

STORAGE NAME: h351.ei

DATE: March 29, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION INNOVATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HJR 351

RELATING TO: Educational Funding Per Child

SPONSOR(S): Representative Bullard

STATUTE(S) AFFECTED: Article IX, Section 1 of the Florida Constitution

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION INNOVATION
- (2) GOVERNMENTAL OPERATIONS
- (3) EDUCATION APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HJR 351 will give children the “fundamental right” to legislative funding to provide an “adequate and appropriate education,” thus raising in terms of constitutional dignity the duty of the state to fund education. There is no higher standard than the “fundamental right” standard. Any state action dealing with legislative funding, if challenged, could be subject to strict scrutiny analysis. A strict scrutiny analysis could make it difficult for the state to win.

The resolution prescribes a working definition for what will satisfy the fundamental right it establishes. That definition is that the minimum acceptable “per child” funding level adopted for education shall be “equal to at least” the average amount funded per child by the top 25 percent of states in the nation.

Raising the per child funding level in Florida to average of the upper quartile is estimated to cost \$4,540,480,000. This will be a negative impact on the General Revenue Fund. Based on research, there is no evidence that this would improve the quality of education in Florida.

HJR 351 will reduce the legislature’s budgetary authority to allocate funds across all budget categories and limit the legislature’s ability to set fiscal priorities. If the legislature increases funding in the area of education, it may be forced to cut spending in others due to the constitutionally required balanced budget and cap on state revenues. The legislature could be questioned in court as to whether it has conformed to constitutionally mandated spending requirements. Due to separation of powers concerns, the judiciary has thus far been reluctant to intrude into this area.

Other public services and activities could be impacted. Funding reductions can cause slowdowns, shortages, or other disruptions. Since the funding shift would occur immediately, rather than incrementally, its impact could be greater.

HJR 351 requires Florida to be dependent upon other states’ spending patterns to determine what is spent on education in Florida. Spending decisions would be based on decisions made by officials of other state governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Requirement for a Uniform System of Free Public Schools

Article IX, Section 1 of the Florida Constitution requires that “adequate provision shall be made by law for a uniform system of free public schools.”

The Florida Supreme Court stated in *School Board of Escambia County v. State*, 353 S.2d 834, 837 (Fla. 1977), that “by definition...a uniform system results when the constituent parts, although unequal in number, operate to a common plan or serve a common purpose.”

The Florida Supreme Court further explained its notion of a “uniform system of free public schools” in *St. John’s County v. Northeast Florida Builder’s Association, Inc.*, 583 So.2d 635 (Fla. 1991):

We see nothing in this section of the Constitution that mandates uniform sources of school funding among the several counties...The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature.

The Court in *Florida Department of Education v. Glasser*, 622 So.2d 944 (Fla. 1993), has continued to suggest “that the uniformity clause will not be construed as tightly restrictive but merely as establishing a larger framework in which a broad degree of variation is possible.”

The Court has consistently stated that decisions concerning the uniformity of the state's school system should be left to the legislature. In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400 (Fla. 1996), the Florida Supreme Court once again refused to examine the adequacy of legislative findings by explaining:

[W]e must consider this issue in the context that appropriations are textually and constitutionally committed to the legislature. Any judicial involvement would involve usurping the legislature’s power to appropriate funds for education. The judiciary must defer to the wisdom of those who have carefully evaluated and studied the social, economic, and political ramifications of this complex issue - the legislature.

In conclusion, the Court held that:

[T]he legislature has been vested with enormous discretion by the Florida Constitution to determine what provision to make for an adequate and uniform system of free public schools. Id at 408.

Education As a Fundamental Right

Since 1973, thirteen supreme courts have held that education is a fundamental right. Courts in nine other states have disagreed. Whether education is a fundamental right is extremely important because it determines the type of analysis to be used if an individual challenges a statute regarding education.

If a challenged statute does not involve a fundamental right or a suspect class, then the standard to be applied is a rational basis analysis. In *Aseptic Packaging Council v. State*, 637 A.2d 457,459 (Me.1992), under a rational basis analysis “different treatment accorded to a similarly situated persons need only be rationally related to a legitimate state interest.” Additionally, in *School administrative District No. 1 v. Commissioner Department of Education*, 659 A.2d 854 (Me. 1995), when a statute is reviewed under a rational basis standard, “a statute bears a strong presumption of validity,” and the party challenging the statute has the burden of proving that no conceivable state of facts exist to support the legislative action.”

If a statute does involve a fundamental right then the standard of analysis to be used in review is raised to the highest standard of all - strict scrutiny analysis. Under strict scrutiny the standard requires that a challenged action will be upheld only if it is narrowly tailored to serve a compelling state interest, and the action must be the least restrictive means for achieving that interest. In other words, if there is another way of achieving that state interest that places less of a burden on the challenger the statute will fail. Under the strict scrutiny analysis the party challenging the statute will almost always win.

According to *Jenkins v. Leininger*, 659 N.E. 2d 1366 (Ill. app. I Dist. 1995), the term

‘fundamental right’ is a term of art and creature of constitutional construction subject to a body of precedent that limits judicial review to the standard of strict scrutiny.... A constitutional right will be characterized as fundamental only where such a conclusion is supported by textual evidence as well as evidence of the intent of the drafter. Id 1373.

In *San Antonio Independent School District v. Rodriguez*, 411 U.S. at 33,93 S.Ct. at 1295, the United States Supreme Court suggested that courts must refrain from characterizing all important rights as fundamental rights, because almost every state statute affects an important right.

Grant of Budgetary Power to the Legislature

Article III, Section 1 of the Florida Constitution grants the Legislature considerable authority over the state’s budget: “The legislative power of the state shall be vested in a legislature of the State of Florida...”

According to the Florida Supreme Court in *Chiles v. Children*, 589 So.2d 260, 267 (Fla. 1991), “Only the legislature, as the voice of the people, may determine and weigh the multitude of needs and fiscal priorities of the State of Florida.”

Additionally, Article III, Section 19 of the Florida Constitution grants the Legislature power to enact a general law which “shall prescribe the adoption of annual state budgetary and planning processes...”

State Revenue Cap

While the constitution confers extensive budgetary powers upon the Legislature, these powers are not unlimited. Article VII, Section 1(e) of the Florida Constitution imposes a limitation on state revenues with annual adjustments for growth in personal income. It

defines state revenues as “taxes, fees, licenses, and charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government.”

Balanced Budget Provision

According to Article V, Section 1(d) the State of Florida must maintain a balanced budget. While this provision does not prohibit the state from borrowing money, it does require that expenses incurred through borrowing be offset by incoming revenues.

Relationship Between States’ Academic Success and Amount Spent Per Pupil

It is unclear whether there is a direct correlation between the amount of money a state spends per pupil and the success in standards and assessment. A recent study prepared in January 1997 by *Education Week* and sponsored by Pew Charitable Trusts gave each state letter grades of A, B, C, D, or F in school performance. Utah was one of the states with a grade of A for core curriculum and student assessments, yet Utah ranks last in the country in per pupil expenditures for public elementary and secondary schools per pupil.

However, NEA Research, *Estimates* data bank calculates that New Jersey, which also received an A, spends more than any other state at \$9,205 per pupil, while Utah is the state that spends the least at \$3,432 per pupil; this is nearly a \$6,000 difference that New Jersey spends over Utah. Florida received a C in standards and assessments and it ranks number 26, which is close to the median of all states, in the amount per pupil spent at \$5,212. The amount per pupil figures are based on fall enrollment for the 1994-1995 school year.

The national average of all 50 states is \$5,412. Florida’s spending is only about \$200 below the average. Florida spends \$3,993 less than New Jersey, the biggest spender per pupil. The top 13 states would comprise the upper quartile of the rankings. The average of these top 13 states is \$7,239. The difference between that average and Florida is \$2,027.

The *Education Week* study and the NEA calculations indicate that the amount of money spent per pupil is clearly not the only factor that determines the success of schools. Other factors include whether the state’s population is concentrated in urban areas, class size, school size, quality of teachers and the equity between rich and poor districts.

B. EFFECT OF PROPOSED CHANGES:

HJR 351 will give children the fundamental right to legislative funding to provide an “adequate and appropriate education.” HJR 351 raises in terms of constitutional dignity the duty of the state to fund education. This resolution raises the obligation to a “fundamental right”. There is no higher standard than this. Any state action dealing with legislative funding, if challenged, could be subject to strict scrutiny analysis. A strict scrutiny analysis could make it difficult for the state to win.

The resolution prescribes a working definition for what will satisfy the fundamental right it establishes. That definition is that the minimum acceptable “per child” funding level

adopted for education shall be “equal to at least” the average amount funded per child by the top 25 percent of states in the nation.

Based on the calculations from NEA Research, *Estimates*, raising the per child funding level in Florida to average of the upper quartile would cost \$4,540,480,000.

Based on the research in *Education Week*, there is no evidence that this would improve the quality of education in Florida.

HJR 351 will reduce the legislature’s budgetary authority to allocate funds across all budget categories. Consequently, the legislature could be questioned in court as to whether it has conformed to constitutionally mandated spending requirements. Due to separation of powers concerns, the judiciary has thus far been reluctant to intrude into this area.

If the legislature increases funding in the area of education, it may be forced to cut spending in others due to the constitutionally required balanced budget and cap on state revenues. Other public services and activities could be impacted. Funding reductions can cause slowdowns, shortages, or other disruptions. Since the funding shift would occur immediately, rather than incrementally, its impact could be greater.

Within the constitutional constraints of a balanced budget and cap on revenues, the legislature could be forced to raise taxes to fund the educational spending mandate.

The spending mandate on state government could limit the state’s options in times of emergency, limit the legislature’s ability to set fiscal priorities. It would take away some flexibility.

HJR 351 requires Florida to be dependent upon other states’ spending patterns to determine what is spent on education in Florida. Spending decisions would be based on decisions made by officials of other state governments.

HJR 351 constitutionalizes a statement of values by classifying children as the state’s “most important asset.”

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill reduces the Legislature’s authority to allocate funds. In terms of overall spending on education, HJR 351 would eliminate legislative discretion.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The Florida Legislature will be charged with the responsibility of funding education based on the average of the top quartile of the states in the nation for per pupil spending. To obtain the amount to be appropriated annually would require additional work to determine an accurate source for the spending of every state and determining what Florida would be spending. Additionally, because HJR 351 requires a specific level of educational funding, it would require government units outside the field of public education to make do with less.

- (3) any entitlement to a government service or benefit?

The public schools will be entitled to educational funding levels based on what other states are spending.

- b. If an agency or program is eliminated or reduced:

Not applicable.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

- (2) what is the cost of such responsibility at the new level/agency?

- (3) how is the new agency accountable to the people governed?

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

There is a possibility that some type of taxes would need to increase due to the significant increase in educational expenditures.

- b. Does the bill require or authorize an increase in any fees?

The bill does not directly require or authorize an increase in fees; however, fees or taxes would be needed to fund education and the other needed expenditures in the state budget.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

As taxpayers, teachers and others who are employed by the educational system or who contract with the public educational system may pay for a small portion of the cost through their taxes.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

HB 351 restricts the budgetary discretion of the legislature.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

No.

(2) service providers?

No.

(3) government employees/agencies?

HJR 351 vests control of educational expenditures in a court enforced formula.

D. SECTION-BY-SECTION RESEARCH:

Section 1 Establishes that children are the state's most important asset.

Establishes that children have a fundamental right to legislative funding for an adequate education.

Directs the legislature to appropriate funds equal to the average amount per student spent in states which are ranked in the top fourth in the nation

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Florida ranks 26th in funding per child at \$5,212. The top 13 states would comprise the upper quartile of the rankings. The average of these top 13 states is \$7,239. The difference between that average and Florida is \$2,027. There are approximately 2,240,000 students in public school grades kindergarten through grade twelve. Raising the per child funding level in Florida to average of the upper quartile would cost an additional \$4,540,480,000 in the public school education budget ($\$2,027 \times 2,240,000$).

3. Long Run Effects Other Than Normal Growth:

Florida's spending on public education would be dependent upon other states' spending patterns. Each year, the amount appropriated would have to be recalculated and adjusted. With a significant increase in educational spending, there would be either reductions in other areas of the state budget or tax increases.

4. Total Revenues and Expenditures:

Although the total cost would depend upon how the education budget in Florida and other states is measured and compared, it is estimated that the negative impact on the General Revenue Fund would be \$4,540,480,000 annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate at this time. If taxes or fees are increased to make up deficits in budget left by increased spending in education or if services are decreased, there could be a negative impact on the private sector.

2. Direct Private Sector Benefits:

Although the skills of a better educated workforce would aid private industry, there is no evidence that spending more on education will improve the quality of education in Florida.

3. Effects on Competition, Private Enterprise and Employment Markets:

If the bill resulted in higher taxes, the competitive position of Florida businesses could be hurt.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

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