

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

**SUBJECT: AUTHORIZATION TO INITIATE OR JOIN LITIGATION REGARDING
CERTAIN PROVISIONS OF HB 7069**

COMMITTEE: FACILITIES AND CONSTRUCTION

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On July 26, 2017, the School Board conducted a workshop to discuss possible legal action regarding certain provisions of HB 7069 that could affect the School Board's constitutional authority under Article IX, Section 4(b) to "operate, control and supervise all free public schools" in Miami-Dade County. The Board was previously provided with legal opinions from several different law firms regarding different provisions of the bill. At the workshop, the School Board Attorney's Office and attorneys from the law office of Berger Singerman presented the legal basis for possible constitutional challenges.

To date, at least six other School Boards around Florida have committed to initiating litigation and/or joining together to challenge certain provisions of HB 7069 including the mandate to share capital millage and other provisions of the bill that erode school boards' authority to carry out their constitutional and statutory responsibilities regarding public education. Other school boards are considering the issue.

The Board expressed its strong support for school choice, as well as for many other provisions of HB 7069 including mandated recess and the changes in teacher evaluation, but expressed concern about other provisions that will negatively impact the ability of the School Board to carry out its constitutional responsibilities. At the end of the workshop, Board members requested that the School Board Attorney bring an item for their consideration to authorize the School Board Attorney's Office to initiate or join litigation challenging provisions of HB 7069, particularly focusing on 1) the language mandating sharing of ad valorem tax revenue with private entities or financing private enterprise and diverting millage revenue for non-District purposes; 2) changes in contract approvals (e.g., requiring standard contract) that reduce the School Board's role to a ministerial one and undermines its constitutional authority; 3) provisions that otherwise deprive the School Board of its constitutional authority to operate and control public schools within District boundaries; and 4) the elimination of Capital Construction

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dollars in support of the Board approved and State required 5-year facilities plan; and (5) five unconstitutional restrictions imposed on Federal Title I distributions by the District. This authorization includes seeking legal clarification to address ambiguities and conflicts that some of these provisions raise with existing statutes. The Board stated its concern that education and classroom funding not be impacted due to this litigation, and the Superintendent confirmed that all funds used to cover these expenses will only come from non-public funds, such as funds received previously through settlement of the BP oil spill litigation.

This item requests authorization for the School Board Attorney's Office to initiate or join litigation as outlined in this item as soon as practicable. Authorization is also requested to fund the litigation from non-public funds received through settlement of the BP oil spill litigation.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize:

- (1) the School Board Attorney to join litigation challenging those specific provisions of HB 7069 that raise constitutional and legal issues as soon as practicable;
- (2) funding for the litigation to be allocated from non-public funds, such as funds received through the settlement of the BP oil litigation, which shall not exceed \$30,000, without additional School Board approval;
- (3) with regard to the potential or active litigation, the Board Attorney is to provide the Board with monthly updates to ensure that the Board is fully informed and engaged;
- (4) notwithstanding the power of the School Board Attorney to join litigation, all elements of negotiation that would provide a reprieve shall be envisioned, explored, and exhausted by the Superintendent and the School Board Attorney; and
- (5) when appropriate request approval from the School Board to initiate any individual litigation on behalf of the School Board.

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