



2010 Legislative Report

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Many of the public policy ideas that The James Madison Institute has espoused over the last two decades gained traction in the 2010 regular session, while still others wait for their window of opportunity. This year, the Florida Legislature took some bold steps that garnered national attention, particularly on education reforms. Florida also took a leading role in the national debate about the role of the states versus the role of the federal government, especially on the issues of health care and balanced budgets. The report below summarizes only a handful of the many issues JMI tracked during this year's regular session.

Education

SJR 0002 - Relating to Class Size Requirements for Public Schools

This is a joint resolution asking Florida voters in November to approve a constitutional amendment to modify the rigid class-size caps that took effect in 2002. If voters approve, this new version would allow the maximum class size to be calculated based on the school-wide average of the number of pupils assigned to each class. By this fall's start of the 2010-2011 school year, the school level average number of students per class could not exceed 18 students for prekindergarten through the 3rd grade, 22 students for 4th through 8th grade, and 25 students for 9th through 12th grade. The joint resolution also provides that the maximum number of students who can be assigned to a teacher in an individual classroom shall not exceed 21 for prekindergarten through the 3rd grade, 27 pupils for grades 4-8, and 30 pupils for grades 9-12.

Additionally, the joint resolution repeals the requirement for funding the annual average two-student-per-year reductions to class size to achieve the constitutional class size limits and clarifies that the constitutional class size limits do not apply to virtual schools.

It has been estimated that the 2002 Class Size Amendment has cost Floridians around \$16 billion to implement. Changing the class size limit to the school level average class size would give districts increased flexibility to meet the class size limits and would reduce the likelihood that districts would have to implement the options required by law to reduce class size in accordance with the current, more rigid requirements, therefore significantly reducing future costs.

The current constitutional class size provisions significantly reduce the operating flexibility of school districts. The joint resolution, if approved by the voters, would restore this flexibility.

Status: SJR 0002 passed the House and Senate by the required 3/5 majority and has been certified for the November 2010 ballot. The joint resolution will appear as Amendment 8.

SB 0004 - Relating to Education Accountability

This piece of legislation increases high school graduation requirements, beginning with students entering 9th grade in the years ahead to include: geometry for the 2010-2011 school year; biology I for the 2011-2012 school year; algebra II for the 2012-2013 school year; chemistry or physics for the 2013-2014 school year; and an additional equally rigorous science course for the 2013-2014 school year.

The bill also requires that students pass statewide, standardized end-of-course (EOC) assessments in the following courses for students entering 9th grade in specified school years: algebra I, 2011-2012; biology I and geometry, 2012-2013; algebra II and chemistry or physics, 2014-2015; and additional EOCs as they are created. As these EOCs are implemented, certain FCAT tests are phased out.

Finally, the bill allows students to earn course credit without sitting for the course if the student passes an EOC assessment, and requires high schools to offer certain acceleration courses in which a student can earn college credit.

Status: SB 0004 was passed by the House and Senate and signed by the Governor. The bill takes effect 7/1/10.

SB 0006 - Relating to Education Personnel

This legislation would essentially make two landmark education reforms in our state:

First, it requires districts to adopt salary schedules that determine salary increases based on performance, while currently salary increases are based on seniority. Half of these performance appraisals will be based on student learning gains, and the remainder on other factors regarding classroom practices including classroom management and knowledge of subject matter. The bill also requires a district school board, when making staff reductions, to base decisions on the employee's performance as determined by annual evaluations.

Second, the legislation sets forth standards in eligibility for new teacher contracts after July 1, 2010. By shifting non-tenured teachers to a new annual contract system based on student progress, school districts can reward their teachers with raises based on classroom success, as well as remove those teachers who are not providing a meaningful learning opportunity for their students to learn. Of the nearly 175,000 teachers who currently have tenure status or hold a professional services contract, none will lose their status because of this legislation.

In addition, the legislation states that by the 2013-2014 school year, school districts must develop or acquire valid and reliable End-of-Course Assessments (EOCs) for grade levels and subjects not assessed on FCAT, AP, IB, AICE or industry certification assessments. Current law already requires local districts to have EOCs in place. In 1999, school districts were directed to develop end-of-course examinations, for every course that meets Florida standards. The legislation allows school districts three years to collaborate and develop these evaluations. District EOCs will be used to measure student learning gains in these subjects and grade levels. Despite that statutory requirement, few school districts have put these assessments into place.

It's important to note that last year, 99.7 percent of teachers in Florida earned a "satisfactory" evaluation, yet 50 percent of high school students, 35 percent of middle

school students and 30 percent of elementary students did not make a year's worth of educational progress. This demonstrates a significant disconnect between teacher accountability and student achievement.

Status: SB 0006 was passed by the House and Senate but vetoed by the Governor on 4/15/10.

HB 0105 - Relating to Civics Education

HB 0105 requires that, beginning with students entering grade 6 in the 2012-2013 school year, promotion from a school composed of grades 6, 7, and 8 requires the successful completion of a one-semester civics education course. The one-semester civics education course is to be designated as one of the three middle school social studies courses currently required for promotion.”

The civics education course that will be required must include the roles and responsibilities of federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches of government; and the meaning and significance of historic documents, such as the Articles of Confederation, Declaration of Independence, and Constitution of the United States.

The bill also requires the reading portion of the language arts curriculum within the Sunshine State Standards to include civics education content for all grade levels beginning with the 2011-2012 school year. Therefore, students should receive additional civics education from other classes as well.

Status: HB 0105 was passed by the House and Senate and signed into law by the Governor. The bill takes effect on 7/1/10.

HJR 1399 - Relating to Religious Freedom

HJR 1399 proposes amending the state Constitution. It includes two provisions:

First, it repeals a provision that bars the state and its subdivisions from spending public funds “directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” This language is commonly referred to as the “Blaine Amendment” or “no-aid provision.” Second, it adds language stating that “an individual may not be barred from participating in any public program because that individual has freely chosen to use his or her program benefits at a religious provider.”

Background: After nearly seven years of litigation, the Florida Supreme Court in 2006 struck down the Opportunity Scholarship Program (OSP), which provided vouchers enabling parents of pupils assigned to chronically failing public schools to attend other schools, including faith-based schools. The Court ruled 5-2 that this was a violation of the state Constitution’s “uniformity” clause, which requires the state to provide a “uniform, efficient, safe, secure, and high quality system of free public schools.” In the ruling the Court majority said it was “unnecessary to address whether the OSP is a violation of the ‘no-aid’ provision in Article I, Section 3 of the Constitution, as held by the First District,” even though lower courts had based their decisions primarily on that provision.

Although the Supreme Court chose not to rule based on the “Blaine Amendment” in this instance, removing that provision would undoubtedly help protect Florida’s other school-choice options from future lawsuits.

Status: HJR 1399 died in committee in both the House and Senate.

HB 1505 - Relating to Education Programs for Children with Disabilities

HB 1505 expands eligibility for students in the John M. McKay Scholarship Program. Under the bill, disabled preschoolers entering kindergarten and students who have been enrolled in a public school in any of the past 5 years will now be eligible for the program. Under current law, only disabled students who attended a public school during the prior year are eligible. The bill also grants the Commissioner of Education the authority to revoke participation by schools that operate in a manner contrary to the health, safety, or welfare of the students.

During the last several years, this successful program has provided disabled students with the opportunity to pursue a quality education in the school of their choice, thereby allowing parents to enroll their disabled children in schools that are equipped to meet the special needs of their child.

Status: HB 1505 was passed by both Houses and signed by the Governor. The bill takes effect on 7/1/10.

SB 2126 - Relating to Florida Tax Credit Scholarship Program

The Florida Tax Credit Scholarship Program has been a growing success since its creation in 2001. This year more than 5,000 students, parents and teachers marched up to the capitol to demonstrate how the scholarships had improved their lives.

SB 2126 increases the current \$118 million fiscal year cap on tax credits authorized under the program to \$140 million for fiscal year 2010-11. In fiscal year 2011-12 and thereafter, the cap will increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount for that year. The bill also adds three new revenue sources for the program, allowing for a greater chance of hitting the cap.

For fiscal year 2010-11, the bill replaces the current limit on the private school scholarship amount of \$3,950 with a variable amount determined by a percentage of the Florida Education Finance Program unweighted full-time equivalent (FTE) amount for that fiscal year. For 2010-2011, the maximum scholarship amount will be 60 percent of the per pupil FTE funding for that year. Beginning in FY 2011-12, the percentage used to determine the scholarship limit increases by 4 percent in the fiscal year when the tax credit cap also increases until it reaches a maximum of 80 percent. In that fiscal year and thereafter, the scholarship limit will be equal to 80 percent of the per FTE funding amount.

In addition, the bill increases the maximum household income threshold for renewing scholarship recipients and their siblings from 200 percent of the federal poverty level to 230 percent of that level, but reduces the maximum scholarship award available to the newly eligible scholarship recipients.

Status: SB 2126 was passed by the House and Senate and signed by the Governor. The bill takes effect on 7/1/10 except as otherwise expressed in the bill.

Healthcare

HJR 0037 - Relating to Health Care Services

HJR 37 proposes the creation of the Health Care Freedom Constitutional Amendment in Article I of the Florida Constitution. The resolution prohibits any person, employer, or health care provider from being compelled to participate in any health care system. With respect to an individual or employer mandate, this provision would allow any person or employer to opt-out of mandated insurance coverage and would allow for flexibility in any health care provider's participation in a particular health care system.

The bill also authorizes any person or employer to pay directly for health care services and provides that persons or employers shall not incur a penalty or fine for direct payment. The resolution authorizes a health care provider to accept direct payment and provides that such health care provider will not incur a penalty or fine for accepting direct payment. This provision would allow a person or employer to purchase health care services without participation in a health care system or plan.

Additionally, the resolution prohibits any law or rule which prohibits private health insurance sales or purchases. The bill subjects this prohibition to reasonable and necessary rules that do not substantially limit purchase or sale options. This provision would allow the purchase or sale of private insurance to individuals regardless of a mandate requiring individuals to have health insurance coverage.

These provisions will not affect required performance of services by a health care provider or hospital, health care services permitted by law, worker's compensation care, or laws or rules in effect as of March 1, 2010.

Status: HJR 37 passed the House and Senate by the required 3/5 majority and has been certified for the November 2010 ballot. The joint resolution will appear as Amendment 9.

SB 1484 - Relating to Medicaid

Ever since the Florida Medicaid Pilot Programs was implemented in 2005, JMI has been actively tracking its progress, most recently in Dr. Mike Bond's April 2010 Backgrounder, "Reforming Medicaid in Florida." This study shows that the pilot program has continued to reduce costs and improved patient care. A comprehensive study from the University of Florida has backed up these findings.

Unfortunately, negotiations to expand Florida's successful Medicaid managed care pilot program disintegrated during this year's legislative session. A combination of budget concerns, time constraints, and a veto threat from the Governor ultimately doomed the discussions.

However, the Legislature did successfully pass SB 1484, which requires the Agency for Healthcare Administration (ACHA) to ask the federal government's Centers for Medicare and Medicaid Services (CMS) to extend Florida's Medicaid waiver 1115, which allowed creation of the pilot project back in 2005. This waiver extension would be vital in allowing the Legislature more time to work on the best plans to expand the program. Because the waiver expires on June 30, 2011, lawmakers currently have only one year remaining to determine a course of action. If the program is not expanded by the waiver expiration date, Medicaid recipients in the five pilot counties will be forced back into the traditional Medicaid system unless they voluntarily stay with their managed care provider.

Public hearings are also a requirement of the program. The first meeting was held at ACHA on May 21.

Status: SB 1484 was passed by the House and Senate and signed by the Governor. The bill takes effect 1/1/11 with the exceptions of section 1, 2, 12, 13, and 14.

Philanthropic Freedom

SB 0998 - Relating to Trust Administration

In December 2009, The James Madison Institute published a policy brief on philanthropic freedom titled, “The Future of Philanthropy in Florida.” This study, written by JMI Adjunct Scholar Matthew Vadum, provided background on how the Greenlining Institute had successfully passed a bill in California that essentially allowed the government to meddle in the operations and governance of philanthropic organizations and to second-guess how these private funds are allocated.

After this report was delivered to the Legislature, several members expressed concern that this could one day happen here in Florida. Therefore, Senate Bill 0998 was amended to create s. 736.1211, F.S., to provide that charitable organizations and trusts may not be compelled to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of its employees, officers, directors, trustees, members, or owners. The bill also prohibits state agencies or local governments from regulating the selection of board members or the distribution of funds of any non-profit or charitable organization.

In addition to the philanthropic freedom language added to SB 0998, the Legislature also passed two ceremonial resolutions (HR 9105 and SR 2868) “recognizing and commending the individuals, foundations, and corporate givers of the state for their charitable acts that enrich the quality of life of all Floridians.”

Status: SB 0998 was passed by the House and Senate and signed by the Governor. The bill takes effect on 7/1/10.

Property Insurance

SB 2044 - Relating to Insurance

In JMI’s March 2010 Backgrounder, “Property Insurance Solutions to Protect Homeowners, Taxpayers, and Florida Government from Financial Disaster” by Eli Lehrer, ideas were discussed to roll back some of the provisions of the 2007 insurance legislation that placed taxpayers on the hook for hurricane damages. This year’s omnibus property insurance bill took a small step in the right direction in implementing some of these ideas.

SB 2044 extends the current prohibition on “use and file” rate filings until December 31, 2012. The bill expands the current expedited rate filing procedure for property insurers to include a rate adjustment for reinsurance costs, financing products used to replace reinsurance, and applicable inflation trend factors published annually by the Office of Insurance Regulation (OIR). All costs contained in the filing are capped at ten percent per policyholder and an insurer may make only one filing in any 12-month period.

The bill increases the capital requirements for new residential property insurers from \$5 million to \$15 million and increases the minimum capital requirements for

current residential property insurers from \$4 million to \$5 million until July 1, 2015, and to \$15 million thereafter.

The bill revises the following replacement cost adjustment requirements for homeowners' insurance policies for damages to dwellings and personal property. For dwelling losses, an insurer must pay the actual cash value of the loss, and subsequently pay the reservation or holdback of any depreciation in value if the insured executes a contract to replace or repair the dwelling or property. For personal property losses, an insurer may pay the greater of the actual cash value or 50 percent of the replacement cost value, and must subsequently pay the reservation or holdback upon the insured providing receipts for the replaced property.

The legislation also allows an insurer to cancel or non-renew a property insurance policy upon a minimum of 45 days' notice, subject to OIR approval, based on a finding that the insurer lacks adequate reinsurance coverage for hurricane risk and other financial factors.

Finally, the bill directs the OIR to develop a comprehensive insurance website in order to provide information that will make it easier for consumers to compare insurance companies.

Status: SB 2044 was passed by the legislature but vetoed by the Governor on 6/1/10.

Federal Spending

SCR 0010 - Relating to Balanced Federal Budget

About a month before session began, JMI staff met with Senate President Jeff Atwater to discuss ways Florida could take action to express its concern over rampant federal spending.

Florida lawmakers during this session passed a measure that calls on Congress to hold a constitutional convention to consider a balanced budget amendment. With the passage of this resolution Florida became the 20th state to have called for such an amendment. The Constitution requires two-thirds of the states to call for a constitutional convention, so the reality of convening one anytime soon is extremely slim.

Critics of this measure claim these actions could lead to a runaway convention if one were actually convened. However, SCR 0010 specifically states that the concurrent resolution will be revoked if the convention decides to take up any other amendments other than a balanced budget amendment.

Status: SCR 0010 was approved by the House and Senate by the required 3/5 majority and has been filed with the Secretary of State.

SB 2742 - Relating to Nonbinding Statewide Advisory Referendum

This legislation simply places a non-binding referendum on the 2010 ballot that would asks voters if Congress should pass a balanced budget amendment to the U.S. Constitution.

The following question will appear on the November ballot:

“In order to stop the uncontrolled growth of our national debt and prevent excessive borrowing by the Federal Government, which threatens our economy and

national security, should the United States Constitution be amended to require a balanced federal budget without raising taxes?"

This referendum will act as a public opinion poll to gauge Floridians' desire for the Federal government to reign in its spending.

Status: SR 2742 was approved by the House and Senate by the required 3/5 majority and was certified for the November 2010 ballot.

Redistricting

HJR 7231 - Relating to Standards for Establishing Legislative and Congressional District Boundaries

Two citizen-driven initiatives relating, respectively, to congressional and legislative redistricting have secured placement on the 2010 General Election ballot. Amendments 5 and 6, promoted by FairDistrictsFlorida.org, would add new redistricting standards to the Florida Constitution. Lawmakers involved with the redistricting process have expressed concern that these two amendments do not contain definitions for the proposed new standards, which may have the effect of restricting the range of redistricting choices available under the federal Voting Rights Act.

House Joint Resolution 7231 proposes an additional amendment for the November ballot. This measure would create a new Section 20 to Article III of the Florida Constitution. The new section would add new state constitutional standards for establishing legislative and congressional district boundaries. The proposed standards in the joint resolution would complement the proposed standards in Amendment 5 and 6 and provide for a balancing of the various constitutional redistricting standards.

Specifically, the proposed joint resolution would require that the state apply federal requirements in its balancing and implementing of the redistricting standards in the state constitution. Both the equal opportunity of racial and language minorities to participate in the political process and communities of interest are established as standards that are on equal footing as any other standard in the state constitution. Therefore, minority access districts can be considered, and communities of interest can be respected and promoted, as matters of legislative discretion. Finally, the proposed joint resolution asserts that districts and plans are valid if the standards in the state constitution were balanced and implemented rationally and consistent with federal law.

Status: Approved by the Legislature by the required three-fifths majority and certified for the November 2010 ballot. The joint resolution will appear as Amendment 7.

State Budget:

The Florida Legislature approved a \$70.4 billion budget for fiscal year 2010-2011. The Governor vetoed \$371 million in spending, but also vetoed \$199 million of budget cuts, placing this year's final budget at \$70.2 billion. This is a \$3.7 billion increase from last year's budget.