

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7075      PCB EDC 19-01      School Choice  
**SPONSOR(S):** Education Committee, Sullivan  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee	15 Y, 2 N	Fudge	Hassell
1) Appropriations Committee	16 Y, 9 N	Potvin	Pridgeon

### SUMMARY ANALYSIS

State law provides a wide range of educational choice options that parents and students may choose from. The Florida Tax Credit Scholarship Program (FTC) was created in 2001 and allows taxpayers to make private, voluntary contributions to non-profit scholarship-funding organizations (SFOs), that can then be awarded as scholarships to eligible low-income students for private school tuition and fees or for transportation to a public school or lab school outside the district in which the student resides. For the 2018-2019 school year, 100,512 students received an FTC scholarship and approximately 13,000 students remain on a waiting list to receive a scholarship.

The Hope Scholarship Program (HSP) was established in 2018 and also allows the use of tax credits to fund scholarships for students who are victims of bullying or other incidents at a public school. The scholarship amounts for the FTC and HSP are calculated as a percentage of the statewide unweighted FTE as follows: eighty-eight percent for students in grades K-5, ninety-two percent for students in grades 6-8, and ninety-six percent for students enrolled in grades 9-12.

The bill establishes the Family Empowerment Scholarship Program (FESP) to provide parents of eligible students a scholarship to attend an eligible private school. The income limitations for the program are three hundred percent of the federal poverty level (FPL) for the 2019-2020 school year, three hundred twenty-five percent of the FPL for the 2020-2021 school year, three hundred fifty percent of the FPL for the 2021-2022 school year, and three hundred seventy-five percent of the FPL beginning with the 2022-2023 school year and thereafter.

The bill establishes a scholarship amount for the FESP which is ninety-seven percent of the district average based upon the grade level of the student. The scholarship amounts for the HSP and the FTC programs are revised to reflect this new amount.

The bill revises the FTC Program to limit eligibility to students who were not awarded a state scholarship and who meet income limitations, removes the limitation that the transportation scholarship for public school students can only be used for transportation to a public school or lab school outside of the school district, and eliminates the tiered scholarship amounts for students whose household income exceeds one hundred eighty-five percent of the FPL, but less than two hundred sixty percent of the FPL. The bill also requires the annual report on the academic performance of students participating in FTC to also include students participating in HSP and FESP.

The bill maintains the priority use of sales tax credits for FTC scholarships by removing the priority for Gardiner scholarships that would have been effective next fiscal year. The bill also allows contributions by purchasers of motor vehicles to be used for FTC scholarships in addition to Hope scholarships.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

For decades, Florida has been a national leader in providing high quality education options for thousands of parents and students. In addition to a myriad of public options, Florida offers four scholarship programs that allow parents of eligible students to register and attend private schools that may better serve a student's particular needs. Research shows that 97.2 percent of parents of students with special needs participating in a scholarship program were satisfied or very satisfied with their private school choice<sup>1</sup> and students participating in another scholarship program were 15 percent more likely to enroll in a public college than their peers.<sup>2</sup> Private schools must meet specific criteria in order to be eligible to participate in these programs and the Department of Education (DOE) and Commissioner of Education (commissioner) are tasked with implementation and oversight responsibilities. In 2018, the Legislature strengthened the oversight and accountability measures for all scholarship programs in the state. In addition, because a majority of private schools participate in more than one scholarship program, the Legislature consolidated all the common criteria relating to private school participation.<sup>3</sup>

##### *Hope Scholarship Program*

In 2018, the Legislature created the Hope Scholarship Program (HSP) to provide the parent of a public school student subjected to a specified incident<sup>4</sup> at school the opportunity to transfer the student to another public school or to request a scholarship for the student to enroll in and attend an eligible private school.<sup>5</sup> A parent may also choose to enroll his or her student in a public school located outside the district in which the student resides and request a transportation scholarship.<sup>6</sup> The scholarship program is funded by taxpayers who make eligible contributions to non-profit scholarship-funding organizations (SFOs), and in turn, receive a credit against any tax due as a result of the purchase or acquisition of a motor vehicle.<sup>7</sup> The credit may not exceed the amount of taxes owed. Each eligible contribution is limited to a single payment of \$105 at the time of purchase of a motor vehicle or at the time of registration of a motor vehicle that was not purchased from a dealer. The purchaser elects whether or not to contribute at the time of the purchase or registration of the vehicle. Contributions must be made to a dealer at the time of purchase or to an agent of the Department of Revenue (DOR) at the time of registration if the vehicle was not purchased from a dealer.

Scholarships are awarded on a first-come, first-served basis based upon available funds. For the 2018-2019 fiscal year, eligible scholarship funding organizations have collected over \$18.5 million. The scholarship amount is calculated as a percentage of the unweighted FTE as follows:

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<sup>1</sup> Center for Civic Innovation, *Vouchers for Special Education Students: An Evaluation of Florida's McKay Scholarship Program*, June 2003, available at [https://www.manhattan-institute.org/pdf/cr\\_38.pdf](https://www.manhattan-institute.org/pdf/cr_38.pdf).

<sup>2</sup> Urban Institute, *The Effects of Statewide Private School Choice on College Enrollment and Graduation – Evidence from the Florida Tax Credit Scholarship Program*, September 2017, available at: [https://www.urban.org/sites/default/files/publication/93471/the\\_effects\\_of\\_statewide\\_private\\_school\\_choice\\_on\\_college\\_enrollment\\_and\\_graduation\\_1.pdf](https://www.urban.org/sites/default/files/publication/93471/the_effects_of_statewide_private_school_choice_on_college_enrollment_and_graduation_1.pdf).

<sup>3</sup> Section 1002.421, F.S. (2018). In the 2017-18 school year, 10 percent of private schools participated in more than one scholarship program. There were a total of 2,110 participating private schools. Email, Florida Department of Education, Office of Independent Education and Parental Choice (May 25, 2018).

<sup>4</sup> A specified incident includes: battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, harassment, assault, or battery; threat or intimidation; or fighting at school. Section 1002.40(3), F.S.

<sup>5</sup> Section 1002.40(1), F.S.

<sup>6</sup> Section 1002.40(6)(a), F.S. (2018).

<sup>7</sup> Section 1002.420(2)(d) and (13), F.S. (2018).

- Eighty-eight percent for students in grades K-5.
- Ninety-two percent for students in grades 6-8.
- Ninety-six percent for students enrolled in grades 9-12.

### *Florida Tax Credit Scholarship Program*

The Florida Tax Credit Scholarship Program (FTC Program) was created in 2001<sup>8</sup> and allows taxpayers to make private, voluntary contributions to SFOs that can then be awarded as scholarships to eligible low-income students for private school tuition and fees. Taxpayers can receive a tax credit for use against their liability for corporate income tax, insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders or alcoholic beverage taxes on beer, wine, and spirits<sup>9</sup>. The tax credit is equal to 100 percent of the eligible contributions made.<sup>10</sup> To receive a tax credit the taxpayer must submit an application to the Department of Revenue (DOR) and specify each tax for which the taxpayer requests a credit and the applicable taxable or state fiscal year for the credit.<sup>11</sup> Taxpayers can rescind tax credits, which will become available to another eligible taxpayer in that fiscal year.<sup>12</sup>

For FY 2017-2018, the maximum amount of tax credits available to be awarded was \$698 million. In any state fiscal year when the annual tax credits granted for the prior state fiscal year are equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, the tax credit cap amount is increased by 25 percent.<sup>13</sup> For FY 2017-2018, the actual tax credit contributions applicable against this limit was \$639.2 million which allowed the tax credit cap to increase by 25 percent; consequently the maximum amount of tax credits available for award in FY 2018-19 is \$873.6 million. However, the March 2019 Revenue Estimating Conference has forecasted \$687.8 million in estimated tax credit collections for FY 2018-2019.

A student is eligible for this scholarship program if:

- the student is on the direct certification list (eligible for free or reduced-priced lunch) or the student's household income does not exceed 185% of the federal poverty level;
- the student is currently placed, or during the previous state fiscal year was placed in foster care or in out-of-home care; or
- the student's household income is greater than 185 percent of the federal poverty level but does not exceed 260 percent of the federal poverty level.<sup>14</sup>

In the 2018-19 school year, 100,512 students enrolled in 1,807 private schools in the FTC program.<sup>15</sup>

Research on the academic performance of FTC students is conducted annually. The Department of Education (DOE) must provide a grant to a state university to annually report on the student performance of participating students. The report must include, to the extent possible, a comparison of scholarship student performance to the statewide student performance of public school students with socioeconomic backgrounds similar to those of the participating program students. The report must also include student performance for each participating private school with a student population that was at least 51 percent comprised of FTC program students in the prior school year. The annual report must be published by the DOE on its website.<sup>16</sup>

<sup>8</sup> Section 1002.395, F.S.

<sup>9</sup> Section 1002.395(1) and (5), F.S.

<sup>10</sup> Sections 220.1875 and 1002.395(5), F.S.

<sup>11</sup> Section 1002.395(5)(b), F.S.

<sup>12</sup> Section 1002.395(5)(e), F.S.

<sup>13</sup> Section 1002.395(5)(a), F.S.

<sup>14</sup> Section 1002.395(3)(b), F.S.

<sup>15</sup> Florida Tax Credit Scholarship Program, *February 2019 Quarterly Report*, available at <http://www.fldoe.org/core/fileparse.php/7558/urlt/FTC-Feb-2019-Q-Report.pdf>.

<sup>16</sup> Section 1002.395(9)(f), F.S. (2018).

The report, issued in 2017, examined student data from the 2015-16 school year. According to the report, the typical student in the FTC program scored at the 48th national percentile in reading and the 46th percentile in mathematics, about the same as in past years. In terms of gain in national percentile ranking points from 2014-15 to 2015-16, the typical FTC student tends to maintain his or her relative position in comparison with all students nationally both in mathematics and reading.<sup>17</sup>

### *Florida Sales Tax Credit Scholarship Program*

The Florida Sales Tax Credit Scholarship Program was established by the 2018 Legislature to allow taxpayers to also receive tax credits against certain sales tax liabilities for contributions to the Gardiner Scholarship Program (GSP) or the Florida Tax Credit Program (FTC Program).<sup>18</sup> The credit is equal to the amount of the monetary contribution made by an eligible business to an eligible scholarship-funding organization (SFO). An eligible business is a tenant that uses property from which the rental or licensee fee is subject to the business rent tax under s. 212.031, F.S. Similar to the FTC Program, a business may not designate a specific student as the beneficiary of the contribution.

SFOs can use contributions for either FTC Program or GSP scholarships. However, contributions may not be used for GSP scholarships unless all of the funds appropriated to the SFO in a fiscal year for that purpose are used. When the appropriations are exhausted the SFO must first use contributions for GSP scholarships. Any remaining contributions can then be used for FTC Program scholarships. (Note: pursuant to Section 7 of HB 5003 (Ch. 2018-10, L.O.F.), contributions under the Florida Sales Tax Credit Scholarship Program may not be used for GSP scholarships during Fiscal Year 2018-2019.) Similar to the FTC Program, an SFO can use up to three percent of contributions from eligible businesses for administrative expenses, subject to certain limitations.<sup>19</sup>

The sum of tax credits under the Florida Sales Tax Credit Scholarship Program that may be approved by DOR in any state fiscal year is \$57.5 million. However, the March 2019 Revenue Estimating Conference has forecasted \$300,000 in estimated tax credit collections for Fiscal Year 2018-2019.

### *Scholarship Funding Organizations*

To participate, an eligible scholarship-funding organization (SFO) must submit an initial application for approval or renewal to the Office of Independent Education and Parental Choice by September 1<sup>st</sup> of each year before the school year for which the SFO intends to offer scholarships. Among other things, the application for initial approval must include:

- a copy of the SFO's incorporation documents and registration with the Division of Corporations of the Department of State and IRS determination letter as a not-for-profit corporation;
- a description of the organization's financial plan and the geographic region it will serve;
- a description of the criteria and methodology it will use to evaluate scholarship eligibility and application process including deadlines and fees; and
- a copy of a surety bond or letter of credit in an amount equal to 25 percent of the scholarship funds anticipated for each school year or \$100,000, whichever is greater.<sup>20</sup>

An application for renewal must include all items listed above for initial approval as well as:

- a surety bond or letter of credit equal to the amount of undisbursed donations held by the organization, which must be at least \$100,000, not to exceed \$25 million;

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<sup>17</sup> Herrington, Carolyn D., Learning Systems Institute & Department of Educational Policy & Leadership, Florida State University, *Evaluation of the Florida Tax Credit Scholarship Program Participation, Compliance, Test Scores in 2015-16*, available at [http://www.fldoe.org/core/fileparse.php/5606/urlt/FTC\\_Report1516.pdf](http://www.fldoe.org/core/fileparse.php/5606/urlt/FTC_Report1516.pdf).

<sup>18</sup> Section 212.099, F.S.

<sup>19</sup> See Section 1002.395(6)(j)l., F.S.

<sup>20</sup> Section 1002.395(16)(a), F.S.

- the organization's completed IRS Form 990;
- a copy of its audit reports;<sup>21</sup> and
- an annual report documenting the number of applications received, applications approved, funds received, scholarships funded, and expenditures of administrative funds.<sup>22</sup>

Within 30 days of receipt of the finalized application the Commissioner of Education must recommend approval or disapproval of the application to the state board. The State Board of Education must then consider the application and recommendation at its next scheduled meeting.<sup>23</sup>

State universities and independent colleges and universities are exempt from the SFO application process, including its surety bond requirements. Instead, they must register with the DOE.<sup>24</sup>

SFOs must:

- comply with federal law<sup>25</sup> prohibiting discrimination based on race, color, or national origin by any program receiving federal financial assistance.
- require owners and operators to undergo Level 2 background screening<sup>26</sup> upon employment or engagement of services and every five years thereafter. Owners and operators must also be screened against an additional list of financial crimes. Owners or operators that fail the Level 2 background screening are ineligible to provide scholarships.
- not own or operate a private school that is participating in the Florida Tax Credit Program.
- provide scholarships from eligible contributions to eligible students on a first-come, first-served basis unless the student qualifies for priority.
- allow a student in foster or out-of-home care to apply for a scholarship at any time.
- not restrict or reserve scholarships for use at a particular private school or provide a scholarship to the child of an owner or operator.
- allow an eligible student to attend any eligible private school and allow a parent to transfer a scholarship during the academic year to another eligible private school.
- maintain separate accounts for scholarship and operating funds.
- expend for annual or partial-year scholarships an amount equal to or greater than 75 percent of the net eligible contributions remaining after administrative expenses during the state fiscal year in which such contributions are collected. Remaining net eligible contributions in excess of 25 percent shall be transferred to other eligible nonprofit scholarship-funding organizations to provide scholarships for eligible students.
- allow for the transfer of funds to another eligible SFO, limited to the greater of \$500,000 or 20 percent of the total contributions received by the SFO making the transfer, if additional funds are required to meet scholarship demands. Such a transfer must be approved by the DOE beforehand.
- maintain a surety bond or letter of credit equal to the amount of undispersed donations, which may be adjusted quarterly to equal the actual amount of undisbursed funds. This requirement is waived if the cost of acquiring a surety bond or letter of credit exceeds the average 10-year cost of acquiring a surety bond or letter of credit by 200 percent. This requirement is also waived for a state university. The surety bond or letter of credit must specify that any claim against the bond or letter of credit may be made only by an eligible nonprofit SFO.
- provide the Auditor General (AG) and the DOE with an annual financial audit of its accounts and records conducted by an independent certified public accountant.

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<sup>21</sup> Section 1002.395(6)(m), F.S.

<sup>22</sup> Section 1002.395(16)(b), F.S.

<sup>23</sup> Section 1002.395(16)(d), F.S.

<sup>24</sup> Section 1002.395(16)(i), F.S.

<sup>25</sup> See 42 U.S.C. s. 2000d.

<sup>26</sup> Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 53 offenses. See s. 435.04, F.S.

- submit to an annual operational audit of its accounts and records by the AG, including any contracts for services with related entities, to determine compliance with program requirements.
- prepare and submit quarterly reports to the DOE.<sup>27</sup>

A SFO may use up to three percent of eligible contributions received during the state fiscal year for administrative expenses if the SFO has operated as an eligible nonprofit scholarship-funding organization for at least the preceding three years and did not have any findings of material weakness or material noncompliance in its most recent audit. Administrative funds may not be used for lobbying or political activity.<sup>28</sup>

### *Private School Accountability*

While each scholarship program has unique requirements for private schools, there are common criteria that each private school must meet in order to participate in any of the state's scholarship programs. These are now included in the newly revised section of law.<sup>29</sup> A private school may be sectarian or nonsectarian, must meet Florida's definition of a private school,<sup>30</sup> be registered with the state and be in compliance with all the requirements of a private school.<sup>31</sup> Additionally, a private school must:

- comply with antidiscrimination provisions of 42 U.S.C. s. 2000d;
- notify the Department of Education (DOE) of its intent to participate;
- notify the DOE of any changes in the school's name, director, mailing address, or physical location within 15 days of the change;
- provide the DOE or the eligible scholarship-funding organization (SFO) all required documentation for student registration and payment;
- annually complete and submit to the DOE a notarized scholarship compliance statement that includes certification that all school employees and contracted personnel have undergone required background screening;
- demonstrate fiscal soundness in accordance with statutory requirements;
- meet applicable state and local health, safety, and welfare laws, codes, and rules;
- employ or contract with teachers that meet specified requirements;
- maintain a physical location in the state at which each student has regular and direct contact with teachers;
- provide to parents, either on a website or in other written form, information regarding the school's programs, services, and qualifications of classroom teachers;
- provide the parent, at least on a quarterly basis, a written report of the student's progress;
- cooperate with a parent who wants a student to participate in the statewide assessments;<sup>32</sup> and
- adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.<sup>33</sup>

If a private school receives more than \$250,000 in scholarship funds through any scholarship program, or a combination of scholarship programs in one year, the school must hire an independent certified public accountant to verify that the school meets a number of requirements outlined in the agreed-upon procedures.<sup>34</sup> This is a set of requirements and procedures that each private school agrees to implement in order to maintain eligibility for the scholarship programs. The procedures must determine,

<sup>27</sup> Section 1002.395(6)(a)-(c), (f), (h)-(q), F.S.; s. 11.45(2)(k), F.S. (operational audit).

<sup>28</sup> Section 1002.395(6)(j)1., F.S.

<sup>29</sup> See s. 1002.421, F.S. (2018).

<sup>30</sup> Section 1002.01(2), F.S.

<sup>31</sup> See s. 1002.42, F.S.

<sup>32</sup> Section 1002.421(1)(a)-(l), F.S. (2018).

<sup>33</sup> Section 1002.421(1)(n), F.S. (2018).

<sup>34</sup> Section 1002.421(1)(q), F.S. (2018) See also, Agreed Upon Procedures, <https://www.stepupforstudents.org/for-schools-providers/agreed-upon-procedures/?highlight=agreed-upon%20procedures> (last visited Mar. 11, 2019).

at a minimum, whether the private school has been verified as eligible by the DOE; has an adequate accounting system, system of financial controls, and process for deposits and classification of scholarship funds; and has properly expended scholarship funds.<sup>35</sup> The procedures are developed jointly with the SFOs, accrediting associations that are members of the Florida Association of Academic Nonpublic Schools, and DOE<sup>36</sup> and are reviewed biennially.<sup>37</sup>

A private school must annually submit the report, by September 15, from the certified public accountant to the SFO that awarded the majority of the scholarship funds. Schools that receive more than \$250,000 solely through the McKay Scholarship program must submit the report to the DOE.<sup>38</sup>

If a private school fails to meet any of the above requirements, or has consecutive years of material exceptions listed in the report, the commissioner may determine that the private school is ineligible to participate in a scholarship program.<sup>39</sup>

Every private school that wishes to participate in a scholarship program must have each employee and contracted personnel undergo a state and national criminal background screening. The results of the screening are provided to the private school. The private school must deny employment to or terminate the employee if he or she fails to meet the screening standards established in chapter 435.<sup>40</sup> Employees and contracted personnel hired by a private school must be rescreened every 5 years and meet all screening standards.<sup>41</sup>

Also, prior to employing instructional personnel or school administrators in any position that requires direct contact with students, the private school must conduct an employment history check of each of the personnel's or administrator's previous employers.<sup>42</sup>

Similar to employees and contracted personnel, the owner or operator of a private school must undergo state and national background screening and must meet the screening standards established in chapter 435.<sup>43</sup> In addition to the standards outlined in Chapter 435, Florida Statutes owners and operators are also screened against additional offenses, including fraud and forgery.<sup>44</sup> An owner or operator who fails the background screening is not eligible to participate in any of these state scholarship programs.<sup>45</sup>

If an owner or operator of a private school wishes to transfer ownership of the school, he or she must notify the parent of each scholarship student at least 30 calendar days prior to the transfer.<sup>46</sup> If an owner or operator is deemed ineligible to participate in a scholarship program, he or she may not transfer ownership or management authority of the school to a relative.<sup>47</sup>

While the DOE has some unique responsibilities within each individual scholarship program, the DOE must fulfill the following responsibilities for all scholarship programs:

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<sup>35</sup> Section 1002.395(6)(o), F.S.

<sup>36</sup> Section 1002.395(6)(o)2., F.S.

<sup>37</sup> Section 1002.395(6)(o)1.b., F.S.

<sup>38</sup> Section 1002.421(1)(q), F.S. (2018).

<sup>39</sup> Section 1002.421(1)(q), F.S., (see flush left provision at the end of the paragraph).

<sup>40</sup> Section 1002.421(1)(m), F.S. See s. 435.04, F.S. for a list of disqualifying offenses.

<sup>41</sup> Section 1002.421(1)(m)8., F.S.

<sup>42</sup> Section 1002.421(1)(o), F.S.

<sup>43</sup> Section 1002.421(1)(p), F.S.

<sup>44</sup> Section 1002.421(1)(p)5., F.S.

<sup>45</sup> Section 102.421(1)(p)4., F.S.

<sup>46</sup> Section 1002.421(1)(p)6., F.S.

<sup>47</sup> Section 1002.421(1)(p)7., F.S. "Relative" means father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

- annually verify the eligibility of private schools for all scholarship programs;
- establish a toll-free hotline to provide parents and private schools with information about the scholarship programs;
- establish a process to allow individuals to notify the DOE of violations of state law relating to a scholarship program;
- annually receive and retain from every participating private school a notarized, sworn compliance statement certifying compliance with state law;
- coordinate with the entities conducting the health inspections and fire inspections for private schools to obtain copies of the inspection reports directly from the entities;
- provide, at no cost to the private school, the statewide assessments and any related materials for administering the assessments, if a participating private school requests the assessments; and
- conduct site visits to private schools entering a scholarship program for the first time. Beginning with the 2019-20 school year, a private school is not eligible to receive scholarship funds until a satisfactory site visit is completed and the school complies with all other requirements in law.<sup>48</sup>

The DOE is authorized to conduct site visits to any private school participating in a scholarship program that has received a complaint about a violation of state law or state board rule, or has received a notice of noncompliance or a notice of proposed action within the previous two years.<sup>49</sup> The DOE must annually submit, by December 15, a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that summarizes its implementation of the accountability measures in the scholarship programs, any substantiated allegations or violations of law or rule by a private school and the corrective action taken.<sup>50</sup>

The Commissioner of Education has the authority to:

- deny, suspend, or revoke a private school's participation in a scholarship program if the school fails to comply with any of the participation requirements or exhibits a previous pattern of failure to comply;<sup>51</sup>
- deny, suspend, or revoke a private school's participation in a scholarship program if the commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in Florida or in another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public; or<sup>52</sup>
- immediately suspend payment of scholarship funds if there is probable cause to believe that there is an imminent threat to the health, safety, and welfare of the students or if there is fraudulent activity on the part of the private school.<sup>53</sup>

If the Commissioner of Education intends to deny, suspend, or revoke a private school's participation in a scholarship program, DOE must notify the private school of the proposed action in writing by certified mail and regular mail. The notification must include the reasons for the proposed action and the timelines and procedures for responding.<sup>54</sup>

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<sup>48</sup> Section 1002.421(2)(a), F.S.

<sup>49</sup> Section 1002.421(2)(b), F.S.

<sup>50</sup> Section 1002.421(2)(c), F.S.

<sup>51</sup> Section 1002.421(3)(a), F.S. If the noncompliance is correctable within 45 days or less and is not threatening the health, safety or welfare of the students, the commissioner may issue a notice of noncompliance providing timelines for the school to correct the deficiencies before taking action to deny, suspend, or revoke the school's participation in the program.

<sup>52</sup> Section 1002.421(3)(b), F.S.

<sup>53</sup> Section 1002.421(3)(d), F.S.

<sup>54</sup> Section 1002.421(3)(c)2.a., F.S.



## Effect of Proposed Changes

The bill creates the Family Empowerment Scholarship Program (FESP) which provides scholarships to pay tuition and fees associated with an eligible student's attendance at a private school. A student is eligible for a scholarship who was counted as a full-time equivalent student during the previous fiscal year for purposes of state per-student funding or received a scholarship from either an eligible nonprofit scholarship-funding organization or from the state during the previous fiscal year, or who is eligible to enter kindergarten, and who:

- is on the direct certification list;
- is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care;
- is a sibling of a student who is participating in the FESP and resides in the same household as the sibling; or
- has a household income level that does not exceed:
  - Three hundred percent of the FPL for the 2019-2020 school year.
  - Three hundred twenty-five percent of the FPL for the 2020-2021 school year.
  - Three hundred fifty percent of the FPL for the 2021-2022 school year.
  - Three hundred seventy-five percent of the FPL beginning with the 2022-2023 school year and thereafter.

Percent of Poverty Level	Income Threshold for Family of Four <sup>55</sup>
--	\$25,750
185%	\$47,638
260%	\$66,950
300%	\$77,250
325%	\$83,687
350%	\$90,125
375%	\$96,572

The Department of Education (DOE) must notify an eligible scholarship-funding organization (SFO) of the number of new scholarships awards available in a fiscal year, approximately 28,000 new scholarships for 2019-20, and the deadline for submitting eligible students. The department must also notify eligible SFOs of students who are eligible for an initial scholarship on a first-come, first-served basis, based upon the following order of priority:

- new applicants whose household income levels do not exceed 185 percent of the FPL or who are in foster care or out-of-home care.
- a sibling of a student who is participating in the scholarship program under this subsection and resides in the same household as the sibling.

The scholarship award for eligible students is based upon the student's grade level and is calculated as 97 percent of the district average per student funding for either grades K-3, 4-8, or 9-12. The FESP is funded solely from general revenue through the Florida Education Finance Program.

A student is ineligible for the FESP if the student is:

- enrolled in a public school, including, but not limited to, the Florida School for the Deaf and the Blind, the College-Preparatory Boarding Academy, a developmental research school, or a charter school;
- enrolled in a Department of Juvenile Justice commitment program;

<sup>55</sup> HHS Poverty Guidelines for 2019, *2019 Poverty Guidelines for the 48 Contiguous States and the District of Columbia* <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 11, 2019). The poverty guideline for a family of four is \$25,750.

- enrolled in a virtual school, correspondence school or distance learning program that receives state funding pursuant to the student's participation unless the participation is limited to two courses per school year; or
- receiving any other state-sponsored K-12 educational scholarship.

Private schools that participate in the FESP must meet the same requirements for participation established by Florida Tax Credit Program (FTC Program).

Likewise, the Commissioner of Education has the same duties and responsibilities over private schools established in the FTC Program. In addition, the annual report on the student performance of FTC students must now include students participating in the Hope Scholarship Program and the FESP.

A participating SFO will be governed by the same statutory requirements as outlined in the FTC Program.

The bill specifically requires the SFO to:

- receive applications and determine student eligibility;
- establish a date by which a parent must confirm his or her intent to renew participation;
- award scholarships to eligible students, giving priority to renewing students; and
- notify the DOE of any violations regarding the program.

The bill requires the Auditor General (AG) to conduct an annual operational audit of accounts of each participating SFO, which must include a verification of students served and transmission of that information to the DOE. The AG also must notify the DOE of any SFO that fails to comply with a request for information.

#### *Florida Tax Credit Scholarship Program*

To align scholarship amounts with the Family Empowerment Scholarship Program (FESP), the bill revises the scholarship amount for Florida Tax Credit (FTC) scholarship students and repeals the sliding scale of scholarship amounts for students whose household income is greater than 185% but less than 260%. The bill also revises eligibility by limiting FTC scholarships to students who do not receive a scholarship from the FESP or another state scholarship program. The bill also revises the transportation scholarship for a public school student by allowing the student to use the scholarship to attend a public school within the school district, instead of only outside the school district.

#### *Hope Scholarship Program*

To align scholarship amounts with the Family Empowerment Scholarship Program (FESP), the bill revises the scholarship amount for Hope Scholarship students. The bill also limits the amount of contributions an eligible scholarship funding organization may carry forward to 5 percent of net eligible contributions. Any contributions above 5 percent must be transferred to another eligible scholarship funding organization or if another eligible scholarship funding organization does not participate in the Hope Scholarship Program, eligible contributions may be used for the Florida Tax Credit scholarship students.

#### *Contributions to Scholarship Funding Organizations*

The bill renames the Florida Sales Tax Credit Program to contributions to scholarship funding organizations, consistent with similar laws. The bill also revises the use of sales tax credits by maintaining the priority for the Florida Tax Credit (FTC) scholarships and eliminating the priority for the Gardiner Scholarship Program scholarships which would have been effective for Fiscal Year 2019-2020. The bill allows contributions by motor vehicles purchasers to be used for FTC scholarships in addition to Hope Scholarships.

**B. SECTION DIRECTORY:**

Section 1: Creates s. 1002.394, establishing the Family Empowerment Scholarship Program.

Section 2: Amends s. 1002.395, F.S., regarding the Florida Tax Credit Scholarship Program, by revising scholarship eligibility, scholarship amount to align with the Family Empowerment Scholarship Program, and allowing the transportation scholarship to be used for transportation to another public school within the school district.

Section 3: Amends s. 212.099, F.S., regarding the Florida Sales Tax Credit Scholarship Program, by renaming the program to credit for contributions to eligible nonprofit scholarship-funding organizations.

Section 4: Amends s. 1002.20, F.S., regarding K-12 Student and Parent Rights, by revising the list of scholarship programs.

Section 5: Amends s. 1002.40, F.S., regarding the Hope Scholarship Program, by revising the scholarship amount to align with the Family Empowerment Scholarship Program and limiting the amount of contributions that may be carried forward by an eligible scholarship funding organization.

Section 6: Amends section 49 of chapter 2018-6, Laws of Florida, by revising the emergency rulemaking authority of the Department of Revenue to include the changes to s. 1002.40.

Section 7: Providing an effective date of upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

To be eligible for the Family Empowerment Scholarship the applicant must either be a public school student during the previous fiscal year or eligible to enter kindergarten for the upcoming fiscal year. As a result of this eligibility requirement, the applicant is either currently funded or forecasted to be funded in the Florida Education Finance Program (FEFP).

2. Expenditures:

The amount of the Family Empowerment Scholarship is calculated based on the grade level and school district in which the student resides as ninety-seven percent of the district average for the basic education program pursuant to s. 1011.62(1)(c)1., F.S. and the General Appropriations Act. If the actual scholarship amount is less than the district average amount, there could be a cost savings.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

There may be an increase in the number of FTC scholarships due to the availability of sales tax credits and tax credits from purchasers of motor vehicles.

**D. FISCAL COMMENTS:**

Under the bill, the maximum annual scholarship amounts will be based on ninety-seven percent of the weighted FEFP funding per FTE at the district level for basic programs.

The bill maintains the priority use of sales tax credits for the Florida Tax Credit (FTC) scholarships by removing the priority for the Gardiner Scholarship Program that would have been effective next fiscal year. The bill also allows contributions by purchasers of motor vehicles to be used for the FTC scholarships in addition to the Hope Scholarship Program.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

In 2006, the Florida Supreme Court held that the Florida Opportunity Scholarship Program was unconstitutional under Article IX, section 1(a) which limits the “Legislature’s power because it provides both a mandate to provide for children’s education and a restriction on the execution of that mandate.”<sup>56</sup> Since then, the Legislature established two additional scholarships programs which have not been declared unconstitutional.

**B. RULE-MAKING AUTHORITY:**

The bill requires the State Board of Education to adopt rules to administer the Family Empowerment Scholarship Program. The bill revises the emergency rulemaking authority of the Department of Revenue to include the revisions to the notice to taxpayers.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>56</sup> See *Bush v. Holmes*, 919 So.2d 392, 406 (Fla. 2006)  
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