that meet the~~
 151 ~~constitutional class size maximums described in subsection (1)~~
 152 ~~are exempt from this requirement.~~

153 (3) IMPLEMENTATION OPTIONS.--District school boards must
 154 consider, but are not limited to, implementing the following
 155 items in order to meet the constitutional class size maximums
 156 described in subsections ~~subsection~~ (1) and ~~the two student per-~~
 157 ~~year reduction required in subsection~~ (2):

158 (a) Adopt policies to encourage qualified students to take
 159 dual enrollment courses.

160 (b) Adopt policies to encourage students to take courses
 161 from the Florida Virtual School.

162 (c)1. Repeal district school board policies that require
 163 students to have more than 24 credits to graduate from high
 164 school.

165 2. Adopt policies to allow students to graduate from high
 166 school as soon as they pass the grade 10 FCAT and complete the
 167 courses required for high school graduation.

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168 (d) Use methods to maximize use of instructional staff,
 169 such as changing required teaching loads and scheduling of
 170 planning periods, deploying district employees that have
 171 professional certification to the classroom, using adjunct
 172 educators, or any other method not prohibited by law.

173 (e) Use innovative methods to reduce the cost of school
 174 construction by using prototype school designs, using SMART
 175 Schools designs, participating in the School Infrastructure
 176 Thrift Program, or any other method not prohibited by law.

177 (f) Use joint-use facilities through partnerships with
 178 community colleges, state universities, and private colleges and
 179 universities. Joint-use facilities available for use as K-12
 180 classrooms that do not meet the K-12 State Regulations for
 181 Educational Facilities in the Florida Building Code may be used
 182 at the discretion of the district school board provided that
 183 such facilities meet all other health, life, safety, and fire
 184 codes.

185 (g) Adopt alternative methods of class scheduling, such as
 186 block scheduling.

187 (h) Redraw school attendance zones to maximize use of
 188 facilities while minimizing the additional use of
 189 transportation.

190 (i) Operate schools beyond the normal operating hours to
 191 provide classes in the evening or operate more than one session
 192 of school during the day.

193 (j) Use year-round schools and other nontraditional
 194 calendars that do not adversely impact annual assessment of
 195 student achievement.

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196 (k) Review and consider amending any collective bargaining
 197 contracts that hinder the implementation of class size
 198 reduction.

199 (l) Use any other approach not prohibited by law.

200 (4) ACCOUNTABILITY.--Beginning with the October student
 201 membership survey of the 2010-2011 school year and at the
 202 October student membership survey of each school year
 203 thereafter, if the department determines that any individual
 204 classroom exceeds the constitutional class size maximums in
 205 subsection (1) and a flexibility exception in subsection (6) has
 206 not been timely granted by the district school board, the
 207 department shall:

208 (a) Identify, for each of the 3 grade groupings, the
 209 number of classrooms with a student enrollment that exceeds the
 210 constitutional class size maximums in subsection (1), the number
 211 of students over the maximum for each classroom, and the total
 212 number of students over the maximum for all classrooms in each
 213 school and each school district.

214 (b) Determine the number of full-time equivalent (FTE)
 215 students that are over the constitutional class size maximums in
 216 subsection (1) for each of the 3 grade groupings.

217 (c) Multiply the total number of FTE students that are
 218 over the constitutional class size maximums in subsection (1)
 219 for each of the 3 grade groupings by the class size reduction
 220 allocation factor for that grade grouping as set in the General
 221 Appropriations Act Conference Report of the Florida Education
 222 Finance Program (FEFP).

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223 (d) Reduce the district's class size reduction operating
 224 categorical as calculated in the third FEFP calculation by an
 225 amount equal to the lesser of the remaining undisbursed balance
 226 of the allocation or the sum of the calculation in paragraph
 227 (c).

228 ~~(a)1. Beginning in the 2003-2004 fiscal year, if the~~
 229 ~~department determines for any year that a school district has~~
 230 ~~not reduced average class size as required in subsection (2) at~~
 231 ~~the time of the third FEFP calculation, the department shall~~
 232 ~~calculate an amount from the class size reduction operating~~
 233 ~~categorical which is proportionate to the amount of class size~~
 234 ~~reduction not accomplished. Upon verification of the~~
 235 ~~department's calculation by the Florida Education Finance~~
 236 ~~Program Appropriation Allocation Conference and not later than~~
 237 ~~March 1 of each year, the Executive Office of the Governor shall~~
 238 ~~transfer undistributed funds equivalent to the calculated amount~~
 239 ~~from the district's class size reduction operating categorical~~
 240 ~~to an approved fixed capital outlay appropriation for class size~~
 241 ~~reduction in the affected district pursuant to s. 216.292(2)(d).~~
 242 ~~The amount of funds transferred shall be the lesser of the~~
 243 ~~amount verified by the Florida Education Finance Program~~
 244 ~~Appropriation Allocation Conference or the undistributed balance~~
 245 ~~of the district's class size reduction operating categorical.~~

246 ~~2. In lieu of the transfer required by subparagraph 1.,~~
 247 ~~the Commissioner of Education may recommend a budget amendment,~~
 248 ~~subject to approval by the Legislative Budget Commission, to~~
 249 ~~transfer an alternative amount of funds from the district's~~
 250 ~~class size reduction operating categorical to its approved fixed~~

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251 ~~capital outlay account for class size reduction if the~~
 252 ~~commissioner finds that the State Board of Education has~~
 253 ~~reviewed evidence indicating that a district has been unable to~~
 254 ~~meet class size reduction requirements despite appropriate~~
 255 ~~effort to do so. The commissioner's budget amendment must be~~
 256 ~~submitted to the Legislative Budget Commission by February 15 of~~
 257 ~~each year.~~

258 ~~3. For the 2007 2008 fiscal year and thereafter, if in any~~
 259 ~~fiscal year funds from a district's class size operating~~
 260 ~~categorical are required to be transferred to its fixed capital~~
 261 ~~outlay fund and the district's class size operating categorical~~
 262 ~~allocation in the General Appropriations Act for that fiscal~~
 263 ~~year has been reduced by a subsequent appropriation, the~~
 264 ~~Commissioner of Education may recommend a 10 percent reduction~~
 265 ~~in the amount of the transfer.~~

266 ~~(b) Beginning in the 2005 2006 school year, the department~~
 267 ~~shall determine by January 15 of each year which districts have~~
 268 ~~not met the two student per year reduction required in~~
 269 ~~subsection (2) based upon a comparison of the district's October~~
 270 ~~student membership survey for the current school year and the~~
 271 ~~February 2003 baseline student membership survey. The department~~
 272 ~~shall report such districts to the Legislature. Each district~~
 273 ~~that has not met the two student per year reduction shall be~~
 274 ~~required to implement one of the following policies in the~~
 275 ~~subsequent school year unless the department finds that the~~
 276 ~~district comes into compliance based upon the February student~~
 277 ~~membership survey:~~

278 ~~1. Year round schools;~~

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279 ~~2. Double sessions;~~
 280 ~~3. Rezoning; or~~
 281 ~~4. Maximizing use of instructional staff by changing~~
 282 ~~required teacher loads and scheduling of planning periods,~~
 283 ~~deploying school district employees who have professional~~
 284 ~~certification to the classroom, using adjunct educators,~~
 285 ~~operating schools beyond the normal operating hours to provide~~
 286 ~~classes in the evening, or operating more than one session~~
 287 ~~during the day.~~
 288
 289 ~~A school district that is required to implement one of the~~
 290 ~~policies outlined in subparagraphs 1. 4. shall correct in the~~
 291 ~~year of implementation any past deficiencies and bring the~~
 292 ~~district into compliance with the two student per year reduction~~
 293 ~~goals established for the district by the department pursuant to~~
 294 ~~subsection (2). A school district may choose to implement more~~
 295 ~~than one of these policies. The district school superintendent~~
 296 ~~shall report to the Commissioner of Education the extent to~~
 297 ~~which the district implemented any of the policies outlined in~~
 298 ~~subparagraphs 1. 4. in a format to be specified by the~~
 299 ~~Commissioner of Education. The Department of Education shall use~~
 300 ~~the enforcement authority provided in s. 1008.32 to ensure that~~
 301 ~~districts comply with the provisions of this paragraph.~~
 302 ~~(c) Beginning in the 2006-2007 school year, the department~~
 303 ~~shall annually determine which districts do not meet the~~
 304 ~~requirements described in subsection (2). In addition to~~
 305 ~~enforcement authority provided in s. 1008.32, the Department of~~
 306 ~~Education shall develop a constitutional compliance plan for~~

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307 ~~each such district which includes, but is not limited to,~~
 308 ~~redrawing school attendance zones to maximize use of facilities~~
 309 ~~while minimizing the additional use of transportation unless the~~
 310 ~~department finds that the district comes into compliance based~~
 311 ~~upon the February student membership survey and the other~~
 312 ~~accountability policies listed in paragraph (b). Each district~~
 313 ~~school board shall implement the constitutional compliance plan~~
 314 ~~developed by the state board until the district complies with~~
 315 ~~the constitutional class size maximums.~~

316 (5) TEAM-TEACHING STRATEGIES.--

317 (a) School districts may use teaching strategies that
 318 include the assignment of more than one teacher to a classroom
 319 of students and that were implemented before July 1, 2005.

320 Effective July 1, 2005, school districts may implement
 321 additional teaching strategies that include the assignment of
 322 more than one teacher to a classroom of students for the
 323 following purposes only:

- 324 1. Pairing teachers for the purpose of staff development.
- 325 2. Pairing new teachers with veteran teachers.
- 326 3. Reducing turnover among new teachers.
- 327 4. Pairing teachers who are teaching out-of-field with
- 328 teachers who are in-field.
- 329 5. Providing for more flexibility and innovation in the
- 330 classroom.
- 331 6. Improving learning opportunities for students,
- 332 including students who have disabilities.

333 (b) Teaching strategies, including team teaching, co-
 334 teaching, or inclusion teaching, implemented on or after July 1,

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335 2005, pursuant to paragraph (a) may be implemented subject to
 336 the following restrictions:

337 1. Reasonable limits shall be placed on the number of
 338 students in a classroom so that classrooms are not overcrowded.
 339 Teacher-to-student ratios within a curriculum area or grade
 340 level must not exceed constitutional limits.

341 2. At least one member of the team must have at least 3
 342 years of teaching experience.

343 3. At least one member of the team must be teaching in-
 344 field.

345 4. The teachers must be trained in team-teaching methods
 346 within 1 year after assignment.

347 (c) As used in this subsection, the term:

348 1. "Team teaching" or "co-teaching" means two or more
 349 teachers are assigned to a group of students and each teacher is
 350 responsible for all of the students during the entire class
 351 period. In order to be considered team teaching or co-teaching,
 352 each teacher is responsible for planning, delivering, and
 353 evaluating instruction for all students in the class or subject
 354 for the entire class period.

355 2. "Inclusion teaching" means two or more teachers are
 356 assigned to a group of students, but one of the teachers is
 357 responsible for only one student or a small group of students in
 358 the classroom.

359
 360 The use of strategies implemented as outlined in this subsection
 361 meets the letter and intent of the Florida Constitution and the
 362 Florida Statutes which relate to implementing class size

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363 reduction, and this subsection applies retroactively. A school
 364 district may not be penalized financially or otherwise as a
 365 result of the use of any legal strategy, including, but not
 366 limited to, those set forth in subsection (3) and this
 367 subsection.

368 (6) FLEXIBILITY EXCEPTION.--

369 (a) Beginning with the October student membership survey
 370 of the 2010-2011 school year and at the October student
 371 membership survey of each school year thereafter, each school
 372 district shall make assignments to meet the constitutional class
 373 size maximums in subsection (1).

374 (b) In the event of unexpected student enrollment growth
 375 after the October student membership survey, which will require
 376 a school district to take further action to meet the
 377 constitutional class size maximums in subsection (1), the
 378 alternatives in subsections (3) and (5) shall be considered and
 379 implemented as deemed practical by the school district. For
 380 purposes of this subsection, unexpected student enrollment
 381 growth at the:

382 1. District level is student enrollment in excess of the
 383 projections used by the Legislature in establishing the General
 384 Appropriations Act.

385 2. Kindergarten through grade 8 school level is student
 386 enrollment in excess of the school's official staffing plan and
 387 capacity.

388 3. Grade 9 through grade 12 school level is student
 389 enrollment in excess of the school's official staffing plan and
 390 capacity or in excess of the official staffing plan and capacity

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391 for a restricted course offering such as a magnet program or a
 392 career academy.

393 (c)1. Upon a finding that taking further action to attain
 394 compliance is either impractical or educationally unsound and
 395 disruptive to students, a district school board may determine
 396 the need for a flexibility exception at a public meeting that
 397 has been noticed pursuant to s. 120.525; however, a school
 398 board's determination under this subparagraph is not subject to
 399 challenge under chapter 120. The district school board shall
 400 file the record of its public meeting, together with
 401 documentation of its flexibility exception determination, with
 402 the department.

403 2. If a flexibility exception determination is made by a
 404 district school board, the following conditions shall apply:

405 a. The flexibility exception shall expire at the end of
 406 the school year.

407 b. A teacher in prekindergarten through grade 3 shall be
 408 assigned no more than three students above the constitutional
 409 class size maximum in paragraph (1) (a) and a teacher in grades 4
 410 through 8 or in grades 9 through 12 shall be assigned no more
 411 than five students above the constitutional class size maximum
 412 in paragraph (1) (b) or paragraph (1) (c), respectively.

413 c. If the unexpected student enrollment growth results in
 414 more than three students or five students above the
 415 constitutional class size maximums as provided in sub-
 416 subparagraph b., the school district shall add classrooms and
 417 teachers or take such other action as necessary to comply with
 418 the constitutional class size maximums in subsection (1).

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419 d. The school shall not exceed the class size average for
 420 each of the 3 grade groupings that is averaged at the school
 421 level for the school year.

422 e. The district school board shall develop a plan to
 423 provide that each school will be in full compliance with the
 424 constitutional class size maximums in subsection (1) by the next
 425 October student membership survey.

426
 427 A school district shall be considered to be in compliance with
 428 the constitutional class size maximums in subsection (1) when
 429 utilizing the flexibility exception established in this
 430 subsection.

431 (7) RULES.--The State Board of Education shall adopt
 432 rules, pursuant to ss. 120.536(1) and 120.54, governing
 433 compliance calculations under this section, the timeliness and
 434 required documentation for district school board flexibility
 435 exception determinations, and district school board appeals of
 436 penalties under this section.

437 Section 2. Section 1011.685, Florida Statutes, is amended
 438 to read:

439 1011.685 Class size reduction; operating categorical
 440 fund.--

441 (1) There is created an operating categorical fund for
 442 implementing the class size reduction provisions of s. 1, Art.
 443 IX of the State Constitution. These funds shall be allocated to
 444 each school district in the amount prescribed by the Legislature
 445 in the General Appropriations Act.

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446 (2) (a) Except as provided in paragraph (b), 100 percent of
 447 class size reduction operating categorical funds shall be used
 448 by school districts for purposes of achieving compliance with
 449 the constitutional class size maximums in s. 1003.03(1) in any
 450 lawful manner, including, but not limited to, the alternatives
 451 in s. 1003.03(3) and (5). ~~the following:~~

452 ~~(a) To reduce class size in any lawful manner, if the~~
 453 ~~district has not met the constitutional maximums identified in~~
 454 ~~s. 1003.03(1) or the reduction of two students per year required~~
 455 ~~by s. 1003.03(2).~~

456 (b) Once a school district is determined to be in
 457 compliance with the constitutional class size maximums in s.
 458 1003.03(1), the district may use class size reduction operating
 459 categorical funds for any lawful operating expenditure, ~~if the~~
 460 ~~district has met the constitutional maximums identified in s.~~
 461 ~~1003.03(1) or the reduction of two students per year required by~~
 462 ~~s. 1003.03(2);~~ however, priority shall be given to increase
 463 salaries of classroom teachers as defined in s. 1012.01(2)(a)
 464 and to implement the differentiated-pay provisions detailed in
 465 s. 1012.22.

466 Section 3. Paragraph (d) of subsection (2) of section
 467 216.292, Florida Statutes, is amended to read:

468 216.292 Appropriations nontransferable; exceptions.--

469 (2) The following transfers are authorized to be made by
 470 the head of each department or the Chief Justice of the Supreme
 471 Court whenever it is deemed necessary by reason of changed
 472 conditions:

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473 ~~(d) The transfer of funds by the Executive Office of the~~
 474 ~~Governor from appropriations for public school operations to a~~
 475 ~~fixed capital outlay appropriation for class size reduction~~
 476 ~~based on recommendations of the Florida Education Finance~~
 477 ~~Program Appropriation Allocation Conference or the Legislative~~
 478 ~~Budget Commission pursuant to s. 1003.03(4)(a). Actions by the~~
 479 ~~Governor under this subsection are subject to the notice and~~
 480 ~~review provisions of s. 216.177.~~

481 Section 4. Paragraph (c) of subsection (3) of section
 482 1002.53, Florida Statutes, is amended to read:

483 1002.53 Voluntary Prekindergarten Education Program;
 484 eligibility and enrollment.--

485 (3) The parent of each child eligible under subsection (2)
 486 may enroll the child in one of the following programs:

487 (c) A school-year prekindergarten program delivered by a
 488 public school, if offered by a school district ~~that is eligible~~
 489 under s. 1002.63.

490
 491 Except as provided in s. 1002.71(4), a child may not enroll in
 492 more than one of these programs.

493 Section 5. Subsections (4) and (6) of section 1002.61,
 494 Florida Statutes, are amended to read:

495 1002.61 Summer prekindergarten program delivered by public
 496 schools and private prekindergarten providers.--

497 (4) Notwithstanding ss. 1002.55(3)(c)1. and 1002.63(4)~~(5)~~,
 498 each public school and private prekindergarten provider must
 499 have, for each prekindergarten class, at least one
 500 prekindergarten instructor who:

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501 (a) Is a certified teacher; or
 502 (b) Holds one of the educational credentials specified in
 503 s. 1002.55(4) (a) or (b).

504
 505 As used in this subsection, the term "certified teacher" means a
 506 teacher holding a valid Florida educator certificate under s.
 507 1012.56 who has the qualifications required by the district
 508 school board to instruct students in the summer prekindergarten
 509 program. In selecting instructional staff for the summer
 510 prekindergarten program, each school district shall give
 511 priority to teachers who have experience or coursework in early
 512 childhood education.

513 (6) Notwithstanding ss. 1002.55(3) (e) and 1002.63 (6) ~~(7)~~,
 514 each prekindergarten class in the summer prekindergarten
 515 program, regardless of whether the class is a public school's or
 516 private prekindergarten provider's class, must be composed of at
 517 least 4 students but may not exceed 10 students. In order to
 518 protect the health and safety of students, each public school or
 519 private prekindergarten provider must also provide appropriate
 520 adult supervision for students at all times. This subsection
 521 does not supersede any requirement imposed on a provider under
 522 ss. 402.301-402.319.

523 Section 6. Section 1002.63, Florida Statutes, is amended
 524 to read:

525 1002.63 School-year prekindergarten program delivered by
 526 public schools.--

527 (1) Each school district ~~eligible under subsection (4)~~ may
 528 administer the Voluntary Prekindergarten Education Program at

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529 the district level for students enrolled under s. 1002.53(3)(c)
 530 in a school-year prekindergarten program delivered by a public
 531 school.

532 (2) Each school-year prekindergarten program delivered by
 533 a public school must comprise at least 540 instructional hours.

534 (3) The district school board of each school district
 535 ~~eligible under subsection (4)~~ shall determine which public
 536 schools in the district shall ~~are eligible to~~ deliver the
 537 prekindergarten program during the school year.

538 ~~(4) To be eligible to deliver the prekindergarten program~~
 539 ~~during the school year, each school district must meet both of~~
 540 ~~the following requirements:~~

541 ~~(a) The district school board must certify to the State~~
 542 ~~Board of Education that the school district:~~

543 1. ~~Has reduced the average class size in each classroom in~~
 544 ~~accordance with s. 1003.03 and the schedule in s. 1(a), Art. IX~~
 545 ~~of the State Constitution; and~~

546 2. ~~Has sufficient satisfactory educational facilities and~~
 547 ~~capital outlay funds to continue reducing the average class size~~
 548 ~~in each classroom in the district's elementary schools for each~~
 549 ~~year in accordance with the schedule for class size reduction~~
 550 ~~and to achieve full compliance with the maximum class sizes in~~
 551 ~~s. 1(a), Art. IX of the State Constitution by the beginning of~~
 552 ~~the 2010-2011 school year.~~

553 ~~(b) The Commissioner of Education must certify to the~~
 554 ~~State Board of Education that the department has reviewed the~~
 555 ~~school district's educational facilities, capital outlay funds,~~

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556 | ~~and projected student enrollment and concurs with the district~~
 557 | ~~school board's certification under paragraph (a).~~

558 | (4)~~(5)~~ Each public school must have, for each
 559 | prekindergarten class, at least one prekindergarten instructor
 560 | who meets each requirement in s. 1002.55(3)(c) for a
 561 | prekindergarten instructor of a private prekindergarten
 562 | provider.

563 | (5)~~(6)~~ Each prekindergarten instructor employed by a
 564 | public school delivering the school-year prekindergarten program
 565 | must be of good moral character, must be screened using the
 566 | level 2 screening standards in s. 435.04 before employment and
 567 | rescreened at least once every 5 years, must be denied
 568 | employment or terminated if required under s. 435.06, and must
 569 | not be ineligible to teach in a public school because his or her
 570 | educator certificate is suspended or revoked. This subsection
 571 | does not supersede employment requirements for instructional
 572 | personnel in public schools which are more stringent than the
 573 | requirements of this subsection.

574 | (6)~~(7)~~ Each prekindergarten class in a public school
 575 | delivering the school-year prekindergarten program must be
 576 | composed of at least 4 students but may not exceed 18 students.
 577 | In order to protect the health and safety of students, each
 578 | school must also provide appropriate adult supervision for
 579 | students at all times and, for each prekindergarten class
 580 | composed of 11 or more students, must have, in addition to a
 581 | prekindergarten instructor who meets the requirements of s.
 582 | 1002.55(3)(c), at least one adult prekindergarten instructor who

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583 is not required to meet those requirements but who must meet
 584 each requirement of subsection (5)~~(6)~~.

585 (7)~~(8)~~ Each public school delivering the school-year
 586 prekindergarten program must:

587 (a) Register with the early learning coalition on forms
 588 prescribed by the Agency for Workforce Innovation; and

589 (b) Deliver the Voluntary Prekindergarten Education
 590 Program in accordance with this part.

591 Section 7. Subsection (2) of section 1002.73, Florida
 592 Statutes, is amended to read:

593 1002.73 Department of Education; powers and duties;
 594 accountability requirements.--

595 (2) The department shall adopt procedures for the
 596 department's:

597 (a) Approval of prekindergarten director credentials under
 598 ss. 1002.55 and 1002.57.

599 (b) Approval of emergent literacy training courses under
 600 ss. 1002.55 and 1002.59.

601 ~~(c) Certification of school districts that are eligible to~~
 602 ~~deliver the school year prekindergarten program under s.~~
 603 ~~1002.63.~~

604 (c)~~(d)~~ Administration of the statewide kindergarten
 605 screening and calculation of kindergarten readiness rates under
 606 s. 1002.69.

607 Section 8. This act shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

B. EFFECT OF PROPOSED CHANGES:

Background

Constitutional requirements

In November 2002, voters approved the constitutional Class Size Reduction Amendment.¹ The amendment requires the Legislature to fund: (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 will be assigned to each teacher; and (2) the reduction of the average number of students in each classroom by at least two until the maximum number of students is achieved.

The maximum number of students specified in the amendment is:

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

Implementation

Section 1003.03(2), F.S., provides for implementation of the class size amendment by establishing the following measures for compliance:

- Establishes a baseline for data from the February 2003, student membership survey;
- Establishes a method of measuring compliance and a schedule for implementation; and
- Establishes requirements for districts found to be noncompliant.

The implementation schedule for the amendment provides that class size, for purposes of determining district compliance with the reduction goals, shall be measured at the:

- District level for each of the three grade groupings during Fiscal Years (FY) 2003-2004, 2004-2005, and 2005-2006.
- School level for each of the three grade groupings in FYs 2006-2007 and 2007-2008.
- Individual classroom level for each of the three grade groupings in FY 2008-2009 and thereafter.

Under current law, school districts must consider, but are not limited to, implementing the following options to meet the constitutional class size maximums and the required two student per year reduction:²

- Encourage dual enrollment courses.
- Encourage courses from the Florida Virtual School.
- Require no more than 24 credits to graduate from high school.

¹ Section 1, Article IX of the Florida Constitution.

² Section 1003.03(3), F.S.

- Allow students to graduate from high school as soon as they pass the grade 10 FCAT and complete the courses required for high school graduation.
- Use methods to maximize use of instructional staff.
- Use innovative methods to reduce the cost of school construction costs.
- Use joint-use facilities.
- Adopt alternative methods of class scheduling, such as block scheduling.
- Redraw school attendance zones.
- Operate schools beyond the normal operating hours.
- Use year-round schools and other non-traditional calendars.
- Review and consider amending any collective bargaining contracts that hinder the implementation of class size reduction.
- Use any other approach not prohibited by law.

Funding

Section 1011.685, F.S., creates an operating categorical fund for class size reduction. Districts are authorized to use such funding for: (a) reduction of class size in any lawful manner if the district has not met reduction goals; or (b) any lawful expenditure if reduction goals have been met with priority to be given to increasing teacher salaries and implementing differentiated-pay provisions.

For FYs 2003-2008, the Legislature appropriated a total of \$7.7 billion in class size reduction operating funds with \$2.6 billion of that amount most recently appropriated for FY 2007-2008.³

The Classrooms for Kids Program⁴ authorizes fixed capital outlay funds appropriated to the program to be distributed to districts based on a specified formula. In order to increase capacity to reduce class size, districts are 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 projects or relocatables identified in the district's five-year work program adopted before March 15, 2003.

For FYs 2003-2008, the Legislature appropriated a total of \$2.5 billion in class size reduction fixed capital outlay funds with \$650 million of that amount most recently appropriated for FY 2007-2008.⁵

According to the current implementation schedule, the eight-year projected total operating and capital costs to implement the class size reduction amendment is \$22,420,015,017.⁶

Compliance

Since FY 2003-2004, the Department of Education (DOE) has reviewed district compliance with class size reduction requirements. When the DOE determines that a district has not complied with the statutory requirements for that year, at the time of the third FEFP calculation, the department is required to calculate an amount from the district's class size reduction operating categorical which is proportionate to the amount of class size reduction not accomplished.⁷

³ 2007-2008 Florida Education Finance Program, Revised 3rd Calculation, dated March 9, 2008.

⁴ Section 1013.735, F.S.

⁵ 2007-2008 General Appropriations Act, Specific Appropriation 36

⁶ Florida Department of Education. PowerPoint Presentation to the Committee on 21st Century Competitiveness, *Update on Class Size Amendment*. February 5, 2008.

⁷ Section 1003.03(4)(a), F.S.

That amount is transferred by the Executive Office of the Governor from the district's class size reduction operating categorical to the district's fixed capital outlay appropriation to be used to meet the class size reduction requirements. However, the Legislative Budget Commission may approve an alternate amount of funds to be transferred if the Commissioner of Education and the State Board of Education (SBE) determine that a district has been unable to meet class size reduction requirements despite appropriate efforts to do so.

Beginning in the 2005-2006 school year and each year thereafter, each district identified by the DOE as having not met the class size reduction requirements must be reported to the Legislature and must implement one of the following policies in the subsequent school year:⁸

- Year-round schools;
- Double sessions;
- Rezoning; or
- Changing instructional staff loads and scheduling, deploying certified district employees to classrooms, or operating beyond normal school days and hours.

Beginning in the 2006-2007 school year, the DOE, in addition to using the enforcement authority in s. 1008.32, F.S., must develop a constitutional compliance plan for each noncompliant district, which must include rezoning for maximum use of space while minimizing additional transportation costs.⁹

Transfers from Operating to Fixed Capital Outlay

During the four FYs between 2003 and 2008, the DOE, as required by statute, has transferred almost \$8.8 million in district class size reduction operating categorical to district class size reduction fixed capital outlay. The bulk of this transfer, \$5,318,921, occurred in FY 2006-2007.

A school district that is found by the DOE to be out of compliance with statutory implementation requirements for class size reduction is allowed to appeal the department's finding of noncompliance and the amount of the district's class size reduction operating categorical to be transferred to fixed capital outlay. The Commissioner of Education may subsequently recommend an adjustment to the transfer calculations if the district demonstrates that one of the following affected their ability to reach compliance:

- District reporting errors;
- An inability to hire teachers; or
- An unexpected student enrollment growth.

In 2007-2008, prior to appeals, there were 31 school districts that had at least one school out of compliance. Moreover, there were 69 traditional public schools (2.25%) and 19 (5.38%) charter schools that were determined to be out of compliance with the class size reduction requirements. The estimated transfer of funds from the class size reduction operating categorical to fixed capital outlay was \$6,132,926.¹⁰

⁸ Section 1003.03(4)(b), F.S.

⁹ Section 1003.03(4)(c), F.S.

¹⁰ Florida Department of Education. PowerPoint Presentation to the Committee on 21st Century Competitiveness, *Update on Class Size Amendment*. February 5, 2008.

Following appeals, there were 16 school districts that had at least one school out of compliance. Moreover, there were 23 traditional public schools (0.75%) and eight (2.27%) charter schools that were determined to be out of compliance. Subsequently, the transfer of funds from the class size reduction operating categorical to fixed capital outlay was \$475,324.¹¹

2007-2008 Compliance with Constitutional Class Size Maximums¹²

For the 2007-2008 school year, the percentages of traditional schools over the constitutional class size maximums are:

- 3.35% in prekindergarten through grade 3;
- 0.71% in grades 4 through 8; and
- 1.54% in grades 9 through 12.

For the 2007-2008 school year, the percentages of charter schools over the constitutional class size maximums are:

- 16.26% in prekindergarten through grade 3;
- 4.72% in grades 4 through 8; and
- 1.12% in grades 9 through 12.

For the 2007-2008 school year, the percentages of individual classrooms in traditional schools over the constitutional class size maximums are:

- 28.84% in prekindergarten through grade 3;
- 26.50% in grades 4 through 8; and
- 33.06% in grades 9 through 12.

For the 2007-2008 school year, the percentages of individual classrooms in charter schools over the constitutional class size maximums are:

- 36.15% in prekindergarten through grade 3;
- 30.72% in grades 4 through 8; and
- 16.86% in grades 9 through 12.

Currently, there are 33,036 classrooms over the constitutional class size maximums in prekindergarten through grade 3, 20,174 classrooms over the constitutional class size maximums in grades 4 through 8, and 10,081 classrooms over the constitutional class size maximums in grades 9 through 12.¹³

DOE conducts annual surveys of all Florida school districts to analyze the use of the class size reduction operating categorical funds. The DOE's 2007-2008 findings are as follows:¹⁴

- \$303,803, 012 on New Positions- Core Teachers (salaries and benefits for teachers added in 2007-2008)
- \$1,634,882,004 on Existing Positions – Core Teachers (salaries and benefits for teachers added in 2003-04 through 2006-07)
- \$9,831,137 on New Positions – Non-Core Teachers (added in 2007-08)
- \$102,935,418 on Charter School Payments
- \$526,682,024 on Salary and Benefit Increases for Existing Teachers and Other Uses

¹¹ Id. The appeals process resulted in a difference of \$5,657,602 being transferred from the class size reduction operating categorical to fixed capital outlay.

¹² Id.

¹³ Florida Department of Education. Information presented to the Committee on 21st Century Competitiveness on March 4, 2008.

¹⁴ Florida Department of Education. Information presented to the Committee on 21st Century Competitiveness. January 2008.

- \$85,138,717 on Dollars Held in Reserve to Ensure Future Compliance.

Voluntary Prekindergarten Education Program (VPK)

Under current law, each school district is authorized, if eligible, to administer the VPK program at the district level for students enrolled in a school-year prekindergarten program delivered by a public school.¹⁵ However, in order to be eligible to deliver the VPK program during the school year, each school district must meet both of the following requirements:¹⁶

- The district school board must certify to the SBE that it has reduced the average number of students in each classroom by at least two and has sufficient facilities and capital outlay funds to continue to reduce the average number of students in each classroom by at least two until the maximum number of students is achieved; and
- The Commissioner of Education must to certify to the SBE that the DOE has reviewed the school district's facilities, capital outlay funds, and projected student enrollment and concurs with the district's certification.

Effect of Proposed Changes

The proposed council bill (PCB) amends s. 1003.03, F.S., to provide a detailed, yet flexible mechanism for the implementation of the constitutional Class Size Reduction Amendment,¹⁷ while preserving the constitutional integrity and purpose of the amendment. The PCB provides for two whereas clauses stating the Florida Supreme Court's holding that, rather than restricting the Legislature, the class size amendment in Art IX, section 1, of the Florida Constitution gives the Legislature latitude in designing ways to reach the class size goal articulated in the amendment¹⁸, and that disruptions in learning in the middle of the school year are educationally unsound and distressing to educators, parents, and students.

Implementation and Compliance Calculation

The PCB revises the school district's implementation schedule and amends the methodology by which class size compliance is calculated for FYs 2008 through 2011. Continuing through the FY 2007-2008, school districts not in compliance with the constitutional class size maximums are required to reduce, by at least two students, the average number of students per classroom in prekindergarten through grade 3, grade 4 through grade 8, and grade 9 through grade 12.

The PCB sets forth methodology for districts to meet the constitutional class size requirements in the 2010-2011 school year by providing the following changes to the statutory implementation schedule:

- FY 2008-2009, each individual classroom should have no more than four students over the constitutional class size maximums based on the October student membership survey.

¹⁵ Section 1002.63, F.S.

¹⁶ Section 1002.63(4), F.S.

¹⁷ Section 1, Article IX of the Florida Constitution.

¹⁸ 816 So.2d 580 at 584, 585. In re Advisory Opinion to the Atty. Gen. Fla., 2002. Supreme Court of Florida Advisory Opinion to the Attorney General re Florida's Amendment to Reduce Class Size No. SC01-2421 April 25, 2002.

- FY 2009-2010, each individual classroom should have no more than two students over the constitutional class size maximums based on the October student membership survey.
- Calculation for compliance remains at the school level for FYs 2008-2009 and 2009-2010.
- Requires districts to use 100% of their class size allocation for reducing class sizes if any classroom in the district is over the constitutional maximums by four students in 2008-2009 and by two students in 2009-2010.
- Requires the DOE to annually calculate the number of students in each individual classroom based on the October student membership survey and annually report, by each grade grouping, those districts that are in excess of four students over the maximums in 2008-2009 and in excess of two students over the maximums in 2009-2010, to the Legislature.

Furthermore, the SBE may exercise its enforcement authority under s. 1008.32, F.S.,¹⁹ to ensure that districts comply with the statutory implementation schedule.

Districts are required to use class size reduction operating categorical funds to reduce class sizes in any lawful manner, including but not limited to, encouraging qualified students to take dual enrollment or Florida Virtual School (FLVS) courses, adopting alternative class schedules, using joint facilities or innovative methods to reduce the cost of school construction, or team teaching strategies.

Beginning with the October student membership survey of the 2010-2011 school year and at the October student membership survey each year thereafter, each individual classroom must be in compliance with the constitutional class size maximums unless a flexibility exception determination has been made by a district school board. Each school district is required to make assignments, at the October student membership survey, so that the maximum number of students assigned to each teacher who is teaching core-curricula²⁰ courses in public school classrooms for:

- Prekindergarten through grade 3 may not exceed 18 students.
- Grades 4 through 8 may not exceed 22 students.
- Grades 9 through 12 may not exceed 25 students.

The DOE is required to annually calculate the number of students in each individual classroom based on the October student membership survey and annually report to the Legislature those districts not in compliance.

¹⁹ Section 1008.32, F.S., provides for the State Board of Education oversight enforcement authority to oversee the performance of district school boards in enforcement of all laws and rules. If the SBE determines that a district school board is unwilling or unable to comply with law or state board rule within the specified time frame, the state board has the authority to initiate any of the following actions: (a) Report to the Legislature the determination and recommend action to be taken by the Legislature. (b) Reduce the discretionary lottery appropriation until the school district complies with the law or state board rule. (c) Withhold the transfer of state funds, discretionary grant funds, or any other funds specified as eligible for this purpose by the Legislature until the school district complies with the law or state board rule. (d) Declare the school district ineligible for competitive grants. (e) Require monthly or periodic reporting on the situation relating to noncompliance until it is remedied.

²⁰ Section 1, Article IX of the Florida Constitution specifies that the class size requirements do not apply to "extracurricular classes." Section 1003.03(1), F.S., specifies that the maximum class sizes apply to "core-curricula courses," which section 1003.01(14), F.S., defines as "courses defined by the Department of Education as mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and courses taught in traditional self-contained elementary school classrooms."

Flexibility Exception

It is possible that a school or school district will experience unexpected student enrollment growth after the student to teacher assignments have been made and the school or school district has been determined to be in compliance with the constitutional class size maximums. For example, a new student will need to be added to a class because his or her family moved to Florida, another county, or to another attendance zone within the county or a natural disaster, such as a hurricane or tornado, may cause the displacement of students from one school in the district to others schools in the district or schools in neighboring counties.

For purposes of the flexibility exception, the PCB provides that unexpected student enrollment growth:

- At the district level is student enrollment in excess of the projections used by the Legislature in establishing the General Appropriations Act.
- At the kindergarten through grade 8 level is student enrollment in excess of the school's official staffing plan and capacity.
- At the grades 9 through 12 level is student enrollment in excess of the school's official staffing plan and capacity or in excess of the official staffing plan and capacity for a restricted course offering such as a magnet program or a career academy.

In the event of unexpected student enrollment growth, the PCB requires school districts to first consider and implement, as deemed practical, alternative methods, including but not limited to, encouraging qualified students to take dual enrollment or FLVS courses, adopting alternative class schedules, using joint facilities or innovative methods to reduce the cost of school construction, or team teaching strategies in order to meet the constitutional class size maximums.

However, in some instances, these alternative methods may be either impractical or educationally unsound and disruptive to students. Therefore, the PCB authorizes the district school board to determine that there is a need for a flexibility exception to the constitutional class size maximums. If a district school board determines that there is the need for a flexibility exception the following conditions apply:

- A teacher in prekindergarten through grade 3 will not be assigned more than three students over the constitutional class size maximum of 18 students.
- A teacher in grades 4 through 8 will not be assigned more than five students over the constitutional class size maximum of 22 students.
- A teacher in grades 9 through 12 will not be assigned more than five students over the constitutional class size maximum of 25 students.
- A school district is required to add classrooms, add teachers, or take other action to comply with the constitutional class size maximums if the unexpected student enrollment growth results in more than three students or five students above the constitutional class size requirements.
- A school is not allowed to exceed the class average for each of the three grade groupings that is averaged at the school level for the school year. This ensures that the average at the school level does not exceed the constitutional class size maximums for each of the three grade groupings.

Also, the flexibility exception expires at the end of the school year and the district school board is required to develop a plan that ensures each school within the district will be in compliance with the constitutional class size maximums by the next October student membership survey.

The district school board's flexibility exception determination must be made at a noticed, public meeting and is not subject to challenge under the Administrative Procedure Act.²¹ A school district is considered to be in compliance with the constitutional class size maximums when utilizing a flexibility exception.

Accountability Provision

The PCB revises the accountability provision for noncompliance with class size reduction so that beginning with the October student membership survey of the 2010-2011 school year and at the October student membership survey each year thereafter, if the DOE determines that any individual classroom exceeds the constitutional class size maximums and a flexibility exception determination has not been made by a district school board, the department is required to reduce the school district's class size reduction operating categorical funds.

The DOE is required to use the following calculation in determining the amount to reduce:

- Identify for each of the three grade groupings, the number of classrooms with a student enrollment that exceeds the class size constitutional maximums, the number of students over the maximum for each classroom, and the total number of students over the maximum for all classrooms in each school and each district.
- Determine the number of full-time equivalent (FTE) students that are over the maximums in each of the three grade groupings.
- Multiply the number of FTE students that are over the maximums for each of the three grade groupings by the class size reduction allocation factor for that grade grouping as set in the General Appropriations Act Conference Report of the Florida Education Finance Program (FEFP) for that year.
- Reduce the district's class size reduction operating categorical as calculated in the third FEFP calculation by an amount equal to the lesser of the remaining undisbursed balance of the allocation or the sum of this calculation.

The PCB removes the transfer penalty provision for noncompliance with class size reduction; therefore, the requirement that the Executive Office of the Governor transfer the district's class size reduction operating categorical to an approved fixed capital outlay appropriation for class size reduction is removed.

Voluntary Prekindergarten Education Program

The PCB removes the eligibility provisions requiring school districts to meet certain requirements relating to class size reduction in order to administer the school-year VPK program. Thus, every school district is now authorized to administer the school-year VPK program at public schools, as determined by the district school board of each county.

C. SECTION DIRECTORY:

- **Section 1.** Amends s. 1003.03, F.S., revising the implementation schedule for class size reduction; providing compliance calculations; requiring the Department of Education to determine which school

²¹ Chapter 120, Administrative Procedure Act

districts do not meet the class size requirements and report such districts to the Legislature; providing the State Board of Education with enforcement authority to ensure district compliance; revising accountability provisions; providing for the reduction of class size operating categorical funds for noncompliance; deleting accountability provisions relating to the transfer of funds and the requirement that noncompliant districts implement certain policies and develop compliance plans; creating a flexibility exception to the constitutional class size maximums for school districts; requiring school districts to make assignments by the October student membership survey; defining unexpected student enrollment growth; requiring districts with unexpected student enrollment growth to consider alternatives to comply with class size requirements; authorizing a district school board to make a flexibility exception determination; requiring a public hearing with notice; providing conditions for a flexibility exception; and requiring rulemaking.

Section 2. Amends s. 1011.685, F.S., revising requirements for the use of class size reduction operating categorical funds.

Section 3. Amends s. 216.292(2)(d), F.S., deleting provisions authorizing the transfer of appropriations for public school operations to a fixed capital outlay appropriation for class size reduction.

Section 4. Amends s. 1002.63(a)(b), F.S., deleting provisions relating to school district eligibility to deliver School-year prekindergarten program based on class size.

Section 5. Amends s. 1002.53, F.S., conforming provisions and correcting cross-references.

Section 6. Amends s. 1002.61, F.S., conforming provisions and correcting cross-references.

Section 7. Amends s. 1002.73, F.S., conforming provisions and correcting cross-references.

Section 8. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There is not an anticipated impact on state revenues or expenditures from the requirements of the PCB.

Currently, school districts must reduce class sizes by two students each year measured at the school level until the constitutional requirements are met. Any excess funds may be used at the discretion of the school district with priority given to increasing teacher salaries. The current class size reduction operating categorical is \$2.64 billion. In FY 2007-2008 school districts used approximately \$526.4 million, or 20% of the total 2007-2008 class size reduction operating categorical, for purposes other than reducing class sizes. The PCB requires districts to use 100% of their class size allocation for reducing class sizes if any classroom in the district is over the constitutional cap by four students in 2008-2009 and by two students in 2009-2010. Consequently, a significantly larger portion of the total class size operating categorical will be used for reducing class sizes.

Currently, school districts that are determined to be out of compliance with the class size maximums have a portion of their class size operating categorical transferred to fixed capital outlay in proportion to the amount of class size reduction not accomplished. Transfer amounts for FYs 2003-2004 through 2007-2008 were:

Fiscal Year	Statewide Transfer Amount
2003-2004	\$(1,479,948)
2004-2005	\$(1,076,719)
2005-2006	\$(496,059)
2006-2007	\$(5,318,921)
2007-2008	\$(475,324)

The PCB eliminates this transfer and establishes a methodology beginning in 2010-2011 to reduce a district's class size reduction allocation for each student over the constitutional requirement. Unless a flexibility exception determination has been made by the district school board, the district's allocation will be reduced by the amount of funding earned for each student over the constitutional requirement.

The 2007-2008 class size reduction per student funding amounts are \$967.23 for prekindergarten through third grade, \$923.50 for grades four through eight, and \$925.73 for grades nine through twelve. Using the current funding methodology, it is estimated these per student funding amounts will be \$1,547.59, \$1,477.60 and \$1,481.17, respectively, for 2010-2011. Unless a flexibility exception determination has been made by a district school board, a district's allocations would be reduced for each student in each grade grouping by the per student amount for that grade grouping.

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:

In the Supreme Court of Florida's *Advisory Opinion to the Attorney General re Florida's Amendment to Reduce Class Size*, the court held that, rather than restricting the Legislature, the class size amendment in Art IX, section 1, of the Florida Constitution gives the Legislature latitude in designing ways to reach the class size goal articulated in the amendment, and places the obligation to ensure compliance on the Legislature, not the local school boards.²² Furthermore, the court found that although the Legislature may choose to fund the building of new schools to achieve the maximum classroom size set as a goal of the amendment, it is not the only method of ensuring the maximum number of students meets the requirements set forth in the amendment.²³

B. RULE-MAKING AUTHORITY:

The PCB provides specific rule-making authority pursuant to ss. 120.536(1) and 120.54 to the SBE for governing compliance calculations, the timeliness and required documentation for district school board flexibility exception determinations, and district school board appeals of penalties under s. 1003.03.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

²² 816 So.2d 580 at 584, 585. In re Advisory Opinion to the Atty. Gen. Fla., 2002. Supreme Court of Florida Advisory Opinion to the Attorney General re Florida's Amendment to Reduce Class Size No. SC01-2421 April 25, 2002. "Proposed amendment does not substantially alter or perform the functions of the local school board. Although as a result of the amendment, the Legislature may choose to fund the building of new schools to achieve the maximum classroom size set as a goal of the proposed amendment, this is not the only method of ensuring that the number of students meets the numbers set forth in the amendment. Rather than restricting the Legislature, the proposed amendment gives the Legislature latitude in designing ways to reach the class size goal articulated in the ballot initiative, and places the obligation to ensure compliance on the Legislature, not the local school boards."

²³ Id.

