



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure: CP 44

REFERENCE:

ACTION:

Sponsor: Commissioner Martinez

1. GSC
2. GPSC

Pre-meeting

Subject: Alternatives to the Public School System

- 3.

Date: February 22, 2008

I. Summary:

The Florida Supreme Court in *Bush v. Holmes* held that the public school system is the “exclusive means set out in the Constitution for the Legislature to make adequate provision for the education of children.”¹ Constitutional Proposal 44 authorizes the state to fund innovative alternatives to the public school system that allow students to obtain a high-quality education. However, the public school system must be the state’s principal means of educating children.

II. Present Situation:

Florida’s public school system contains 67 school districts and 3,945 schools.²

Bush v. Holmes

In *Bush v. Holmes*, the Florida Supreme Court considered whether the Opportunity Scholarships Program (OSP) violated the State Constitution.

The Legislature created the OSP to allow a student attending a “failing” public school to attend a private school, sectarian or non-sectarian, with the financial assistance of the state. Under the OSP, the state make[s] available opportunity scholarships in order to give parents and guardians the opportunity for their children to attend a public school that is performing satisfactorily or to attend an eligible private school when the parent or guardian chooses to apply the equivalent of the public education funds generated by his or her child to the cost of tuition in the eligible private school. . . .

¹ *Bush v. Holmes*, 919 So. 2d 392, 409 (Fla. 2006).

² Florida Department of Education, Florida Public Schools by Type, <http://www.fldoe.org/eias/eiaspubs/pdf/schoolsbytype.pdf> (Nov. 30, 2007).

For the student attending a private school with assistance under the OSP, a state warrant is made payable to a student's parent or guardian and is mailed by the Department of Education directly to the private school chosen by the parent or guardian; the parent or guardian then is to restrictively endorse the warrant to the private school.³

The Supreme Court's analysis in *Bush v. Holmes* focused on Article IX, section 1(a) of the Florida Constitution which states in part:

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.

The Supreme Court interpreted Article IX, section 1(a) of the Florida Constitution to mean that "the system of free public schools . . . is the exclusive means set out in the Constitution for the Legislature to make adequate provision for the education of children."⁴ Thus, state funding of alternatives violates the Florida Constitution. However, an exception to this general rule permits the state to fund the tuition of exceptional students who attend "'private schools because of the lack of *special* services' in their school district."⁵

The Supreme Court also found that Article IX, section 1(a) requires that the system of free public schools be "uniform."^{6 7}

The Court stated that the OSP made "no provision to ensure that the private school alternative to the public school system me[t] the criterion of uniformity."⁸ According to the Court, the private school alternative was not uniform with the public school system for the following reasons:

³ *Bush v. Holmes*, 886 So. 2d 340, 347 (Fla. 1st DCA 2004).

⁴ *Bush v. Holmes*, 919 So. 2d 392, 409 (Fla. 2006).

⁵ *Id.* at 411 (quoting *Scavella v. School Board of Dade County*, 363 So. 2d 1095 (Fla. 1978)).

⁶ *Id.* at 409.

⁷ The uniformity requirement:

only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature. The constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent. Inherent inequities, such as varying revenues because of higher or lower property values or differences in millage assessments, will always favor or disfavor some districts.

St. Johns County v. North East Florida Builders Assn, Inc., 583 So. 2d 635, 641 (Fla. 1991).

⁸ *Bush v. Holmes*, 919 So. 2d 392, 409 (Fla. 2006).

- The Legislature did not regulate private schools, but regulated public schools.
- Private school curriculum and teachers are not subject to the same standards as those in force in public schools.
- Public school teachers must be certified by the state. Private school teachers need not be certified by the state.
- Public school teachers must submit to background screening. Background screening is not required of private school employees.
- Public education is based on the Sunshine State Standards. The curriculum standards of private schools may differ from the Sunshine State Standards.

School Choice Programs

Florida law provides for two scholarship programs for students to attend private schools.

The McKay Scholarships for Students with Disabilities Program provides “a scholarship to a private school of choice, for students with disabilities for whom an individual education plan has been written in accordance with rules of the State Board of Education.”⁹ The program provides for scholarship warrants to be made payable to a parent. “The parent to whom the warrant is made must restrictively endorse the warrant to the private school for deposit into the account of the private school.”¹⁰

The Corporate Tax Credit Scholarships Program “provides for state tax credits for contributions to nonprofit scholarship funding organizations, called SFOs. The SFO’s then award scholarships to eligible children of families that have limited financial resources.”¹¹ Unlike the OSP and the McKay Scholarships, funding for the Corporate Tax Credit Scholarship Program never reaches the state treasury.

III. Effect of Proposed Changes:

The Florida Supreme Court in *Bush v. Holmes* held that the public school system is the “exclusive means set out in the Constitution for the Legislature to make adequate provision for the education of children.”¹² Constitutional Proposal 44 authorizes the state to fund innovative alternatives to the public school system that allow students to obtain a high-quality education. However, the public school system must be the state’s principal means of educating children.

IV. Constitutional Issues:

None.

⁹ Section 1002.39(1), F.S.

¹⁰ Section 1002.39(9)(f), F.S.

¹¹ Florida Department of Education, Corporate Tax Credit Scholarships Program, <http://www.floridaschoolchoice.org/Information/etc/>.

¹² *Bush v. Holmes*, 919 So. 2d 392, 409 (Fla. 2006).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This measure may reduce costs of educating the state's children if the cost of alternatives to the public school system is less than the cost of educating a child through the public school system.

B. Private Sector Impact:

This measure may enable students to attend private schools that they would otherwise be unable to afford.

C. Government Sector Impact:

This measure may reduce the number of schools, teachers, and administrators needed for the public school system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.