

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: SB 500

INTRODUCER: Senator Wise

SUBJECT: Florida School Recognition Program

DATE: November 18, 2005 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	ED	Fav/1 amendment
2.			JU	
3.			EA	
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill authorizes certain schools to participate in the Florida School Recognition Program. The schools are not currently eligible to participate in the program because the schools do not receive a school grade.

If the school serves any combination of kindergarten through grade 3 students but does not receive a school grade under s. 1008.34, F.S., the school (identified as the feeder pattern school) would receive the school performance grade of the school to which at least 60 percent of the feeder pattern school's students are scheduled to be assigned. The Department of Education would designate feeder pattern schools and the school district would verify the designation.

Additionally, the bill requires that the feeder pattern school be subject to the provisions of the Opportunity Scholarship Program as specified in s. 1002.38, F.S.

The bill amends section 1008.36 of the Florida Statutes.

II. Present Situation:

Current state law regarding school recognition awards

Section 1008.36, F.S., created the Florida School Recognition Program. Under the program, special funding is directed to public schools as a reward for high performance. Funding for the program is subject to appropriation by the Legislature through the General Appropriations Act, Education Enhancement Lottery Trust Fund, and each school that maintains a school grade of “A” or improves a full letter grade under the state’s grading system is eligible to receive a financial award. In 2005, the Legislature appropriated \$263,449,842 through the Lottery Enhancement Trust Fund for the School Recognition program and 1,502 schools were eligible to receive awards of \$100 per student.¹

Florida’s school grading system, section 1008.34, F.S., designates school performance grade categories based on annual learning gains and student achievement scores as measured by FCAT assessments in grades 3 through 10. Because students are not assessed until grade 3, certain schools configured with only K-3 students are not graded and therefore ineligible for School Recognition funds.

Current state law regarding Opportunity Scholarship Program

The Opportunity Scholarship Program, created in section 1002.38, F.S., provides scholarship funding for private school enrollment to students attending a public school designated “F” for two of the last four years. Students attending schools configured with only K-3 students are not graded and therefore these students are not eligible for the Opportunity Scholarships.

III. Effect of Proposed Changes:

If a school serves any combination of kindergarten through grade 3 students but does not receive a school grade under s. 1008.34, F.S., the school (identified as the feeder pattern school) would receive the school performance grade of the school to which at least 60 percent of the feeder pattern school’s students are scheduled to be assigned. The Department of Education would designate feeder pattern schools and the school district would verify the designation. Therefore, if the school to which at least 60 percent of the feeder pattern school’s students are scheduled to be assigned receives an “A” school grade or improves a letter grade, the feeder pattern school would be eligible to receive School Recognition Program funds.

Additionally, the bill requires that the feeder pattern school be subject to the provisions of the Opportunity Scholarship Program as specified in s. 1002.38, F.S. Accordingly, if the K-3 feeder pattern school receives an “F” school grade in two of the last four years, students attending or assigned to attend the feeder pattern school would be eligible to receive an Opportunity Scholarship to attend a private school.

¹ <http://www.fldoe.org/faq/faq.asp?Dept=177>

According to the Department of Education, 102 schools with a total enrollment of 20,101 were identified as schools serving students in any grade level K-3 that did not receive a school grade for the 2004-2005 school year. There may be a potential ambiguity with respect to the eligibility requirement of the K-3 school that it serve “any combination of students in kindergarten through grade 3.” The Department of Education obtained its calculation under the assumption that a school would be eligible if it served any kindergarten through grade 3 students. The number of potentially eligible schools declines if the school must serve all four grades, K-3, as opposed to serving only one of the grades.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The State Constitution provides, in pertinent part, that “No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”² In 1999, certain parents of children in the state’s public schools and several organizations³ challenged the constitutionality of the state’s Opportunity Scholarship Program,⁴ alleging that the program violated Art. I, s. 3 and Art. IX, s. 1 of the State Constitution.⁵ The Opportunity Scholarship Program allows a student attending certain failing public schools to attend a private school, sectarian or nonsectarian, with the financial assistance of the state. The parent selects the private school under which their child shall attend under the program.

The trial court first determined that the Opportunity Scholarship Program violated Art. IX, s. 1 of the State Constitution, which required that “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools...” The 1st District Court of Appeal reversed the trial court’s finding that Art. IX,

² Art. I, s. 3, FLA. CONST.

³ The organizations consisted of the Florida State Conference of Branches of the NAACP, the Citizen’s Coalition for Public Schools, the Florida Congress of Parents and Teachers, Inc., and the League of Women Voters, Inc.

⁴ Codified in s. 229.0537, F.S. (1999), now codified in s. 1002.38, F.S.

⁵ The plaintiffs also alleged a violation of the Establishment Clause of the First Amendment to the United States Constitution, 42 U.S.C. s. 1983, and Art. IX, s. 6 of the State Constitution. Following the *Zelman v. Simmons-Harris*, 536 U.S. 639, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002), decision which upheld a Cleveland tuition voucher program under the U.S. Constitution Establishment Clause, the plaintiffs voluntarily dismissed these challenges.

s. 1 does not prohibit the Legislature from authorizing the well-delineated use of public funds for private school education, particularly when the Legislature finds such use is necessary.⁶ On remand, the trial court determined that the program facially violated Art. I, s. 3 of the State Constitution, which prohibited the use of state revenues directly or indirectly in aid of sectarian institutions. This decision was upheld by a three-judge panel of the 1st District Court of Appeal.⁷ On November 12, 2004, the 1st District Court of Appeals issued en banc opinion finding that the Opportunity Scholarship Program violated Art. I, s. 3 of the State Constitution because the program authorizes state funds to be paid to sectarian schools.⁸ In addition, the court held that so-called “no-aid provision” does not violate the Free Exercise clause of the United States Constitution.⁹ Finally, a five-judge concurring opinion also found the program to violate s. 1, Art. IX of the State Constitution.¹⁰ The opinion has been appealed to the Florida Supreme Court. Oral argument before the court was conducted on June 7, 2005.

Accordingly, the provision of the bill relating to the Opportunity Scholarship Program may be constitutionally challenged pending disposition of the case by the courts.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive fiscal impact on private schools after two years depending on whether students at feeder pattern schools become eligible for the Opportunity Scholarship Program and select to attend a private school. The magnitude of the impact is indeterminate at this time. There would be no fiscal impact on private schools in the next two years.

C. Government Sector Impact:

The bill may reduce the amount of awards provided to eligible schools dependant upon the number of additional schools eligible to receive school recognition funds and the amount of funds appropriated by the Legislature. The extent of the impact is indeterminate at this time.

⁶ *Bush v. Holmes*, 767 So.2d 668, 675 (Fla. 1st DCA 2000)(footnote omitted).

⁷ *Bush v. Holmes*, 2004 WL 1809821, 29 Fla. L. Weekly D1877 (Fla.App. 1 Dist. Aug 16, 2004) (NO. 1D02-3160, 1D02-3163, 1D02-3199).

⁸ *Bush v. Holmes*, 886 So.2d 340 (Fla. 1st DCA 2004).

⁹ *Id.* citing *Locke v. Davey*, 540 U.S. 712, 124 S.Ct. 1307, 158 L.Ed.2d 1 (2004) (which upheld a Washington state statute that prohibited certain scholarship funds from being used to pay for a theology degree (program taught from a religious viewpoint rather than a comparative study of religion) from a challenge alleging that the statute discriminated against religious viewpoints in violation of the Free Exercise Clause of the 1st Amendment to the U.S. Constitution).

¹⁰ *Id.* at 371 (Benton, J., concurring opinion).

Additionally, school districts may lose students and funds attached to those students depending on feeder pattern school grades and participation in the Opportunity Scholarship Program. The fiscal impact is indeterminate at this time.

According to the Department of Education, 102 schools with a total enrollment of 20,101 were identified as schools serving students in any grade level K-3 that did not receive a school grade for the 2004-2005 school year. Of the 20,201 total enrollment, 12,404 students are enrolled in K-3 at these schools. Approximately 62% of Florida's elementary schools were eligible to receive School Recognition funds this year. Accordingly, the department estimates that the bill would require an additional \$769,048 in funding based on an award of \$100 per student. The fiscal impact varies with the interpretation of the definition of a feeder pattern school.

VI. Technical Deficiencies:

The bill does not republish flush left language contained in s. 1008.36, F.S. In order to ensure a consistent interpretation of the law, the flush left language should be republished.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 874570 by Education:

Republishes current law which states that, notwithstanding statutory provisions to the contrary, incentive awards are not subject to collective bargaining.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
