



center for  
Educational  
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& Accountability

## **A TAXWATCH SERIES:**

*TAKING A FRESH LOOK AT FLORIDA'S CLASS SIZE LIMITS*

# **OPTIONS FOR REFORMING CLASS SIZE LIMITS**

**FEBRUARY 2015**



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Dear Fellow Taxpayer:

This year, Florida taxpayers have allocated \$22.6 billion to fund education in the Sunshine State. This significant investment of your hard-earned money makes up the second-largest budget category in Florida, falling behind only health care spending. While this seems like a daunting amount of money, every penny of the state's budget is a precious and limited resource, and each cent spent on education must be used wisely to help every Florida student become college or career ready.

While the state has made many smart investments to improve teacher quality and student performance, one big policy has been holding back student achievement in Florida for nearly 12 years. Since 2002, Florida schools have made tough choices and budget cuts while spending more than \$30 billion to build new schools and hire additional teachers to comply with the state's class size amendment requirements. Instead of investing in proven measures to increase accountability and student achievement, Florida has been pumping money into a program that simply doesn't work.

This research paper, the third in a series about revisiting Florida's class size limits, analyzes the opportunities to reform the state's class size restrictions to better educate Florida students while reducing class size compliance costs and increasing the investment in other, proven tools. Our independent analysis recommends that the state uniformly employs a class size calculation which is currently discriminately used for only some public schools, which would result in a multi-billion dollar savings for Florida taxpayers. For more information on the ineffectiveness of Florida's class size limits, I encourage you to review other Florida TaxWatch publications on class size reform: *Taking a Fresh Look at Florida's Class Size Limits* and *Smaller Schools, Not Smaller Class Sizes*.

Sincerely,

  
Dominic M. Calabro  
President & CEO



# Introduction

This is the third in a series of research papers intended to renew the discussion of Florida's class size limits in public schools. The first paper<sup>1</sup> in the series, entitled "Taking a Fresh Look at Florida's Class Size Limits," concluded that Florida taxpayers invested more than \$27 billion into efforts to reduce class sizes, and that the smaller class sizes had no discernible impacts on student achievement. Research suggests that permitting school districts to achieve the class size limits on a school level average for grades 4-12 would generate substantial savings, which could then be reinvested into measures that will improve teacher quality and student achievement. The 2010 Florida TaxWatch Voter Guide on proposed Constitutional amendments estimated these savings at \$7 to \$10 billion over a 10-year period.<sup>2</sup>

The second paper<sup>3</sup>, entitled "Smaller Schools, Not Smaller Classes," points out that smaller schools are better able to facilitate student achievement than smaller class sizes. Students in smaller schools have higher achievement scores in math and reading, fewer disciplinary problems, more individualized instruction, higher extracurricular participation, and are more likely to graduate.

Florida's class size limits continue to present challenges to local school districts. This paper examines the different options and recommends a strategy for reforming the class size limits.

## Background

The full text of the 2002 constitutional amendment approved by Florida voters is as follows. The added language is underlined.

"Article IX, Section 1, Florida Constitution, is amended to read:

Section 1. Public Education.-

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. 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;

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1 "Taking a Fresh Look at Florida's Class Size Limits," Florida TaxWatch, March 2014.

2 "Voter Guide to the Proposed Constitutional Amendments on the November 2010 Ballot," Florida TaxWatch, September 2010.

3 "Smaller Schools, Not Smaller Classes," Florida TaxWatch, December 2014.

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 year until the maximum number of students per classroom does not exceed the requirements of this subsection."

## Implementing the Class Size Limits

Although the class size limits and the deadline for implementing them are established, the Constitution provides no specific direction to the Legislature regarding how to implement the limits. To implement the constitutional class size averages, the 2003 Legislature enacted ch.2003-391, Laws of Florida, to:

- Define the terms "core-curricula courses" and "extracurricular courses." "Core-curricula courses" include 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. "Extra-curricular courses" includes all other courses not defined as "core curricula."
- Establish the constitutional maximum class size averages.
- Require non-compliant districts to reduce the average number of students per classroom in grades pre-kindergarten through 3, grades 4-8, and grades 9-12 by at least two students per year. For fiscal years 2003-04 through 2005-06, the average was calculated at the district level. For fiscal years 2006-07 through 2007-08, the average was calculated at the school level. For fiscal years 2008-09 and thereafter, the average was calculated at the individual classroom level.
- Provide local school districts implementation options to meet the constitutional class size maximums and the two students per year reductions.
- Authorize the Department of Education to penalize non-compliant districts. An amount proportionate to the amount of class size reduction not accomplished (or an alternative approved amount) would be transferred from the district's class size reduction operating categorical appropriation to an approved fixed capital outlay appropriation for class size reduction in the affected district.

## The Need for Class Size Reform

The State of Florida has invested more than \$30 billion to reduce class sizes with the expectation that smaller class sizes will result in improved academic performance. The most definitive study of class size reduction in Florida (Chingos, 2010) found that class size reduction had no discernible impact upon student achievement, either positive or negative.<sup>4</sup>

Despite the significant appropriation and expenditure of state funds to comply, Florida school districts continue to struggle to meet the class size limits. As of December 3, 2014, 6,678 out of 242,721 (2.7%) traditional public school classrooms, 2 out of 6 lab schools (33.3%), 42 out of 621 (6.8%) charter schools, and 22 out of 1,861 (1.2%) district-operated schools of choice were not in compliance with the class size limits.<sup>5</sup>

For charter schools and district-operated schools of choice, compliance is calculated using the average at the school level. As a result, these districts stand to have their class size categorical allocation (prior to appeals) reduced by more than \$14.5 million.<sup>6</sup> The 2014 Legislature has appropriated \$3.01 billion to continue implementing the class size limits during the 2014-15 school year, which represents approximately 14% of the overall education budget for fiscal year 2014-15.<sup>7</sup>

Projected student enrollment growth will create new challenges for districts that are in compliance and even greater challenges for those that have yet to comply. Student enrollment (FTE) in grades 4-12 is projected to increase by more than 87,000 between the current and 2018-19 school year, with the greatest increase (more than 64,000) projected in grades 4-8.<sup>8</sup>

## The Nature of Class Size Reform

Florida TaxWatch supports Florida's continued efforts to reduce class sizes to 18 students or fewer in pre-kindergarten through grade 3. This is where Florida's investment in class size reduction will have the greatest influence on student achievement.

Florida TaxWatch supports measures that would permit local school districts to achieve the class size reduction mandate on a "school level class size average" basis for grades 4-12. This will give school districts additional flexibility while only modestly affecting the way the class size limits are applied, and will generate substantial savings.

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4 Matthew M. Chingos, "The Impact of a Universal Class-Size Reduction Policy: Evidence from Florida's Statewide Mandate", Program on Education Policy and Governance, John F. Kennedy School of Government, Harvard University, Last revised: August 2010.

5 December 3, 2014 Memorandum from Commissioner Pam Stewart to District School Superintendents and Charter School Directors, "2014-15 School Class Sizes and Process and Time Line for Appeals."

6 December 23, 2014 Memorandum from Commissioner Pam Stewart to District School Superintendents and Charter School Directors, "2014-15 Calculations of Reductions to Class Size Operating Funds (Prior to Appeals).

7 Florida House Passes Balanced Budget with Substantial Tax Relief and an Increased Commitment to Education, Florida House of Representatives News release, May 2, 2014.

8 Florida Department of Education, Official Adopted Forecast for the February 14, 2014 K-12 Public Schools Education Estimating Conference.

Florida TaxWatch supports the reinvestment of the savings realized by permitting local school districts to achieve the class size reduction mandate on a “school level class size average” basis for grades 4-12 into measures to improve teacher quality and to improve student achievement.<sup>9</sup>

## Strategy for Class Size Reform

The following outlines what Florida TaxWatch considers to be a reasonable and responsible strategy for reforming Florida’s maximum class size limits.

1. The 2015 Florida Legislature should establish “school level average” as the standard for calculating compliance with the class size limits for grades 4 through 8 and grades 9 through 12.
2. The 2015 Florida Legislature should revise or eliminate provisions that impose financial penalties on local school districts that do not meet the constitutional class size limits for grades 4 through 8 and grades 9 through 12.
3. Should the Legislature choose to let the people decide, the 2015 Florida Legislature should pass a joint resolution to give voters an opportunity to approve a constitutional amendment that would permit local school districts to achieve the class size limits on a school level class size average for grades 4 through 8 and grades 9 through 12.

## Rationale

In 2008, the Legislature enacted ch.2008-142, Laws of Florida, which amended s.1003.03(2), Florida Statutes, to extend the timeframe for calculating average class size at the school level one year, through fiscal year 2008-09. Although all but 23 traditional schools and eight charter schools reduced their school level averages by two students in the 2007-08 school year, the Legislature sought to provide school districts and charter schools additional time to reduce the number of students in any classroom to the constitutional maximum and provide a more gradual approach to achieving compliance.<sup>10</sup>

In 2009, the Legislature enacted ch.2009-59, Laws of Florida, which amended s.1003.03(2), Florida Statutes, to extend the timeframe for calculating average class size at the school level one year, until fiscal year 2009-10, and to extend the timeframe for calculating average class size at the individual classroom level until fiscal year 2010-11 and thereafter.

This was in response to escalating costs of compliance and Department of Education data that showed 26% of classrooms in grades pre-K through 3, 25% of classrooms in grades 4 through 8, and 33% of classrooms in grades 9 through 12 classrooms were not in compliance.<sup>11</sup>

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9 “Taking a Fresh Look at Florida’s Class Size Limits,” Florida TaxWatch, March 2014.

10 Bill Analysis and Fiscal Impact Statement, CS/SB 1756, Professional Staff of the Education PreK-12 Appropriations Committee, The Florida Senate, April 2, 2008.

11 Bill Analysis and Fiscal Impact Statement, CS/CS/SB 1676, Professional Staff of the Policy and Steering Committee on Ways and Means, The Florida Senate, April 8, 2009.

Since the timeframe for calculating average class size at the classroom level is established in the 2002 constitutional amendment, any further action by the Legislature to extend this timeframe beyond the beginning of the 2010 school year is, if challenged, likely to be found to be unconstitutional.

The precedent has been established for using school level class size average as the basis for calculating compliance. In 2010, the Legislature enacted ch.2010-154, Laws of Florida, which amended s.1002.33(16), Florida Statutes, to establish the compliance calculation for charter schools as the average at the school level. In 2013, the Legislature enacted ch.2013-250, Laws of Florida, which amended s.1002.31(9), Florida Statutes, to establish the compliance calculation for district-operated schools of choice as the average at the school level.

The Legislature has, therefore, established a standard for calculating compliance for charter schools and district-operated schools of choice that differs from the standard used to calculate compliance for traditional public schools. It is expressly clear and understood that the constitutional class size limits apply to children attending public schools. It is also expressly clear and understood that all charter schools are public schools.<sup>12</sup> The same applies to district-operated schools of choice.<sup>13</sup> If the Legislature can establish the school level average as the standard for determining compliance for charter and district-operated schools of choice, then amending s.1003.03(2), Florida Statutes, to establish the school level average as the standard for determining compliance for traditional public schools is an option available to the Legislature.

In 2011, the Legislature enacted ch.2011-55, Laws of Florida, which amended s.1003.01, Florida Statutes to redefine the terms “core curricula courses” and “extracurricular courses.”<sup>14</sup> Core curricula courses would include:

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

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<sup>12</sup> s.1002.33(1), Florida Statutes.

<sup>13</sup> s.1002.31, Florida Statutes.

<sup>14</sup> Extracurricular courses would include courses that may result in college credit.

The terms “core-curricula courses” and “extra-curricular courses” could be further redefined to add or delete courses in ways that make the class size calculations more favorable and that make it easier for local school districts to comply. This was done in 2013, when the Legislature amended s.1003.01(14), Florida Statutes, to remove “blended learning courses” taught in a charter school, traditional public school, or district innovation schools from the definition of core-curricula courses. Eliminating courses in grades 4-12 that are subject to assessment or promotion/graduation could, however, be viewed as intellectually dishonest.

The 2011 Legislature also sought to amend s.1003.03, Florida Statutes, to delete the provisions that impose financial penalties on school districts that do not meet maximum class size requirements. The proposed bill (SB 776) was eventually withdrawn from consideration. The Legislature could ease the burden of compliance on local school districts by revising or eliminating the provisions in s.1003.03(4), Florida Statutes, which impose financial penalties on school districts that do not meet maximum class size requirements.

The 2014 session’s education funding bill (HB 5101), included provisions that would amend s.1003.03(4), Florida Statutes, to (among other things) base the method for calculating the penalty paid by non-compliant schools on the school average instead of the classroom average. The bill was passed by the House and sent to the Senate, which substituted a strike-all amendment and passed its version. The details, which were worked out in Budget Conference, did not include the revised method for calculating the penalty paid by non-compliant schools based on the school average. The Legislature could choose to consider similar legislation in future sessions.

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The Legislature has other options to help local school districts comply with the class size limits. The Legislature could make mandatory one or more of the optional implementation strategies established in s.1003.03(3), Florida Statutes. For example, requiring districts to use year-round schools and other non-traditional calendars that would not adversely impact annual assessment of student achievement could ease the burden of compliance.

There are no realistic judicial or executive remedies. Changing Florida’s state constitution would require a federal court to declare the class size limits unconstitutional or a state court to find an amendment to be unacceptable.<sup>15</sup> The class size limits have been in effect for almost 12 years and no court action to declare them unconstitutional has been taken.

There may be one or more scenarios where the Governor could use an executive order to temporarily suspend or waive the class size limits. For example, if the state were to find itself in a financial emergency and was unable to meet its obligation to pay the costs associated with reducing class sizes to meet the constitutional limits, the Governor could suspend payment through an executive order. Upon expiration of the executive order, however, the class size limits and the state’s obligation to pay the costs to achieve them would remain in full force and effect. The Governor cannot change the class size limits established in the Constitution by executive order.

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15 Ballotpedia. Amending State Constitutions. [http://ballotpedia.org/Amending\\_state\\_constitutions](http://ballotpedia.org/Amending_state_constitutions)



The State Board of Education is the chief implementing and coordinating body of public education in Florida (except for the State University System) with a focus on high-level policy decisions. The Board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it for the improvement of the state system of K-20 public education except for the State University System.<sup>16</sup> Since the rules adopted by the Board must be consistent with and implement Florida Statutes, the Board could not legitimately use its rulemaking authority to change the class size limits established in the Constitution.

Amending the Florida Constitution is an option for reforming class size, and there are five ways to amend the Constitution:<sup>17</sup>

- Ballot initiative process;
- Constitutional convention;
- Constitutional Revision Commission;
- Joint legislative resolution; and
- Taxation and Budget Reform Commission.

Two of these methods, the Constitutional Revision Commission (CRC) and Taxation and Budget Reform Commission (TBRC) can be eliminated from consideration for reasons related to their timing. The CRC last met in 1997-98 and will not meet again until 2017-18. The TBRC last met in 2007 and will not reconvene until 2027.<sup>18</sup>

The ballot initiative process permits the people to propose amendments to the Constitution. A sponsor would first be required to register as a political committee with the Florida Division of Elections. The sponsor would be required to collect petitions signed by a number of voters equal to eight percent of the votes cast in the last presidential election. These petitions must come from at least one-half of the state's congressional districts. Placing a proposed Constitutional Amendment on the 2016 General Election Ballot (the next opportunity) would require the collection of more than 680,000 signatures from at least 14 congressional districts. The costs to verify each signature (10 cents or actual costs, whichever is less) must be borne by the sponsoring political committee and paid when the petitions are submitted for verification. For 680,000 or more signatures, the cost of verifying the signatures would be expected to exceed \$68,000.

The process for the people to call for a Constitutional Convention is similar to the ballot initiative process. Proponents must collect signatures from registered voters equal to 15% of the total number of statewide ballots cast in the previous Presidential election, and follow the same signature validation/certification process

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16 s.1001.02, Florida Statutes.

17 Vote Smart Florida. 5 Ways to Amend Florida's Constitution.  
<http://www.votesmartflorida.org/mx/hm.asp?id=waystoamendconstitution>.

18 Florida State University School of Law. Florida Constitutional Revision Commission. <http://www.law.fsu.edu/crc/>

as for a citizen-initiated constitutional amendment. Placing a proposed Constitutional Convention before the voters on the 2016 General Election Ballot (the next opportunity) would require the collection of more than 1.27 million signatures. The costs to verify the signatures would be expected to exceed \$127,000.

The Florida Legislature can pass a joint resolution supported by three-fifths of the membership of each house of the Legislature. This option would not require a sponsor to register as a political committee, nor would it require the collection or verification (including the associated costs) of signed petitions. Placing a proposed Constitutional Amendment on the 2016 General Election Ballot would require 24 affirmative votes in the Senate and 72 affirmative votes in the House.

In 2010, then President-designate Gaetz and Speaker-designate Weatherford introduced SJR2, which passed 77-41 in the House and 26-12 in the Senate, and appeared on the 2010 ballot as Amendment 8. This reform would have:

- Required that for pre-kindergarten through grade 3, the average number of students per classroom would not exceed 18, and the maximum number of students per classroom would not exceed 21.
- Required that for grades 4-8, the average number of students per classroom would not exceed 22, and the maximum number of students per classroom would not exceed 27.
- Required that for grades 9-12, the average number of students per classroom would not exceed 25, and the maximum number of students per classroom would not exceed 30.
- Expanded the exemption from classroom size limitations to include virtual classes.

Although more than 54% of those who voted on the proposed amendment voted to relax the class size limits, the proposed amendment failed to achieve the 60% affirmative vote necessary to amend the Constitution. It is noteworthy that the proposed amendment to relax the class size limits garnered more support than the amendment that originally established the class size limits.

## Conclusions

Because the Constitution left it up to the Legislature to establish the provisions guiding the implementation of the class size limits, the Legislature has authority to amend the statutory provisions that guide the implementation of the class size limits in ways that make them less expensive or less onerous to implement. The Legislature can take, and in some cases has taken, steps to ease the burden of implementing the class size limits on local school districts.

## ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

Florida TaxWatch is supported by voluntary, tax-deductible memberships and private grants, and does not accept government funding. Memberships provide a solid, lasting foundation that has enabled Florida TaxWatch to bring about a more effective, responsive government that is accountable to the citizens it serves since 1979.

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### THE FLORIDA TAXWATCH CENTER FOR EDUCATIONAL PERFORMANCE & ACCOUNTABILITY

The Florida TaxWatch Center for Educational Performance and Accountability (CEPA) was established to address the profound fiscal and economic impact that PreK-20 education has on Florida's competitiveness. CEPA works directly with Florida's business community and educational research organizations to advocate sound education policy to promote high academic achievement, develop and deploy reliable assessment tools, maximize the return on taxpayer investment, and help foster a more competitive Florida.

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