

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 511 Uses of the District School Tax
SPONSOR(S): Kendrick and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1750

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on K-12</u>	<u>8 Y, 0 N</u>	<u>Gillespie</u>	<u>Ahearn</u>
2) <u>Schools & Learning Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Gillespie</u>	<u>Cobb</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Council Substitute for House Bill 511 allows a school district to use revenues from the 2-mill nonvoted capital improvement levy to pay premiums for the district's property and casualty insurance necessary to insure the educational plants of the school district. Operating revenues made available due to use of the 2-mill levy for property and casualty insurance may be used only for the nonrecurring operational expenditures of the school district.

The council substitute also requires a school district, if the district anticipates using revenues from the 2-mill levy for property and casualty insurance premiums, to list that anticipated use on the list of projects included on its annual public tax notice published in a newspaper of general paid circulation in the district.

Current law restricts the use of revenues from the 2-mill levy to certain projects. A district is exempt from these restrictions if the Commissioner of Education certifies that all of the district's instructional space needs for the next 5 years can be met from capital outlay sources that the district reasonably expects to receive within 5 years or from sound methods of meeting the district's space needs. The council substitute adds three additional requirements that a school district must meet in order to be exempt from these restrictions:

- The district must meet the class-size reduction requirements for the current year;
- The district must receive an unqualified opinion of its financial statements for the preceding 3 years; and
- The district must have no material weaknesses or instances of material noncompliance in an audit for the preceding 3 years.

The council substitute does not appear to create a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The council substitute does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Section 9, Article VII of the State Constitution permits a school district, if authorized by law, to levy up to 10 mills¹ of property taxes for school purposes. From the 10 mills, current law authorizes a school district to levy up to 2 mills for certain projects without voter approval (commonly known as the “nonvoted capital improvement millage”). Before 1997, the list of projects on which revenues from the 2-mill levy were authorized to be spent, included:²

- New construction and remodeling projects;
- Maintenance, renovation, and repair of existing educational plants³ or leased facilities to correct nonconformity with the Florida Building Code or Fire Safety Prevention Code;
- Purchase, lease-purchase, or lease of school buses and other school vehicles;
- Purchase, lease-purchase, or lease of new and replacement equipment;
- Payment for educational facilities and sites under certain lease-purchase agreements;
- Payment of loans for specific school-related purposes;
- Payment of costs to comply with state and federal environmental laws, rules, and regulations;
- Payment of costs for renting or leasing educational facilities; and
- Purchase, lease-purchase, or lease of school buses or payment to a private entity to offset the cost of school buses.

In 1997, the Legislature established, effective July 1, 2003, a new list of projects on which revenues from the 2-mill levy may be spent.⁴ The 1997 law also established a transition schedule for the years 1997 through 2003, incrementally shifting districts to projects on the new 2003 list.⁵ The 2003 list of authorized projects includes:⁶

- Construction, renovation, remodeling, maintenance, and repair of educational plants;
- Purchase, lease, or lease-purchase of equipment, educational plants, and construction materials directly related to the delivery of student instruction;
- Rental or lease of existing buildings or space converted for use as educational facilities;
- Opening day collections for the library media centers of new schools;
- Purchase, lease-purchase, or lease of school buses or payment to a private entity to offset the cost of school buses; and
- Payments for certificates of participation⁷ issued before January 7, 2003.⁸

¹ A mill is 0.001 of one dollar. Thus, one mill of \$100,000 of taxable value is \$100.

² Section 1011.71(2), Florida Statutes.

³ Section 1013.01(7), Florida Statutes, defines the term “educational plant” to comprise the educational facilities, site, and site improvements necessary to accommodate students, faculty, administrators, staff, and the activities of the educational program of each plant.

⁴ Section 8, chapter 97-265, Laws of Florida; Section 35, chapter 97-384, Laws of Florida; section 1011.71(5), Florida Statutes.

⁵ *Id.*

⁶ Section 1011.71(5)(a), Florida Statutes.

⁷ A “certificate of participation” is an instrument evidencing a pro rata share in a specific pledged revenue stream, usually lease payments by the issuer that are subject to annual appropriation. The certificate generally entitles the holder to receive a share, or participation, in the lease payments from a particular project. Municipal Securities Rulemaking Board, *Glossary of Municipal Securities Terms* 2d ed. (Jan. 2004), at <http://www.msrb.org/msrb1/glossary/default.asp> (last visited Apr. 17, 2007).

A school district that spends revenues from the 2-mill levy in violation of these limits is subject to an equal-dollar reduction in funds appropriated to the district under the Florida Education Finance Program the fiscal year after an audit finds the violation.⁹

Current law provides that, if the Commissioner of Education certifies that all of a school district's instructional space needs for the next 5 years can be met from capital outlay sources that the district reasonably expects to receive within 5 years or from sound methods of meeting the district's space needs,¹⁰ the district may use revenues from the 2-mill levy on expenditures allowed before 1997.¹¹ The pre-1997 list of projects is more inclusive than the 2003 list that currently restricts expenditures.

A review by the Department of Education of the legislative history of the 2-mill nonvoted capital improvement levy shows that the levy "has always been restricted to costs associated with capital outlay, and not with operating expenses."¹²

The department reports that, for 2006-2007, the value of 1 mill of school taxable value is \$1.56 billion. Thus, the 2-mill levy could generate a statewide value of \$ 3.11 billion. The following table shows the millage rates levied by Florida's school districts for 2006-2007:¹³

2006-2007 Capital Improvement Millage Rates	
<i>Levy of Discretionary 2 Mills</i>	<i>School Districts</i>
Three school districts do not levy millage	Calhoun, Holmes, and Jackson
Three school districts levy 0.001 to 0.500 mills	Gulf, Madison, and Monroe
Seven school districts levy 0.501 to 1.500 mills	Bay, DeSoto, Orange, Pasco, Santa Rosa, Walton, and Washington
Two school districts levy 1.501 to 1.999 mills	Citrus and Okaloosa
<i>The remaining 52 school districts levy the maximum of 2.000 mills</i>	

Class-Size Reduction:

In 2002, the voters of Florida approved an amendment to the State Constitution requiring the reduction of class sizes by the 2010 school year so that the maximum number of students per public school classroom assigned to a teacher is:¹⁴

- Eighteen students for prekindergarten through third grade;
- Twenty-two students for grades 4 through 8; and
- Twenty-five students for grades 9 through 12.

The constitutional amendment requires the Legislature, beginning with the 2003-2004 fiscal year, to provide funds for reducing the average number of students in each classroom by at least two students per year until reaching the maximum class sizes.¹⁵

⁸ See sections 663 and 1065, chapter 2002-387, Laws of Florida.

⁹ Flush-left provisions of section 1011.71(5), Florida Statutes.

¹⁰ Current law provides the following examples of sound methods for meeting a school district's space needs: alternative scheduling or construction, leasing, rezoning, or technological methodologies. *Id.*

¹¹ Flush-left provisions of section 1101.71(5), Florida Statutes.

¹² Florida Department of Education, *2007 Bill Analysis of HB 511*, at 2 (Feb. 6, 2007).

¹³ Florida Department of Education, Office of Funding and Financial Reporting, *Florida Education Finance Program 2006-07 Third Calculation* 47 (Dec. 15, 2006), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-4169/coefo-07-12c.pdf>.

¹⁴ Section 1(a), Article IX of the State Constitution.

¹⁵ *Id.*

To implement the constitutional amendment, the Legislature required a school district that did not comply with the maximum class sizes to reduce its average number of students per classroom¹⁶ by at least two students per year. The Legislature also specified how the averages are calculated:

- For fiscal years 2003-2004 through 2005-2006, the average number of students per classroom was calculated at the district level.
- For fiscal years 2006-2007 through 2007-2008, the average is calculated at the school level.
- For fiscal year 2008-2009 and thereafter, the average is calculated at the individual classroom level.

Thus, for fiscal years 2003-2004 through 2005-2006, a school district that did not meet the maximum class sizes for its classrooms was required to reduce the district's average number of students per classroom by two students. A school district was permitted to have a school whose average class size was not reduced as long as the district's average showed an overall reduction by two students.

For fiscal years 2006-2007 and 2007-2008, a public school (including a charter school) that does not meet the maximum class sizes for its classrooms is required to reduce the school's average number of students per classroom by two students. A school is permitted to have individual classrooms that are not reduced as long as the school's average shows an overall reduction by two students.

Beginning in fiscal year 2008-2009, an individual classroom that does not meet the maximum class size must be reduced by two students to meet the maximum class size.

Under current law, if the Department of Education determines for any year that a school district has not reduced average class sizes as required, the department must calculate an amount of the district's operating funds proportionate to the amount of class-size reduction not accomplished. Once the department's calculation is verified, the Executive Office of the Governor transfers the operating funds to the district's fixed capital outlay account for class-size reduction.¹⁷ If, however, the Commissioner of Education recommends that the State Board of Education has reviewed evidence indicating that a school district was unable to meet class-size reduction requirements despite appropriate efforts, current law allows the Legislative Budget Commission to approve an alternative amount of funds to be transferred from the district's operating funds to fixed capital outlay for class-size reduction.

For 2006-2007, if a school district had at least one public school (including a charter school) that did not meet the class-size reduction requirements, the Department of Education allowed the district to appeal the department's calculation of the amount of operating funds to be transferred to fixed capital outlay. The Commissioner of Education subsequently recommended an adjustment to the transfer calculations if the district demonstrated that one of the following affected the calculation:

- Correction of data errors;
- District was actively recruiting (e.g., advertising of vacancy) a teacher to fill a vacancy before the class-size calculations and subsequently filled the position; or
- District experienced unexpected student enrollment growth.

¹⁶ The State Constitution specifies that the class-size requirements do not apply to "extracurricular classes." *Id.* Section 1003.03(1), Florida Statutes, specifies that the maximum class sizes apply to "core-curricula courses," which section 1003.01(14), Florida Statutes, 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."

¹⁷ Section 1003.03(4)(a), Florida Statutes.

Based on the adjusted calculations resulting from the appeals, operating funds of 24 school districts are subject to transfer to fixed capital outlay:¹⁸

School District	Transfer Amount
Bay	\$68,834
Brevard	\$2,474
Broward	\$954,157
Clay	\$37,392
Collier	\$2,573
Miami-Dade	\$518,149
Duval	\$34,210
Gadsden	\$4,294
Hendry	\$35,956
Lee	\$37,685
Levy	\$7,392
Manatee	\$596,123

School District	Transfer Amount
Monroe	\$13,041
Orange	\$1,766,907
Osceola	\$444,463
Palm Beach	\$59,831
Pasco	\$7,226
Pinellas	\$153,569
Polk	\$120,551
Putnam	\$7,151
Sarasota	\$20,623
Seminole	\$722
Sumter	\$193,466
Washington	\$19,220

In addition to these school districts, five districts had at least one public school that did not meet the class-size reduction requirements, but, as a result of the department's appeals process, are not subject to the transfer of operating funds to fixed capital outlay: Alachua, Franklin, Lake, Okaloosa, and Walton.

Tax Notices:

Current law requires a school district to annually publish certain notices of its tentative budget, tax increases, and budget hearings in a newspaper of general paid circulation in the district, which is of general interest and readership in the community and not one of limited subject matter.¹⁹ If a school district levies the nonvoted capital improvement millage (up to 2 mills), current law requires the district to publish a second notice of that tax, which also must appear in a newspaper of general paid circulation in the district.²⁰ The notice must include a list of the projects anticipated to be funded by the capital improvement tax.²¹

Proposed Changes:

The council substitute allows a school district to use revenues from the 2-mill nonvoted capital improvement levy to pay premiums for the district's property and casualty insurance necessary to insure the educational plants²² of the school district. Operating revenues made available due to use of the 2-mill levy for property and casualty insurance may be used only for the nonrecurring operational expenditures of the school district.

The council substitute also requires a school district, if the district anticipates using revenues from the 2-mill levy for property and casualty insurance premiums, to list that anticipated use on the list of projects included on its annual public tax notice published in a newspaper of general paid circulation in the district.

As previously discussed, current law restricts the use of revenues from the 2-mill levy to certain projects.²³ A district is exempt from these restrictions if the Commissioner of Education certifies that all of the district's instructional space needs for the next 5 years can be met from capital outlay sources that the district reasonably expects to receive within 5 years or from sound methods of meeting the

¹⁸ Florida Department of Education, *2006-07 Class Size Reduction Transfer to Fixed Capital Outlay: All Schools* (Feb. 2007).

¹⁹ Section 200.065(2)(f) and (3), Florida Statutes.

²⁰ Section 200.065(9)(a), Florida Statutes.

²¹ *Id.*

²² Section 1013.01(7), Florida Statutes, defines an "educational plant" as the "educational facilities, site, and site improvements necessary to accommodate students, faculty, administrators, staff, and the activities of the educational program of each plant."

²³ Section 1011.71(5)(a), Florida Statutes.

district's space needs.²⁴ The council substitute adds three additional requirements that a district must meet in order to be exempt from these restrictions:

- The district must meet the class-size reduction requirements for the current year;
- The district must receive an unqualified opinion²⁵ of its financial statements for the preceding 3 years; and
- The district must have no material weaknesses or instances of material noncompliance in an audit for the preceding 3 years.

Accordingly, if a district meets these requirements, the council substitute allows the district to use revenues from the 2-mill levy on any of the projects listed in current law, including those authorized before 1997.

The council substitute does not apply these restrictions to a district's use of revenues from the 2-mill levy for property and casualty insurance premiums. A district may use revenues from the 2-mill levy for property and casualty insurance premiums, regardless of whether the district meets these requirements.

Since current law provides for calculation of class-size reduction requirements at the school level for fiscal years 2006-2007 and 2007-2008,²⁶ the council substitute is unclear as to what conditions must be met in order to determine that a school district has met the current-year class-size reduction requirements, especially in light of the appeals and adjustment process implemented by the Department of Education. Moreover, beginning in fiscal year 2008-2009, the class-size reduction requirements will be calculated at the level of individual classrooms, further obscuring what conditions a district must meet in order to comply with the current-year class-size reduction requirements.

The council substitute provides an effective date of July 1, 2007.

C. SECTION DIRECTORY:

Section 1. Amends section 200.065, Florida Statutes, requiring the addition of specified information in an annual tax notice.

Section 2. Amends section 1011.71, Florida Statutes, allowing revenues from the 2-mill nonvoted capital improvement levy to be used to pay certain insurance costs.

Section 3. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²⁴ Flush-left provisions of section 1011.71(5), Florida Statutes.

²⁵ An "unqualified opinion" states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles. An unqualified opinion is distinguishable, for example, from a qualified opinion or an adverse opinion. See American Institute of Certified Public Accountants, *Auditing Standards, Statement of Auditing Standards No. 58, section 508.10* (June 30, 2006), available at <http://www.aicpa.org/download/members/div/auditstd/AU-00508.PDF>.

²⁶ Section 1003.03(2)(b)2., Florida Statutes.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The council substitute allows a school district to use revenues from the 2-mill nonvoted capital improvement levy to pay the district's property and casualty insurance premiums for educational plants, which is typically paid from operational funds. Accordingly, a district is able to make operational funds available for other purposes. If, however, the district confronts unexpected capital outlay demands, the district could experience challenges in shifting payment for the district's insurance premiums back to its operational funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As previously discussed, the council substitute is unclear as to what conditions must be met in order to determine that a school district has met class-size reduction requirements for the current year.

In addition, current section 1011.71, Florida Statutes, which is amended by the council substitute, contains historical provisions that are now obsolete but create ambiguity as to the future application of the law and may create confusion as to how to apply the council substitute's provisions.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Committee on K-12 adopted an amendment by Representative Kendrick. The amendment:

- Deletes provisions from the original bill which allow a school district to use revenues from the 2-mill nonvoted capital improvement levy for health insurance costs;
- Keeps provisions from the original bill which allow revenues from the 2-mill levy to be used for payment of premiums for property and casualty insurance, but limits the payment of premiums to insurance necessary for insuring the educational plants of the school district;
- Eliminates a requirement in the original bill which conditions a district's use of revenues from the 2-mill levy for property and casualty insurance premiums on the district's compliance with the current-year class-size reduction requirements and the Commissioner of Education's certification that all of the district's instructional space needs for the next 5 years can be met from capital outlay sources that the district reasonably expects to receive within 5 years or from sound methods of meeting the district's space needs; and
- Requires a school district to use operating revenues made available through payment of property and casualty insurance from the 2-mill levy only on nonrecurring operational expenditures.

The amendment also adds provisions substantially similar to provisions in CS/SB 1228 which provide for the designation of academically high-performing school districts according to the following criteria:

- The district must earn a district grade of "A" for 2 consecutive years, beginning with the 2004-2005 school year;
- The district must have no schools, including charter schools, which earn a grade of "F";
- The district must comply with all class-size requirements;
- The district must have no material weaknesses or instances of material noncompliance noted in the annual financial audit; and
- The district must report the specific State Board of Education rules and statutes from which the school district is exempt.

The designation may be retained for 3 years, if the district complies with the initial eligibility criteria and earns at least a district grade of "A" for 2 years within a 3-year period. However, a district may not retain the designation if a public school, including a charter school, earns a grade of "F" during the 3-year period.

The amendment allows a designated district to exempt itself from any laws or rules, except as otherwise provided, for a limited time. In addition, an academically high-performing school district is specifically exempt from complying with laws relating to the following: program expenditure levels in the Florida Education Finance Program (FEFP) for kindergarten through grade 12; annual K-12 comprehensive reading plans; requirements for covered walkways for relocatable facilities (i.e., portables); the use of relocatable facilities; procurement of instructional materials; and use of the instructional materials allocation.

The amendment also provides for renewing the designation at the end of 3 years and specifies a district's requirements for reporting academic performance to the State Board of Education and the Legislature. The state board must make recommendations to the Legislature for eliminating any reporting requirements in state law which duplicate requirements in the federal No Child Left Behind Act.

On April 10, 2007, the Schools & Learning Council adopted a substitute amendment by Representative Kendrick. The substitute amendment:

- Removes provisions adopted by the Committee on K-12 regarding academically high-performing school districts; and
- Adds three additional requirements that a school district must meet in order to be exempt from current restrictions on the use of revenues from the 2-mill levy:
 - The district must meet the class-size reduction requirements for the current year;
 - The district must receive an unqualified opinion of its financial statements for the preceding 3 years; and
 - The district must have no material weaknesses or instances of material noncompliance in an audit for the preceding 3 years.

The Schools & Learning Council reported the bill favorably as a council substitute, which incorporates the changes made by the substitute amendment. The council substitute differs from the original bill, as follows:

- Limits use of revenues from the 2-mill levy for payment of premiums for property and casualty premiums to insurance *necessary to insure the educational plants of the school district*;
- Requires a school district to use operating revenues made available through payment of property and casualty insurance from the 2-mill levy only on nonrecurring operational expenditures;
- Eliminates a requirement in the original bill which conditions a district's use of revenues from the 2-mill levy for property and casualty insurance premiums on the district's compliance with the current-year class-size reduction requirements and the Commissioner of Education's certification that all of the district's instructional space needs for the next 5 years can be met from capital outlay sources that the district reasonably expects to receive within 5 years or from sound methods of meeting the district's space needs; and
- In addition to meeting class-size reduction requirements, as required by the original bill, the council substitute adds two additional requirements that a school district must meet in order to be exempt from current restrictions on the use of revenues from the 2-mill levy:
 - The district must receive an unqualified opinion of its financial statements for the preceding 3 years; and
 - The district must have no material weaknesses or instances of material noncompliance in an audit for the preceding 3 years.