

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Education

BILL: SB 506

INTRODUCER: Senator Diaz

SUBJECT: Hope Scholarship Program

DATE: November 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	Favorable
2.			AED	
3.			AP	

I. Summary:

SB 506 expands eligibility for the Hope Scholarship Program (Hope program) to include a student who attends a school overseen by a district school board that is subject to ongoing action initiated by the State Board of Education (SBE) for non-compliance with state law or state board rule.

The bill provides flexibility for parents to use program funds in a variety of ways through an education savings account (ESA) and makes a number of other modifications to the Hope program. In addition, the bill:

- Authorizes ESA funds to be used for instructional materials, curriculum, tuition and fees, fees for specified assessments, and contributions to the Stanley G. Tate Florida Prepaid College Program or Florida College Savings program, for an eligible student who opts to attend a private school.
- Specifies that a student subjected to a qualified incident is eligible for a Hope program scholarship, and that the student’s parents must be notified of the scholarship option, regardless of the outcome of any investigation.
- Requires each school district and the Florida Department of Education (DOE) to publish specified information about the Hope program on the district’s website. Additionally, the bill requires the DOE to:
 - Deny or terminate program participation upon a parent’s failure to meet compliance requirements specified in the bill.
 - Require each nonprofit scholarship funding organization (SFO) to verify specified expenditures before the distribution of funds for specified uses; and
 - Investigate any written complaint of a program violation by a parent, a student, a private school, a public school a school district, an SFO, or another appropriate party.
- Authorizes the DOE, at the direction of the Commissioner of Education, to suspend or revoke the program participation or use of program funds:

- Modifies parent and student responsibilities and authorizes a parent to move the student from one eligible private school another. In addition, the parent:
 - Must renew participation in the program each year.
 - Is responsible for making authorized uses of program funds.
 - Must sign an agreement with the SFO and annually submit a sworn compliance statement meeting specified requirements to satisfy or maintain program eligibility.
- Adds that an SFO must verify that scholarship funds are used for authorized purposes, and document each student's eligibility before granting a scholarship.
- Authorizes payment of the scholarship to a student's account, rather than by individual warrant made payable to the student's parent. In addition the bill specifies that:
 - Accrued interest in the student's account is in addition to the awarded funds; and
 - A student's scholarship award may not be reduced for specified fees.

The bill also adds language to the tax credit contribution election form to include a public school student who attends a school overseen by a district school board that is subject to ongoing action by the SBE.

The fiscal impact of the bill is indeterminate. See Section V.

The bill takes effect on July 1, 2022.

II. Present Situation:

Education Choice

Across the United States, an evolving school choice landscape reflects changes in the accessibility and desirability of an array of education options, including traditional and nontraditional public schools, private schools, and homeschooling.¹ All 50 states and the District of Columbia provide parents the ability to send their child to a school outside of their zoned school.² Twenty-seven states and the District of Columbia have enacted policies designed to broaden access to a private education.³ The three primary policies states have adopted that expand private education choices include:⁴

- School vouchers;
- Scholarship tax credits; and
- Education savings accounts.

¹ National Center for Education Statistics, *School Choice in the United States 2019* (2019), available at <https://nces.ed.gov/pubs2019/2019106.pdf> at ix.

² National Conference of State Legislatures, *Interactive Guide to School Choice Laws* <https://www.ncsl.org/research/education/interactive-guide-to-school-choice.aspx> (last visited Nov. 18, 2021).

³ National Conference of State Legislatures, *Private School Choice* <https://www.ncsl.org/research/education/private-school-choice635174504.aspx> (last visited Nov. 18, 2021).

⁴ School vouchers are state-funded scholarships that pay for students to attend private school rather than public school. Scholarship tax credits allow individuals and corporations to allocate a portion of their owed state taxes to private nonprofit scholarship organizations that issue public and private school scholarships to K-12 students. Education Savings Accounts are state-funded grants deposited into special savings accounts from which parents can withdraw funds for certain educational expenses. *Id.*

Education Choice in Florida

Approximately 45 percent of Florida's Pre-Kindergarten through grade 12 students participate in education choice programs in Florida.⁵ Students in all programs must meet school attendance requirements through:⁶

- Enrolling in a public school;
- Enrolling in a private school;⁷
- Participating in a home education program directed by his or her parent;⁸ or
- Enrolling in a private tutoring program.⁹

To help students take advantage of educational choice options, Florida offers multiple student scholarship programs for students who meet the eligibility requirements:

- The John M. McKay Scholarship for Students with Disabilities Program (McKay program),¹⁰ a school voucher program;
- The Florida Tax Credit Scholarship Program (FTC program),¹¹ a tax-credit scholarship program;
- The Family Empowerment Scholarship Program (FES program),¹² a school voucher program for students of families with limited financial means and students of military families, and an education savings account (ESA) program for students with disabilities; and
- The Hope Scholarship Program (Hope program), a school voucher program serving students who have reported an incident of battery, harassment, hazing, bullying or other encounter as defined in law.¹³

Hope Scholarship Program

The Hope Scholarship Program (Hope program) was established in 2018¹⁴ as a tax credit scholarship program to provide the parent of a public school student in kindergarten through grade 12 an 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 if that student has

⁵ ReimaginedEd, Once Again, Charter Schools Dominate Florida's Education Choice Landscape, Florida's K-12 School Choice Options, <https://www.reimaginedonline.org/2021/01/once-again-charter-schools-dominate-floridas-education-choice-landscape/> (last visited Nov. 18, 2021).

⁶ Section 1003.01(13), F.S.

⁷ A private school is defined as an individual, association, co-partnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade and is below college level. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. A home education program is not considered a private school. Section 1002.01(2), F.S.

⁸ A home education program is defined as the sequentially progressive instruction of a student directed by his or her parent in order to satisfy attendance requirements. Section 1002.01(1), F.S.

⁹ Section 1002.43, F.S.

¹⁰ Section 1002.39, F.S., and Rule 6A-6.0970, F.A.C.

¹¹ Section 1002.395, F.S., and Rule 6A-6.0960, F.A.C.

¹² Section 1002.394, F.S., and Rule 6A-6.0952, F.A.C.

¹³ Section 1002.40, F.S., and Rule 6A-6.0951, F.A.C.

¹⁴ Section 16, ch. 2018-6, L.O.F.

been subjected to an incident of battery; harassment;¹⁵ hazing; bullying; kidnapping; physical attack; robbery; sexual offenses; threat or intimidation; or fighting at school.¹⁶

Program Prohibitions

A student is not eligible for a Hope program scholarship while he or she is enrolled in a public school or Department of Juvenile Justice program; receiving another state educational scholarship pursuant to Florida law; enrolled in a home education or private tutoring program; or enrolled in the Florida School for the Deaf and the Blind. The student is also limited to participating in no more than two state-funded virtual courses per year.¹⁷

Eligibility Term

The term of the scholarship continues until the student returns to public school or graduates from high school.¹⁸

School District Obligations and Parental Options

Upon receipt of a report of an incident, the school principal must provide a copy of the report to the parent and investigate the incident. Within 24 hours after receipt of the report, the principal must provide a copy of the report to the parent and to the superintendent. The school district must notify the parent of the scholarship upon conclusion of the investigation or within 15 days after the incident was reported, whichever occurs first. The school district must also offer the parent an opportunity to enroll his or her student in a different public school or attend an eligible private school through the Hope program.¹⁹ A parent who chooses to enroll his or her student in a public school located outside the district in which the student resides is eligible for a transportation scholarship.²⁰

Private School Obligations

Private schools participating in the scholarship program must comply with the general laws governing private schools, pursuant to s. 1002.421, F.S., and must annually administer or make provision for participating students in grades 3 through 10 to take one of the nationally norm-referenced tests identified by the Florida Department of Education (DOE) or take the statewide standardized assessments.²¹

¹⁵ Harassment includes “COVID-19 harassment” defined as any threatening, discriminatory, insulting, or dehumanizing verbal, written or physical conduct an individual student suffers in relation to, or as a result of, school district protocols for COVID-19, including masking requirements, the separation or isolation of students, or COVID-19 testing requirements, that have the effect of substantially interfering with a student’s educational performance, opportunities or benefits. Eligibility under COVID-19 harassment extends through the 2021-2022 school year. Department of Education, *Emergency Rule 6AER21-02 COVID-19 Hope Scholarship Transfer Procedures* (2021), available at <https://www.fldoe.org/core/fileparse.php/19994/urlt/hope.pdf>. Rule 6A-6.0951, F.A.C.

¹⁶ Section 1002.40(1) and (6), F.S. The student subjected to a specified incident is eligible for a Hope program scholarship whether or not the incident is substantiated. Rule 6A-6.0951, F.A.C.

¹⁷ Section 1002.40(4), F.S.

¹⁸ Section 1002.40(5), F.S.

¹⁹ Section 1002.40(6), F.S.

²⁰ *Id.*

²¹ Section 1002.40(7), F.S.

If a private school fails to meet requirements specified in law, the Commissioner of Education (commissioner) may determine that the private school is ineligible to participate in the program.²²

Florida Department of Education (DOE) Obligations

The DOE is required to:²³

- Cross-check the list of participating scholarship students with the public school enrollment lists to avoid duplication;
- Maintain a list of nationally norm-referenced tests to satisfy testing requirements;
- Require quarterly reports by the nonprofit SFOs regarding the number of students and private schools enrolled; and
- Contract with an independent entity to annually evaluate the program.

Parent and Student Obligations

Parents must meet participation requirements for the Hope program, which include all of the following:²⁴

- Selecting an eligible private school.
- Informing the child's school district when withdrawing a child to attend a private school.
- Remaining in attendance at the private school throughout the school year.
- Ensuring the student takes the required norm-referenced assessment.
- Restrictively endorsing the scholarship warrant to the private school.

A parent who fails to comply with this paragraph forfeits the scholarship.²⁵

Nonprofit Scholarship-funding Organization (SFO) Obligations

The scholarship is directly administered by state-approved nonprofit SFOs, which have multiple obligations, including:²⁶

- Reviewing applications to determine student eligibility.
- Notifying parents of their receipt of a scholarship.
- Establishing deadlines for parents to confirm participation.
- Awarding scholarships and giving priority to renewing students.
- Preparing quarterly reports to the DOE.
- Notifying the DOE of any violation of Hope program requirements.

Auditor General Obligations

The Auditor General is required to conduct an annual operational audit of accounts and records of each organization that participates in the program.²⁷

²² Section 1002.40(7), F.S.

²³ Section 1002.40(8), F.S.

²⁴ Section 1002.40(9), F.S.

²⁵ *Id.*

²⁶ Section 1002.40(10), F.S.

²⁷ Section 1002.40(12), F.S.

Scholarship Funding Tax Credit

Funding for the program comes from taxpayers who elect to donate up to \$105 of the sales tax they pay when purchasing a motor vehicle in Florida.²⁸ Dealers collect the contributions and remit the funds to participating SFOs. Dealers may claim a tax credit²⁹ only for the funds which are remitted to the SFO.³⁰ The eligible contribution must be accompanied by a contribution election form.³¹ Eligible contributions used to fund the Hope program may be used to fund FTC program scholarships, with conditions. An SFO may carry forward to the next state fiscal year no more than five percent of net eligible contributions to the Hope program.³²

In the 2020-2021 school year, \$78.2 million in contributions were available to fund scholarships for eligible students.³³

Scholarship Funding and Payment

The calculated amount for a student to attend an eligible private school must be calculated in accordance with the FES program.³⁴ The maximum amount awarded to a student enrolled in a public school located outside of the district in which the student resides is \$750.³⁵

During the 2020-2021 school year, Hope program scholarships in the amount of \$2.9 million were awarded to a total of 488 students.³⁶ As of November 2021, 217 scholarships were awarded to students for the 2021-2022 school year with total scholarship funding of \$380,560.³⁷

²⁸ Department of Revenue, *2021 Legislative Bill Analysis of SB 506* (Nov. 8, 2021).

²⁹ The purchaser of a motor vehicle is granted a credit of 100 percent of an eligible contribution made to an eligible nonprofit scholarship-funding organization for the Hope Scholarship Program against any tax imposed by the state and collected from the purchaser by a dealer, designated agent, or private tag agent as a result of the purchase or acquisition of a motor vehicle, except that a credit may not exceed the tax that would otherwise be collected from the purchaser by a dealer, designated agent, or private tag agent. Section 212.1832(1), F.S.

³⁰ Department of Revenue, *2021 Legislative Bill Analysis of SB 506* (Nov. 8, 2021).

³¹ Section 1002.40(13), F.S. The contribution election form that must include the following: “THE HOPE SCHOLARSHIP PROGRAM PROVIDES A PUBLIC SCHOOL STUDENT WHO WAS SUBJECTED TO AN INCIDENT OF VIOLENCE OR BULLYING AT SCHOOL THE OPPORTUNITY TO APPLY FOR A SCHOLARSHIP TO ATTEND AN ELIGIBLE PRIVATE SCHOOL RATHER THAN REMAIN IN AN UNSAFE SCHOOL ENVIRONMENT.”

³² Section 1002.40(11)(i), F.S.

³³ PreK-12 Appropriations Subcommittee, *Overview of School/Education Choice for K-12 Students*, Presentation to the PreK-12 Appropriations Subcommittee, The Florida House of Representatives (Nov. 3, 2021), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3094&Session=2022&DocumentType=Meeting%20Packets&FileName=pka%2011-3-21%20REVISED.pdf> at 19-20.

³⁴ Section 1002.40(11), F.S.

³⁵ *Id.*

³⁶ PreK-12 Appropriations Subcommittee, *Overview of School/Education Choice for K-12 Students*, Presentation to the PreK-12 Appropriations Subcommittee, The Florida House of Representatives (Nov. 3, 2021), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3094&Session=2022&DocumentType=Meeting%20Packets&FileName=pka%2011-3-21%20REVISED.pdf> at 19-20.

³⁷ PreK-12 Appropriations Subcommittee, *Update and Discussion on Fiscal Year 2021-2022 School Choice Enrollments and Funding*, Presentation to the PreK-12 Appropriations Subcommittee, The Florida House of Representatives (Nov. 3, 2021), available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3094&Session=2022&DocumentType=Meeting%20Packets&FileName=pka%2011-3-21%20REVISED.pdf> at 10.

State Board of Education Oversight of District School Boards

The State Board of Education (SBE) oversees the performance of district school boards in enforcement of all laws and rules.³⁸ In order to ensure compliance with law or state board rule, the SBOE is authorized to request and receive information, data, and reports from school districts.³⁹ In addition the commissioner:⁴⁰

- May investigate allegations of noncompliance with law or state board rule and determine probable cause.
- Must report determinations of probable cause to the SBE which must require the district school board to document compliance with law or state board rule.
- Must report to the SBE any findings by the Auditor General that a district school board is acting without statutory authority or contrary to general law.

If the district school board cannot satisfactorily document compliance, the SBE may order compliance within a specified timeframe. If the SBE determines that a district school board is unwilling or unable to comply with law or state board rule within the specified timeframe, the SBE is authorized to initiate any of the following actions:

- Report to the Legislature that the school district is unwilling or unable to comply with law or state board rule and recommend action to be taken by the Legislature.
- Withhold the transfer of specified funds until the school district complies with law or state board rule.
- Declare the school district ineligible for competitive grants.
- Require monthly or periodic reporting on the situation related to noncompliance until it is remedied.

As of October, 2021 the SBE authorized the commissioner to financially sanction district school boards in the amounts of the salaries of elected school board members in eight school districts due to school districts' violations of law during the 2021-2022 school year.⁴¹

III. Effect of Proposed Changes:

SB 506 modifies s. 1002.40, F.S. to expand the purpose of the Hope Scholarship Program (Hope program) to include a student who attends a school overseen by a district school board that is subject to ongoing action initiated by the State Board of Education (SBE) for non-compliance with state law or state board rule. Such program expansion may increase participation in the program. The bill also specifies that program eligibility is not dependent on the outcome of an investigation into a reported incident.

The bill provides flexibility for parents to use program funds in a variety of ways through an education savings account (ESA) and makes a number of other modifications to the Hope program.

³⁸ Section 1008.32, F.S.

³⁹ Section 1008.32(1), F.S.

⁴⁰ Section 1008.32, F.S.

⁴¹ Florida Department of Education, *State Board of Education Sanctions School Districts for Failure to Follow the Law*, <https://www.fldoe.org/newsroom/latest-news/state-board-of-education-sanctions-school-districts-for-failure-to-follow-the-law.stml> (last visited Nov. 17, 2021).

Authorized Uses of Program Funds

For an eligible student who opts to attend a private school, the bill authorizes ESA funds to be used for the following:

- Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content and training on the use of and maintenance agreements for these devices.
- Curriculum;⁴²
- Tuition and fees at an eligible private school;
- Fees for nationally standardized, norm-referenced achievement tests and other assessments; and
- Contributions to the Stanley G. Tate Florida Prepaid College Program or Florida College Savings program.⁴³

Eligibility Term

The bill modifies requirements to the term of the Hope program scholarship. The scholarship remains in force until:

- The parent does not renew program eligibility;
- The nonprofit scholarship funding organization (SFO) determines that the student is not eligible for program renewal;
- The Commissioner of Education (commissioner) suspends or revokes program participation or use of funds; or
- The student's parent has forfeited participation for failure to comply with specified requirements.

The bill authorizes that program expenditures may continue until the account balance is expended or the account is closed and requires that any remaining funds revert to the SFO after:

- Denial or revocation of program eligibility by the commissioner for fraud or abuse; or
- Two consecutive fiscal years during which an account has been inactive.

School District Obligations and Parental Options

The bill modifies school district obligations and parental options, which include:

- Requiring the school district to provide parents notice of the scholarship regardless of the outcome of any investigation.
- Authorizing the parent of an eligible student to apply directly to an SFO for a scholarship after the submission of a report, and requiring the parent to include a copy of the submitted report with the application.
- Requiring each school district to publish specified information about the Hope program on the district's website homepage.

⁴² Curriculum is defined in the bill as a complete course of study for a particular content area or grade level, including any required supplemental materials and associated online instruction.

⁴³ See Sections 1009.98 and 1009.981, F.S.

Department of Education Obligations

The bill adds the program award amount per student and the total expenditures for authorized uses of funds to the quarterly reports the Florida Department of Education (DOE) must require of the SFOs. In addition, the bill adds that the DOE must;

- Publish and update specified information about the Hope program on the DOE website;
- Deny or terminate program participation upon a parent's failure to meet specified compliance requirements;
- Notify the parent and the SFO when a scholarship account is closed and program funds revert to the SFO;
- Require each SFO to verify specified eligible expenditures before the distribution of funds for instructional materials and curriculum; and
- Investigate any written complaint of a program violation by a parent, a student, a private school, a public school, a school district, an SFO, or another appropriate party.

At the direction of the commissioner, the bill authorizes the DOE to:

- Suspend or revoke program participation or use of program funds by the student or participation or eligibility of an SFO, eligible private school, or other party for a program violation.
- Determine the length of, and conditions for, lifting a suspension or revocation.
- Recover unexpended program funds to recover funds that were not authorized for use.

In determining whether to suspend or revoke participation or to lift a suspension or revocation, the bill authorizes the DOE to consider factors including:

- Acts or omissions that led to a previous suspension or revocation of participation in a state or federal program or an education scholarship program;
- Failure to reimburse the organization for funds improperly received or retained;
- Failure to reimburse government funds improperly received or retained;
- Imposition of a prior criminal sanction related to the person or entity or its officers or employees;
- Imposition of a civil fine or an administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to a person's or an entity's management or operation; or
- Other types of criminal proceedings in which the person or entity or its officers or employees were found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

Parent and Student Responsibilities

The bill modifies parent and student responsibilities and authorizes that a parent, upon reasonable notice to the SFO, may move the student from one eligible private school to another. In addition, the parent:

- Must renew participation in the program each year.
- Is responsible for making authorized uses of program funds and for all authorized uses of program funds in excess of the amount of the scholarship.
- Must sign an agreement with the SFO and annually submit a sworn compliance statement, with specified provisions, to satisfy or maintain program eligibility.

A student whose participation in the program is not renewed may continue to spend scholarship funds in his or her account from prior years unless the account must be closed. If a parent does not make authorized uses of program funds for the student, and the student's account has been inactive for two consecutive years, the student is ineligible for additional scholarship payments until the SFO verifies that expenditures from the account have occurred.

The bill specifies that a participant who fails to meet the parent and student responsibilities forfeits the scholarship.

Nonprofit Scholarship Funding Organization Obligations

The bill requires that an SFO establish and maintain separate accounts for each eligible student; verify that scholarship funds are used for authorized purposes; and document each scholarship student's eligibility for a fiscal year before granting a scholarship for that year.

Funding and Payment

The bill removes the requirement for scholarship payment to be made by individual warrant made payable to the student's parent and adds that the payment may be deposited into the student's account established by the SFO. In addition the bill adds that:

- Accrued interest in the student's account is in addition to, and not part of, the awarded funds and program funds include both the awarded funds and accrued interest; and
- A student's scholarship award may not be reduced for debit card or electronic payment fees.

Scholarship Funding Tax Credits

The bill adds language to the tax credit contribution election form to include a public school student who attends a school overseen by a district school board that is subject to ongoing action by the SBE.

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Revenue may incur operational costs associated with updating the contribution election form. Because the additional number of students who will qualify for the Hope Scholarship Program cannot be determined, the fiscal impact of the bill is indeterminate. The Revenue Estimating Conference will determine the revenue impact on state and local government, if any.⁴⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 213.053, 1002.394, 1002.395, and 1002.40.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

⁴⁴ Department of Revenue, *2021 Legislative Bill Analysis of SB 506* (Nov. 8, 2021).