

The Florida Senate
PROFESSIONAL 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 Pre-K - 12 Committee

BILL: CS/SB 2380

INTRODUCER: Committee on Education Pre-K - 12 and Senator Webster

SUBJECT: Education/Failing Schools

DATE: April 12, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	_____	_____	FT	_____
3.	_____	_____	EA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates a new program to enhance the performance of failing schools. The bill provides for corporate tax credit scholarships to students attending failing schools so that a student has the choice of attending a higher performing public school or a private school while the failing public school to which a student is assigned is improving. The bill also revises the current Corporate Tax Credit Scholarship Program and the income tax code to conform to the creation of the new program. The existing Opportunity Scholarship Program is repealed by the bill.

Additionally, the bill revises the income tax code to provide that all corporate income tax revenue shall be deposited into a new trust fund rather than General Revenue. The new trust fund would have to be created in a separate bill.¹

This bill creates sections 1008.3455 and 220.1875 of the Florida Statutes, and repeals section 1002.38 of the Florida Statutes. This bill amends the following sections of the Florida Statutes: 213.053, 220.02, 220.13, 220.187, 220.701, 1001.10, 1001.42, 1002.20, and 1002.39.

¹ Senate Bill 2382 creates a new Corporate Income Tax Trust Fund for this purpose.

II. Present Situation:

Opportunity Scholarship Program

The Legislature created the Opportunity Scholarship Program (OSP) in 1999 as part of a broad education reform package known as the A+ Plan.² The program was designed to provide parents of students in failing schools the opportunity to send their children to another public school that is performing satisfactorily or to an eligible private school. For purposes of the OSP, a failing school is a school that has received an “F” grade for two years in a four-year period.³ An OSP eligible private school is a private school—non-sectarian or sectarian—that has notified the Department of Education (DOE) of its intent to participate in the program and meets the requirements set forth in statute.⁴ Students who attended another public school or received a scholarship to attend a private school may attend the school they choose through graduation if the high school to which the student is assigned is a “D” or “F” school or if the chosen private school educates students through the twelfth grade.⁵

To be eligible to participate in the Opportunity Scholarship Program, a private school must meet specific requirements, including the following:

- Be a Florida private school, whether non-sectarian or sectarian;
- Show fiscal soundness by operating for one school year or providing the Department of Education (DOE) with a CPA statement confirming that the school is insured and that the owners have sufficient capital, through statement, surety bond, or letter of credit;
- Notify the DOE of its intent to participate by May 1 of the preceding school year;
- Comply with federal antidiscrimination laws and state and local health and safety laws;
- Accept scholarship students on a random and religious-neutral basis, except where a sibling has already been accepted;
- Hire teachers who hold a baccalaureate or higher degree, have at least three years teaching experience, or who have special skills;
- Comply with state law regarding private schools;
- Accept as full tuition and fees the amount provided by the state for each student; and
- Agree not to compel religious worship by an OSP student.⁶

The maximum opportunity scholarship is equal to the base student allocation multiplied by the appropriate cost factors and district cost differential in the Florida Education Finance Program (FEFP) under the same funding formula as that applied to public school student allocations, including the per student share of categorical funds.⁷

Payment for an opportunity scholarship is made by a warrant that is payable to the parents of the student attending a private school. Upon receiving notification of the number of students receiving scholarships, the DOE transfers funds from the respective districts’ appropriated funds

² ch. 99-398, L.O.F.

³ s. 1002.38(1), F.S.

⁴ s. 1002.38(4), F.S., provides eligibility requirements.

⁵ s. 1002.38(2)(b), F.S.

⁶ s. 1002.38(4), F.S.

⁷ s. 1002.38(6)(a), F.S.

to an account for the OSP. Then, the Chief Financial Officer sends the warrants to the respective private schools, and parents must restrictively endorse them for the schools to receive OSP funds.

Opportunity Scholarship Program Participation

The number of students who used the public school choice aspect of the program has been difficult to track because of other provisions in statute that also allow parents to choose among schools within their district.⁸ The DOE does not have a means of delineating whether a student is transferring under the OSP or under one of the other programs provided in statute, unless the districts make this distinction in their reports to the department. With respect to the private school option, there were five private schools that accepted the 57 OSP students when the program was first implemented in 1999.⁹ At that time, four of the five private schools accepting students were religiously affiliated.

For school year 2005-2006, there were 734 students attending 56 private schools with a total of \$2,982,448 in scholarship payments and an average scholarship payment of \$4,206. Of the private schools participating in the OSP, 66.7 percent were sectarian, and 55 percent of the OSP scholarship students attended these schools.¹⁰

Legal Challenge to the OSP – *Bush v. Holmes*

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.”¹¹ Article IX, s. 1 of the State Constitution requires “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools...”

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program, which allowed a student attending certain failing public schools to attend a private school, sectarian or nonsectarian, chosen by the parent with the financial assistance of the state, violated Art. IX, s. 1(a) of the State Constitution, which mandates an education through a uniform system of free public schools.¹² The Florida Supreme Court opinion further stated that the court found it unnecessary to address whether the program is a violation of the “no aid” provision in Art. I, s. 3 of the State Constitution, as held by the First District Court of Appeal, since the program was found unconstitutional based on Art. IX, s. 1(a).

⁸ See s. 1002.20(6)(a), F.S., and the federal No Child Left Behind Act for additional programs under which a student may transfer to another public school. Prior to the 2005-2006 school year, the number of students choosing the OSP public school option was not tracked on an annual basis. According to the DOE, only aggregate data is available for school years 1999-2000 through 2004-2005. Data now exists for both the 2005-2006 and 2006-2007 school years.

⁹ Opportunity Scholarship Program Statistics, <http://www.floridaschoolchoice.org>

¹⁰ *Ibid.*

¹¹ Art. I, s. 3, FLA. CONST

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

Effect on Existing Programs

The Supreme Court's opinion invalidating the OSP provides that the ruling applied prospectively at the end of the 2005-2006 school year to avoid disruption of the students who were using the scholarships.¹³ The Supreme Court attempted to limit its ruling to the OSP, stating that the effect of its decision on other programs would be speculation.¹⁴ The court noted, however, that prekindergarten, community colleges, adult education, and general welfare programs are not implicated by its decision.¹⁵

John M. McKay Scholarships for Students with Disabilities Program (McKay program)

The McKay program is structured similarly to the OSP in that it allows parents to select private schools. The McKay program provides scholarships to students with a disability¹⁶ when the parent is dissatisfied with the student's progress at the public school.¹⁷ Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school.¹⁸ The law also establishes requirements for student eligibility for scholarships to attend an eligible private school or to provide transportation to another public school and provides eligibility requirements for private schools participating in the program.

To be eligible for a McKay scholarship to attend a private school, a student with a disability must meet the following requirements:

- Have an individual education plan (IEP) written in accordance with SBE rules, and
- Have spent the prior school year in attendance at a Florida public school or the FSDB.¹⁹

At any time, the student's parent may remove the student from a private school and place the student in another eligible private school or in a public school.

¹³ *Holmes*, 919 So. 2d at 413.

¹⁴ *Id.* at 412.

¹⁵ *Id.* at 411-412. The court found these programs were not implicated because pre-kindergarten is addressed separately in the free public schools section and does not have a requirement that it be provided by particular means; community colleges and adult education programs are not within the general conception of free public schools or institutions of higher learning; and many of the other public welfare programs are not affected by the constitutional provision upon which this opinion is based—article IX.

¹⁶ Eligible students with disabilities include K-12 students who are documented as having mental handicap, including trainable, profound, or educable; a speech or language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; a physical impairment; a serious emotional disturbance, including an emotional handicap; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; or autism. Eligible students also include students from the Florida School for the Deaf and the Blind (FSDB), students in a Department of Juvenile Justice (DJJ) commitment program, if funded under the FEFP, and for students at least four years old who are eligible for special education and related services under s.

1003.21(1)(e), F.S.

¹⁷ s. 1002.39(2), F.S.

¹⁸ s. 1002.39, F.S.

¹⁹ Prior school year in attendance means that the student was enrolled and reported by a school district for funding during the preceding October and February FEFP surveys in kindergarten through grade 12.

Funding is based on the FEFP base student allocation multiplied by the appropriate cost factor and district cost differential.²⁰ As the recipients are exceptional students, however, a matrix level of services is additionally considered in the calculation.²¹

The criteria for private schools participating in the McKay program and the OSP have some similarities in that private schools are eligible to accept scholarship students so long as the schools meet certain conditions.²² Additionally, the distribution of McKay scholarship funds uses the same methodology as the OSP: warrants are made payable to parents who must restrictively endorse the warrant over to the school of their choice.²³

For FY 2005-2006, 17,300 students received scholarships to attend 751 schools with a total of \$107,686,252 in scholarship awards and an average scholarship award of \$6,926. For FY 2006-2007 (as of February 2007), 17,884 students received scholarships to attend 802 schools with a total of \$88,773,218 in scholarship awards.²⁴

Corporate Tax Credit Scholarship Program (CTC program)

The CTC program illustrates a wholly different type of funding for education. Tax credit scholarships were created to encourage private, voluntary contributions from corporate donors to nonprofit scholarship-funding organizations.²⁵ A corporation can receive a dollar for dollar tax credit toward up to 75 percent of its state income tax liability for donations to private nonprofit scholarship-funding organizations (SFOs).

Similar to the other two scholarship programs, private schools participating in the CTC program must provide documentation of financial stability and comply with federal antidiscrimination law.²⁶ Private schools participating in the program must comply with all state laws regulating private schools.

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act²⁷ and who:

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is eligible to enter kindergarten or the first grade; or
- Received a scholarship under the CTC program or from the state the previous school year.

²⁰ s. 1002.39(10), F.S.

²¹ *Id.*

²² s. 1002.39(4), F.S. Conditions include the school notifying the DOE of its intent to participate in the McKay program, providing certification of its financial stability, complying with federal antidiscrimination provisions, and adhering to hiring requirements for teachers.

²³ s. 1002.39(10)(e), F.S.

²⁴ See http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports/mckay_report_feb2007.pdf

²⁵ s. 220.187(1), F.S.

²⁶ s. 220.187(8), F.S.

²⁷ s. 220.187(3), F.S.

Contingent upon available funds, a scholarship student will not lose his or her scholarship due to a change in the economic status of the student’s parents unless the parents’ economic status exceeds 200 percent of the federal poverty guidelines.²⁸ The amount of the scholarship provided to any child for any single school year by any eligible SFO may not exceed the following limits:

- \$3,750 for a scholarship awarded to a student for tuition, textbooks, or transportation to attend an eligible private school, 75 percent of which must be used for tuition; or
- \$500 for a scholarship awarded to a student for transportation to a Florida public school that is located outside the district in which the student resides.

An SFO must be a charitable organization exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code and may not use any portion of the taxpayer’s contribution for administrative expenses. Scholarships must be provided for eligible students on a first come, first-served basis, unless the student qualifies for priority consideration. An SFO may not restrict or reserve scholarships for use at a particular private school or for the child of an operator or owner of a private school or SFO. A taxpayer making the contribution may not designate a specific child or group of children as the beneficiaries of the scholarship. The Legislature initially capped the CTC program at \$50 million in tax credits per state fiscal year, but subsequently expanded the cap to \$88 million in 2003.²⁹

The following summarizes information related to the tax credits approved by the Department of Revenue.³⁰

Tax Year	Number of Approved Tax Credit Applications	Number of Taxpayers	Total Amount of Tax Credits Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credits	Total Amount of Tax Credits Approved for Small Businesses ³¹
2002-03	77	48	\$47,686,000	4	\$186,000
2003-04	114	56	\$47,579,000	3	\$ 79,000
2004-05	102	58	\$47,560,000	2	\$ 60,000
2005-06	126	79	\$80,323,071	2	\$ 4,000
2006-07	93	64	\$87,120,000	0	\$0

The following reflects the credit allocations per SFO for 2006-2007:³²

Academy Prep Foundation, Inc	\$ 736,250
Children First Central Florida ³³	\$39,053,000
Florida School Choice Fund (Florida Pride)	\$44,142,028
Credit Carry Forward	\$ 3,188,722
Total Allocations	\$87,120,000

²⁸ *Id.*

²⁹ s. 9, ch. 2003-391, L.O.F.

³⁰ Department of Revenue, March 12, 2007.

³¹ Until last year, s. 220.187(3)(a), F.S., provided that five percent of the tax credit was reserved for small businesses as defined under s. 288.703(1), F.S. Chapter 2006-75, L.O.F., reduced the small business cap to one-percent and is codified in s. 220.187(5)(b), F.S.

³² Department of Revenue, March 12, 2007.

³³ Children First Central Florida is now Children First Florida.

Currently, there are 926 participating schools and 16,629 students receiving scholarships from three SFOs: Academy Prep Foundation, Inc.; Florida PRIDE; and Children First.³⁴ Following are the number of students receiving CTC scholarships, by SFO, for the current year: Academy Prep Foundation, Inc., 23 students; Florida PRIDE, 8,223 students; and Children First, 8,383 students. Three SFOs no longer participate in the program: Faith Based Scholarship Foundation of Florida; FloridaChild; and Silver Archer. YES OPPORTUNITIES, INC., and Florida PRIDE merged to become Florida PRIDE, while H.E.R.O.E.S. and Children First Central Florida merged to become Children First Florida.

III. Effect of Proposed Changes:

This bill creates a new program to enhance the performance of failing schools. The bill also provides for corporate tax credit scholarships to students attending failing schools so that a student has the choice of attending a higher performing public school or a private school while the failing public school to which a student is assigned is improving. The proposed language also revises the current CTC scholarship program under s. 220.187, F.S., and provisions of the income tax code to conform to the creation of the new program. The existing Opportunity Scholarship Program is repealed by the bill.

School Improvement Program

The bill creates s. 1008.3455, F.S., to provide for a new program designed to improve schools failing to make adequate progress based upon the school performance grading categories already in statute. School performance grade designations (“A,” “B,” “C,” “D,” and “F”) are based upon a combination of student achievement scores, student learning gains (as measured by annual FCAT assessments in grades 3 through 10), and improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT, unless these students are performing at a satisfactory performance level.³⁵

The new section directs the Commissioner of Education to create a comprehensive strategic program to facilitate improvement of schools to be submitted to the Legislature by February 1, 2008. The program is targeted at improving “F” schools, and consists of the following:

- Assessing the extent to which new policies, or enhancements to existing policies, could be used to facilitate improvement of schools over a 5-year period of time;
- Creating an advisory committee comprised of teachers, staff, and parents to assist the Commissioner in creating and implementing the new program;
- Requiring the Commissioner to consult with other entities and to report annually to the Governor and presiding officers in the Legislature on the program’s implementation; and
- Requiring specific recommendations for legislative action.

³⁴ *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, February 2007.

³⁵ s. 1008.34, F.S.

Corporate Income Tax Credit Scholarship Programs

The bill requires SFOs to separately account for scholarships and donations. In addition, the bill requires SFOs to give priority in awarding scholarships to students who received opportunity scholarships in the final quarter of the 2006-2007 school year.³⁶

The proposed legislation adds a new section under the Income Tax Code, chapter 220, F.S., to allow corporate income tax credits for donations to and the creation of a scholarship program for students attending schools failing to make adequate progress.³⁷ Several components of the new program are similar to the existing CTC program, but the distinguishing elements between the two programs are that the new program:

- Defines a qualified student based upon attendance in a failing school instead of economic status;
- Allows eligible SFOs under the existing CTC to be eligible for the new program, with the approval of the DOE;³⁸
- Requires the school district to notify parents of their child's eligibility to attend a higher-performing school in the same district, to apply for a scholarship toward transportation expenses associated with attending a public school in an adjoining district, or to apply for a scholarship to attend a private school;
- Limits the amount of tax credits that may be granted under the new program to \$5 million per year;
- Provides eligibility requirements for private schools participating in the new program;³⁹
- Limits the duration of the scholarship based upon matriculation to different levels of education (e.g. elementary, middle, and high school);
- Establishes the scholarship award to attend a private school as the lesser of tuition and fees or a calculated amount;
- Requires scholarship students to take the FCAT;
- Provides that five percent of the tax credit is reserved for small businesses; and
- Instructs failing public schools that lose students to continue to count scholarship students for purposes of receiving full state education funding.

However, the bill does not include all the provisions in the McKay and CTC programs that provide the Commissioner of Education with the authority to immediately suspend payment of scholarship funds and require site visits to participating schools and regular and direct contact by a student with a private school teacher at a school's physical location.

³⁶ s. 220.187(6)(e), F.S., currently requires that qualified students who received a scholarship from an eligible SFO or the state be given priority in scholarship awards. The bill would require that opportunity scholarship students be given equal consideration.

³⁷ Proposed s. 220.1875, F.S.

³⁸ If approved by the DOE, the bill also allows SFOs authorized under the new program to provide scholarships to students under both programs. It is unclear as to whether or not the SFOs under both programs are subject to all of the same requirements.

³⁹ The requirements essentially reflect those for OSP participating schools; however, they do not include all of the requirements for private schools that participate in either the McKay program or the CTC program. See ss. 220.187(8), 1002.421, and 1002.39(8), F.S.

A failing public school will continue to receive funding for the remainder of the time the scholarship student would have attended that school. The bill allows for surplus funds collected under the existing CTC program to be used for payment of scholarships under the new program, upon approval of the DOE. To track the transfers, it may be advisable to require all transferred funds to be deposited into the receiving organization's scholarship account and separately disclosed in the audit.

The bill allows an eligible SFO to give priority to a student who received a scholarship the prior school year. The scholarship does not have to have been provided by the SFO.

The bill revises the tax code to conform to the creation of the new scholarship program for families of students attending schools failing to make adequate progress.⁴⁰ Additionally, the income tax code is revised to provide that all corporate income tax revenue shall be deposited into a new trust fund rather than General Revenue. The new trust fund would have to be created in a separate bill.⁴¹

The bill repeals the Opportunity Scholarship Program and makes conforming changes to relevant provisions of law.

The bill provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Section 7 of the bill provides that taxes collected under chapter 220, F.S., the corporate income tax chapter, are to be deposited in a new Corporate Income Tax Trust Fund created under s. 220.7015, F.S., rather than in the General Revenue Fund as current law requires. Article III, s. 19 of the State Constitution requires a separate bill to create or recreate a trust fund of the state or other public body. Senate Bill 2382 has been proposed for this purpose.

D. Other Constitutional Issues:

This bill appears to be designed to respond to the state courts' rulings on the Opportunity Scholarship Program on state constitutional grounds. The Florida Supreme Court invalidated the program based upon art. IX, s. 1, or the uniform free public schools

⁴⁰ Specifically, ss. 213.053(8)(z), 220.02(8), and 220.13(1)(a), F.S.

⁴¹ Senate Bill 2382 creates a new Corporate Income Tax Trust Fund for this purpose.

provision, and the First District Court of Appeal invalidated the program based upon art. I, s. 3, or the no-aid provision. It is not known how a court would rule on these issues if the provisions of the bill were to be challenged in the future.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill would allow a corporation to receive a dollar for dollar tax credit toward up to 75 percent of its state income tax liability for donations to private scholarship funding organizations. The amount of the tax credits authorized under the new program would be \$5 million annually.

B. Private Sector Impact:

The bill would provide scholarships or transportation funds to families of students attending public schools failing to make adequate progress to cover expenses so that students may attend private schools or public schools in other districts, respectively. The bill requires current SFOs to give priority in awarding scholarships to students who received opportunity scholarships in the final quarter of the 2006-2007 school year. No student received an OSP scholarship to attend a private school in the 2006-2007 school year.⁴² The number of OSP students who opted for a public school choice for the final quarter of the 2006-2007 school year is unknown at this time. According to the DOE, 1,027 students are currently using the OSP public school option.⁴³

In addition, the new matriculation policy provided in proposed s. 220.1875(8), F.S., would limit the duration of the scholarship based upon matriculation to different levels of education (e.g. elementary, middle, and high school). Thus, a student would no longer be eligible for a scholarship through graduation of high school unless the student is assigned to a failing school at each level of education.

Scholarship funding organizations or owners will be assessed a fee by the Florida Department of Law Enforcement (FDLE) for fingerprinting and background screening. Scholarship-funding organization personnel were not previously required to be fingerprinted. The bill provides that the SFO or owner may pay for the required background screening. The costs of the initial screening total approximately \$47: \$23 for Florida records checks and \$24 for a Federal Bureau of Investigation (FBI) national records checks. Additionally, there is an annual fee to retain the prints (\$6) and a fee (\$24) for an FBI national records re-check every five years. There is no need for state screening at that time if the arrest records are screened against the retained prints on a regular basis. The annual fee will be set by FDLE rule. Fees for fingerprint searches must be paid to the FDLE.

⁴² *Holmes*, 919 So. 2d at 413. The Supreme Court's opinion provides that the ruling applies prospectively at the end of the 2005-2006 school year.

⁴³ As reported by districts to the Department of Education in the February 2007 survey.

C. Government Sector Impact:

The cost of implementing a comprehensive, long-term plan for improving schools, as envisioned by the bill, is indeterminate at this time. To the extent that the planning process is coordinated with the DOE's school improvement efforts under the federal No Child Left Behind Act, the cost may be mitigated. Additional efforts for the DOE to monitor the SFOs as required in the bill suggest that there will be an increased cost to the department.

The bill is not fiscally neutral in that payment is made to the private school for a scholarship student and to the public school that the student would have attended. Essentially, payment is made twice for the same student.

The bill revises the tax code to conform to the creation of the new corporate tax credit scholarship program for families of students attending schools failing to make adequate progress. Additionally, the income tax code is revised to provide that all corporate income tax revenue shall be deposited into a new trust fund rather than General Revenue. The Department of Revenue reports that this bill has no fiscal impact on the operation of the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
