

CHALLENGE TO PENALTY PROVISION OF HB 5101

Article IX, Section 1(a) of the Florida Constitution requires the state to make “adequate provision” (i.e., to provide sufficient funding) to meet the class size numeric goals stated in the Constitution. In the Florida Supreme Court’s review of the ballot initiative voted on in 2002 [Advisory Opinion to the Attorney General, 816 So.2d 580 (Fla. 2002)], the Court determined that the class size amendment created a funding imperative on the state; it was not an obligation imposed upon school districts, but rather “places the obligation to ensure compliance on the Legislature, not the local school boards.” Notwithstanding that the State Board of Education and Department of Education determined a need for the additional amount of \$354 million to be appropriated to move to classroom compliance, the state failed to appropriate the funds required.

Accordingly, if the data developed in last year’s October count were to be used, according to a model created by the Department of Education, virtually every school district falls short of the class size requirements.

By failing to meet its constitutional duty to provide adequate funding, the Legislature has prevented school districts from compliance with the constitutional provision relating to class size. HB 5101 increases the penalties for the legislatively induced failure of school districts to meet the class size numeric goals.

PROPOSED LITIGATION

The lawsuit, to be filed in Leon Circuit Court, would seek declaratory and injunctive relief. In essence, the suit would be a mini “adequacy” lawsuit, seeking a judicial declaration that the legislature has failed to meet its constitutional obligation to provide a “uniform, efficient, safe, secure, and high quality system of free public schools” by failing to make “adequate provision” to ensure that the class size goals could be achieved by school districts. The lawsuit would seek a temporary injunction to prevent the Department of Education from imposing penalties against the school districts found to be out of compliance solely due to the Legislature’s failure to fund class size. Such penalties include the withholding and reallocation of both class size categorical funds and base student allocations.

Beyond the injunctive relief, and subsumed within the requested declaration that the Legislature has acted unconstitutionally, would be the argument that the statute also violates the constitution by permitting the Department of Education to reallocate monies taken from non-complying school districts and to distribute them to school districts which are in compliance with class size provisions. The taxes levied by school districts may not properly be reallocated to other school districts by an administrative agency such as the Department of Education [Articles III and IX, Section 4(b), Florida Constitution].

REQUESTED ACTION

The Board is requested to authorize the initiation of litigation challenging the Legislature’s failure to make adequate provision for school districts to meet the class size obligations set forth in Article IX Section 1(a) of the Florida Constitution and seeking injunctive relief to prevent the imposition of penalties as a result of such non-compliance.