

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

BILL: SB 1634

INTRODUCER: Senator Legg

SUBJECT: School Choice

DATE: January 28, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Favorable
2.	Sikes	Elwell	AED	Favorable
3.			AP	

I. Summary:

SB 1634 defines the statutory conditions under which a charter school or district innovation school of choice may be approved to calculate class size penalties at the school level average. Specifically, the bill:

- Establishes a definition for a school of choice to include concepts of innovation that is distinct and unique, along with open enrollment choice.
- Expands authority for school districts to pursue school board approved innovation schools of choice through the State Board of Education beyond just technology-oriented schools.
- Equally applies the new definition of schools of choice to both charter schools and district innovation schools of choice to be eligible for class size penalties calculated at the school level average.

The bill requires all public schools, including charter schools, to meet the definition of an innovation school of choice to be eligible for class size maximums measured at the school average rather than the classroom level. This will likely decrease the number of schools eligible for class size maximums measured at the school average and increase the class size penalty for noncompliance. For the 2014-2015 fiscal year, the class size penalty calculated at the school average for district-operated schools of choice was \$421,513. However, the class size penalty for these schools would have been \$162,529,902 had the calculation been done at the classroom level. The number of existing schools of choice that would meet the required definition to be classified as a district innovation school of choice is unknown.

The bill takes effect upon becoming a law.

II. Present Situation:

The Florida Constitution prohibits the maximum number of students assigned to each teacher from exceeding a certain number.¹ The Constitution requires the Legislature to make “adequate provision” to ensure there are a sufficient number of classrooms to meet this requirement.² As part of setting the policy to implement such requirements, the Legislature, among other methods, has provided varying means of calculating a penalty for schools that do not comply with the constitution, as implemented via law.³ Two of these mechanisms is for the penalty for a school to be calculated at the class level or the school level.⁴

Class Size

Class Size Reduction Constitutional Amendment

In 2002, voters approved the Class Size Reduction Amendment to Section 1(a), Article IX of the Florida Constitution.⁵ Thus, the Florida Constitution provides in part:

To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that:

- (1) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students;
- (2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and
- (3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students.

The class size requirements of this subsection do not apply to extracurricular classes. Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local school districts. Beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per classroom until the maximum number of students per classroom does not exceed the requirements of this subsection.

¹ Art. I(a), s. 1, Fla. Const.

² *Id.*

³ Section 1003.03, F.S.

⁴ *Id.*; ss. 1002.31(5); 1002.33(1); 1002.451(5), F.S.

⁵ The Florida Reduce Class Size, Amendment 9 (2002) was an initiated constitutional amendment on the November 5, 2002 election ballot, where it was approved. *See*, Art. IX., S. 1, Fla. Const.

Courses Subject to the Class Size Maximums

Extracurricular courses are expressly excluded from the class size mandate.⁶ However, the state constitution does not define “extracurricular courses.”

Through implementation, the Legislature has provided that the constitutional requirements apply to “core-curricula courses.”⁷ Core curricula courses are defined:⁸

- In prekindergarten through grade 3, as courses for language arts/reading, mathematics, social studies, and science.
- In grades 4-8, as courses in subjects that are measured by state assessment at any grade level and courses required for middle school promotion.
- In grades 9-12, as courses in subjects that are measured by state assessment at any grade level and courses that are specifically identified by name in statute as required for high school graduation that are not measured by state assessment.
- As exceptional student education courses.
- As English for Speakers of Other Language courses.

Thus, core-curricular courses are primarily associated with courses found within the English/Language Arts; Mathematics, Science, and Social Studies subject areas.⁹

The definition of core-curricula courses also excludes extracurricular courses¹⁰ and various other courses¹¹. Thus, the courses to which the class size requirements do not apply are:

- Extracurricular courses are all courses that are not defined as core-curricula courses, which may include, but are not limited to, physical education, fine arts, performing fine arts, career education, and courses that may result in college credit.¹²
- For a school district’s part-time and full-time kindergarten through grade 12 virtual instruction, courses delivered in the traditional school setting by personnel providing direct instruction through virtual instruction or through blended learning courses¹³ consisting of both traditional classroom and online instruction techniques.
- For charter schools, blended learning courses consisting of both traditional classroom and online instructional techniques.¹⁴
- Courses provided by the Florida Virtual School.
- Virtual instruction programs offered by approved providers.
- Courses provided by the Florida Approved Courses and Tests (FACT) Initiative.

⁶ *Id.*

⁷ Section 1002.03(1)(a), F.S.;

⁸ Section 1003.01(14), F.S.

⁹ Florida Department of Education, *2015-2016 Course Code Directory*, <http://www.fldoe.org/policy/articulation/ccd/2015-2016-course-directory.stml> (last visited January 18, 2016).

¹⁰ Sections 1003.01(14) and (15), F.S.

¹¹ *See*, the flush left provision of s. 10023.01(15), F.S., which excludes from the definition of “core-curricula courses” courses offered under ss. 1002.321(4)(e), 1002.37(7)(a)2.b., 1002.37, 1002.45, and 1002.499.

¹² Section 1003.01(15), F.S.

¹³ Currently, neither statute nor rule defines “blended learning course”. *Compare*, s. 1002.451(1)(b), which defined a “blended learning program” and “blended learning models.”

¹⁴ Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Section 1002.33(7)(a)2.b., F.S.

To avoid confusion, the Department of Education (DOE) is required to identify from the Course Code Directory the core-curricular courses for the purpose of satisfying the maximum class size requirements.¹⁵

Class Size Implementation Flexibility

The Legislature has identified various methods by which district school boards may implement the maximum class size requirements. For example, options district school boards must consider include, but are not limited to:¹⁶

- Adopting policies to encourage qualified students to take dual enrollment courses, as well as courses from the Florida Virtual School and other virtual instruction options.
- Repealing district school board policies that require students to earn more than 24 credits to graduate from high school, and implement early graduation options.
- Maximizing use of instructional staff.
- Using innovative methods to reduce the cost of school construction.
- Using joint-facilities through partnerships with Florida College System Institutions, state universities and private colleges and universities.
- Adopting alternative methods of scheduling, such as block scheduling.
- Redrawing school attendance zones to maximize use of facilities while minimizing additional use of transportation.
- Operating schools beyond the normal operating hours to provide classes in the evening or operate more than one session of school during the day.
- Using year-round schools and other nontraditional calendars that do not adversely impact annual assessment of student achievement.
- Reviewing and considering amending any collective bargaining contracts that hinder the implementation of class size reduction.
- Any other approach not prohibited by law.

The Legislature also authorized school districts to use teaching strategies that include the assignment of more than one teacher to a classroom of students.¹⁷ For example the Legislature:

- Authorized various purposes for teaching strategies that assign more than one teacher to a classroom.
- Authorized, defined, and provided parameters for team teaching, co-teaching, and inclusion teaching.

Finally, the Legislature retroactively prohibited a school district from being penalized, financially or otherwise, as a result of using any legal strategy which relates to using these implementation options or team-teaching strategies to implement class size reduction.¹⁸

¹⁵ Section 1003.03(6), F.S. Florida Department of Education, *2015-2016 Course Code Directory*, <http://www.fldoe.org/policy/articulation/ccd/2015-2016-course-directory.stml> (last visited January 18, 2016).

¹⁶ Section 1003.03(3), F.S.

¹⁷ Section 1003.03(5), F.S.

¹⁸ *Id.*

Class Size Measurement and Reductions

Under the initial implementing statute in 2003, class size for public schools (which included charter schools and public schools of choice), was to be measured at the:¹⁹

- District level for each of the three grade groupings from 2003-2006;
- School level for each of the three grade groupings from 2006-2008; and
- Individual classroom level for each of the three grade groupings from 2008-2009 and thereafter.

The initial implementing schedule above was subsequently modified as follows:

- In 2008, and again in 2009, the timeframe for measuring class size at the school level was extended by the Legislature, ultimately applying measurement of class size at the individual classroom level in 2010-2011.²⁰
- In 2010, the class size calculation penalty for charter schools was specifically statutorily set at the school level average.²¹
- In 2013, the class size calculation penalty at the school level average was also specifically statutorily set for school or program that is a public school of choice pursuant to s. 1002.31, F.S., and district innovation schools of technology.²²

Thus, under current law, the class size compliance penalty is calculated at the:

- Classroom level for traditional public schools;²³ and
- School level average for charter schools.²⁴
- School level average for a school or program that is a public school of choice pursuant to s. 1002.31.²⁵
- School level average for district innovation schools of technology.²⁶

Temporary Flexibility From Maximum Class Size Requirements

The Legislature provided additional flexibility for students who enroll in a school after the October student membership survey.²⁷ These students may be assigned to an existing class that temporarily exceeds the maximum number of students if the district school board determines it to be impractical, educationally unsound, or disruptive to student learning to not assign the student to the class.²⁸

If the district makes this determination, it may assign over the class size maximum up to:

- Three additional students for prekindergarten through grade 3, and
- Five additional students for grades 4 through 12.²⁹

¹⁹ Section 2, ch. 2003-391, L.O.F.

²⁰ Section 5, ch. 2008-142, L.O.F.; Section 13, ch. 2009-59, L.O.F.

²¹ HB 5101 (2010).

²² CS/CS/HB 7009 (2013).

²³ Section 1003.03(4), F.S.

²⁴ Section 1002.33(16)(b)3., F.S.

²⁵ Section 1002.31(5), F.S.

²⁶ Section 1002.451(5), F.S.

²⁷ Section 1003.03(2)(b), F.S.

²⁸ *Id.*

²⁹ *Id.*

However, the district school board is required to develop a plan that provides the school will be in full compliance with the maximum size requirements by the subsequent October student membership survey.³⁰

Controlled Open Enrollment

Controlled open enrollment means a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.³¹

Each district school board is authorized to offer controlled open enrollment within the public schools, which is in addition to the existing choice programs, such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.³²

A district's controlled open enrollment plan must:³³

- Adhere to federal desegregation requirements.
- Include an application process that allows parents to declare school preferences, including placement of siblings within the same school.
- Provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases.
- Afford parents of students in multiple session schools preferred access.
- Maintain socioeconomic, demographic, and racial balance.
- Address the availability of transportation.

Public School of Choice

Included within controlled open enrollment statutes are two provisions relating to the label "public schools of choice:"

- In 1999, the Legislature created a reporting requirement so that each district school board would annually report the number of students attending the various types of public schools of choice in the district, including schools such as virtual instruction programs, magnet schools, and public charter schools, according to rules adopted by the State Board of Education.³⁴
- In 2013, the Legislature provided that for a school or program that is a school of choice under s. 1002.31, F.S., the calculation for compliance with maximum class size pursuant to s. 1003.03, F.S., is the average number of students at the school level.³⁵

The term "public school of choice" is not defined statute and has not been defined in State Board of Education rule. Absent a definition in statute or rule, districts may self-designate any number

³⁰ *Id.*

³¹ Section 1002.31, F.S.

³² Section 1002.31(2), F.S.

³³ Section 1002.31(3), F.S.

³⁴ CS/HB 2147 (1999); Section 1002.31(4), F.S. (2015).

³⁵ CS/CS/HB 7009 (2013), Section 1002.31(5), F.S. (2015).

of schools and programs as public schools of choice – which allows such schools to utilize class size compliance calculations at the school level.

The number of schools self-designated by schools districts as “public schools of choice” for the:

- 2013-2014 school year was 1,193 schools (39.09% of schools), and
- 2014-2015 school year was 1,862 schools (61.20% of schools).³⁶

District Innovation Schools of Technology

A district innovation school of technology³⁷ is similarly conceptual to charter schools, with a key distinction being that an innovation school of technology is operated by the district school board and a charter school is operated by a charter school governing board.³⁸ A district innovation school of technology develops the innovative use of industry-leading technology while requiring high student achievement and accountability in exchange for flexibility and exempt from specified statutes and rules.³⁹

A district innovation schools of technology is required to specifically focus on innovation and technology.⁴⁰ Additionally, an innovation school of technology is required to have a blended learning program on a schoolwide basis.⁴¹

Currently, no district school board has applied to the State Board of Education to operate a district innovation school of technology.⁴²

Charter Schools

Charter Schools are part of the state’s program of public education.⁴³ A charter school is operated pursuant to a contract between the sponsor and charter school governing board.⁴⁴ The charter contract frees charter schools from many regulations created for traditional public schools while holding them accountable for academic and financial results.⁴⁵

³⁶ Florida Department of Education, *2013-14 and 2014-15 District-Operated and District-Operated Schools of choice – Pre Appeals*, on file with committee staff.

³⁷ District Innovation Schools of Technology were first authorized in 2013. Section 9, ch. 2013-250, L.O.F.

³⁸ Compare ss. 1002.33 and 1002.451, F.S. Both types of schools similarly operate pursuant to a contract with a sponsor (the sponsor for charter schools is a school district or university; the sponsor for innovation schools is the State Board of Education), have guiding principles, and are exempt from various statutes. *Id.*

³⁹ Section 1002.451(1), F.S.

⁴⁰ *Id.*

⁴¹ *Id.* A blended learning program is an education program in which a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home. *Id.* The school may use a flipped classroom model, flex model, or rotation model. *Id.*

⁴² Email, Florida Department of Education, Office of K-12 School Choice (January 17, 2016). District innovation schools of technology were first authorized by the Legislature in 2013. CS/CS/HB 7009 (2013)

⁴³ Section 1002.33(1), F.S.

⁴⁴ Section 1002.33(7), F.S. A sponsor may be a district school board or a state university. Section 1002.33(5)(a), F.S.

⁴⁵ Florida Department of Education, *Frequently Asked Questions*, <http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml> (last visited January 17, 2016). A charter school shall organize as, or be operated by, a nonprofit organization. Section 1002.33(12)(i), F.S.

One of the purposes that a charter school is to encourage the use of innovative learning methods.⁴⁶ Additionally, charter schools may, but are not required, to implement blended learning courses which combine traditional classroom instruction and virtual instruction.⁴⁷

During the 2014-2015 school year, there were 646 charter schools in Florida.⁴⁸

III. Effect of Proposed Changes:

SB 1634 defines the statutory conditions under which a charter school or district innovation school of choice may be approved to calculate class size penalties at the school level average. Specifically, the bill:

- Establishes a definition for a school of choice to include concepts of innovation that are distinct and unique, along with open enrollment choice.
- Expands authority for school districts to pursue school board approved innovation schools of choice through the State Board of Education beyond just technology-oriented schools.
- Equally applies the new definition of schools of choice to both charter schools and district innovation schools of choice to be eligible for class size penalties calculated at the school level average.

Controlled Open Enrollment

The bill removes authority for programs and schools that are schools of choice to utilize class size compliance calculations at the school level, to provide that the class size penalty calculation at the school level may only be utilized by individual district innovation schools of choice (per SBE approval), and district-approved charter schools (per the charter contract).

District Innovation Schools of Technology

The bill re-designates “district innovation schools of technology” as “district innovation schools of choice.” To effect this re-designation, the bill:

- Expands the purpose of innovation schools so the schools develop innovation, which may include but is not limited to technology;
- Authorizes, rather than requires, that a district innovation school of choice provide blended learning on a schoolwide basis;
- Removes the tiered limitations on the number of innovation schools of choice that may be authorized in small, medium, and large districts;
- Enable a district’s application to the State Board of Education to propose multiple innovation schools of choice, although approval remains on a case-by-case basis;
- Strengthens the application requirements to require clearly defined, distinct and unique schoolwide, innovation and enrollment practices;
- Specify performance metrics, including, but not limited to, trends and targets for student’s performance improvement associated with the innovation;

⁴⁶ Section 1002.3(2)(b)3., F.S.

⁴⁷ Section 1002.33(7)(a)2.b., F.S.

⁴⁸ Florida Department of Education, *Florida’s Charter Schools* (2015), available at http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter_Oct_2015_11-20-15.pdf

- Removes autonomy for an innovation school of choice to restructure its school day or school year to accomplish its goals; and
- Requires a district innovation school of choice to demonstrate compliance with the performance metrics every three years in order to retain the class size penalty calculation at the school level average.

Charter Schools

The bill requires charter schools that wish to continue to have the class size penalty calculation at the school level average to modify their contracts to:

- Clearly articulate how the charter school distinctly and uniquely defines and provides schoolwide innovation and the school's enrollment practices;
- Specify performance metrics, including, but not limited to, trends and targets for the students' performance improvement associated with the innovation; and
- Demonstrate compliance with the performance metrics every three years in order to retain the school level class size penalty calculation.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires all public schools, including charter schools, to meet the definition of an innovation school of choice to be eligible for class size maximums measured at the school average rather than the classroom level. This will likely decrease the number of schools eligible for class size maximums measured at the school average and increase the

class size penalty for noncompliance. For the 2014-2015 fiscal year, the class size penalty calculated at the school level average for district-operated schools of choice was \$421,513. However, the class size penalty for these schools would have been \$162,529,902 had the calculation been done at the classroom level. It is not known how many existing schools of choice would meet the required definition to be classified as a district innovation school of choice.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.31, 1002.33, and 1002.451.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.