

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1 School Choice

SPONSOR(S): PreK-12 Appropriations Subcommittee, Choice & Innovation Subcommittee, Tuck, Plasencia and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	13 Y, 4 N, As CS	Wolff	Sleep
2) PreK-12 Appropriations Subcommittee	11 Y, 3 N, As CS	Bailey	Potvin
3) Education & Employment Committee			

SUMMARY ANALYSIS

For decades, Florida has been a national leader in providing high quality education options for its parents and students. In addition to a myriad of public options, Florida offers scholarship programs that allow parents of eligible students to register and attend private schools that may better serve a student's particular needs or to provide educational options for students with disabilities. These programs primarily consist of the Florida Tax Credit Scholarship (FTC), the Family Empowerment Scholarship for students attending private school (FES-EO), and the Family Empowerment Scholarship for students with disabilities (FES-UA).

The bill increases the number of students with disabilities served under the FES-UA by increasing scholarship growth rates from 1 percent to 3 percent of Florida's exceptional education students, annually. Additionally, the bill authorizes a SFO that administers FTC scholarships to use any excess tax credit funds, after all FTC scholarships have been funded, to fund eligible FES-UA students on a waitlist.

The bill expands eligibility for the FTC and FES-EO scholarships to any student who is a resident of Florida and is eligible to enroll in kindergarten through grade 12 in a public school. The bill establishes the personalized education program as a parent directed educational choice option and authorizes the student to participate in FTC. The bill retains the requirement that priority for FTC and FES-EO scholarships be given to those students whose household income does not exceed 185 percent of the federal poverty level or who is in foster care or out-of-home care. Under the bill, each parent of an eligible student will receive an empowerment savings account to choose among a variety of options to customize their child's k-12 education. The bill expands the scope of authorized uses for scholarships.

To provide additional clarity to participants, the bill aligns the parental and student responsibilities for recipients of FTC and FES-EO scholarships as well as aligns the provisions governing how long an award remains in force and when an account must be closed. Additionally, the bill requires scholarship funding organizations to develop purchasing guidelines for authorized uses of scholarship funds and publish them to their websites.

The bill requires that scholarship-funding organizations review student eligibility annually, approve all expenditures prior to disbursing any funds from the empowerment savings account, and notify parents that participation in a scholarship program does not guarantee enrollment in a private school.

The bill expressly authorizes any school in Florida, including public charter schools, to permit a student to enroll part-time and provides that the student will be funded proportionally based on their time of attendance.

The estimated fiscal impact on state government expenditures is \$209.6 million. See Fiscal Analysis.

The bill has an effective date of July 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0001b.PKA

DATE: 2/24/2023

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

For decades, Florida has been a national leader in providing high quality education options for its parents and students. In addition to a myriad of public options, Florida offers scholarship programs that allow parents of eligible students to register and attend private schools that may better serve a student's particular needs or to provide educational options for students with disabilities. The three scholarship programs, include:

- The Family Empowerment Scholarship Program, consisting of a scholarship for students attending private school (FES-EO) and a scholarship for students with a disability (FES-UA);¹
- Florida Tax Credit Scholarship Program (FTC);² and
- The Hope Scholarship Program (HOPE).³

Private schools must meet specific criteria in order to be eligible to participate in Florida's scholarship programs⁴ and the Department of Education (DOE)⁵ and Commissioner of Education (commissioner)⁶ are tasked with implementation and oversight responsibilities. Florida's scholarship programs are administered by Scholarship-funding Organizations (SFO) approved by the DOE.⁷

Florida Tax Credit Scholarship Program

Present Situation

The FTC was created in 2001 and enables taxpayers to make private, voluntary contributions to a SFO, to expand educational opportunities for families that have limited financial resources, and enables Florida's children to achieve a greater level of excellence in their education.⁸ The FTC is funded with contributions to SFOs from taxpayers who 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 and rental or license fees.⁹ The tax credit is equal to 100 percent of the eligible contributions made.¹⁰ SFOs use these contributions to award scholarships for the cost of tuition and fees at an eligible private school or transportation expenses to a Florida public school in which a student is enrolled and that is different from the school to which the student was assigned.¹¹

The DOE, the Department of Revenue (DOR), and the Division of Alcoholic Beverages and Taxes (DABT) cooperatively administer the FTC.¹²

FTC Scholarship Eligibility

¹ Section 1002.394, F.S.; *see also* rule 6A-6.0952, F.A.C.

² Section 1002.395, F.S.; *see also* rule 6A-6.0960, F.A.C.

³ Section 1002.40, F.S.; *see also* rule 6A-6.0951, F.A.C.

⁴ Section 1002.421(1), F.S.

⁵ Section 1002.421(2), F.S.

⁶ Section 1002.421(3), F.S.

⁷ *See* ss. 1002.394(11) and 1002.395(6) and (15).

⁸ Section 1002.395(1)(b), F.S.

⁹ Section 1002.395(1) and (5) and s. 212.099(2), F.S. Information and documentation provided to the DOE and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution under this section shall remain confidential at all times. Section 1002.395(6)(q), F.S. (flush-left provision at end of section).

¹⁰ Sections 220.1875(1), 212.099(2), and 1002.395(5), F.S.

¹¹ Section 1002.395(6)(d), F.S. An eligible contribution is a monetary contribution from a taxpayer to an eligible nonprofit SFO. The taxpayer may not designate a specific child as the beneficiary of the contribution. Section 1002.395(2)(e), F.S.

¹² Section 1002.395(5) and (12), F.S.

The FTC provides scholarships to students, with priority given to children from low-income families and those who are in foster care or out-of-home care.¹³ Contingent upon available funds, a student is initially eligible for a FTC scholarship if he or she meets one or more of the following criteria:

- The student is on the direct certification list¹⁴ or the student's household income level does not exceed an adjusted maximum percent of the federal poverty level (FPL), which is set at 400 percent of the FPL (\$111,000¹⁵ for a family of four) for the 2022-2023 school year.¹⁶
- The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care.¹⁷
- The student is a sibling of a student participating in the FTC scholarship and the siblings reside in the same household.¹⁸

Once a student qualifies for a FTC scholarship based on household income during their initial eligibility year, the student continues to be eligible until he or she graduates from high school or turns 21 years old, whichever occurs first, regardless of household income level in subsequent years.¹⁹ A scholarship recipient is not required to reapply annually, however, a SFO may require a recipient to annually confirm their continued participation in the program.²⁰

A student is ineligible for a scholarship under the FTC if the student is:²¹

- enrolled in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs;
- receiving a scholarship from another eligible SFO under this section;
- receiving an educational scholarship pursuant to this chapter;
- participating in a home education program;
- participating in a private tutoring program;
- participating 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 no more than two courses per school year; or
- enrolled in the Florida School for the Deaf and the Blind.

FTC Scholarship Award Amount

¹³ Section 1002.395(3)(b), F.S. (flush left provision at end of subsection). Priority for an initial FTC scholarship must be given to a student whose household income level does not exceed 185 percent of the FPL (\$51,337.50 for a family of four for the 2022-2023 school year) or who is in foster care or out-of-home care. *See Step Up for Students, Florida Tax Credit Scholarship Parent Handbook* (July 2022), at 3, available at <https://www.stepupforstudents.org/wp-content/uploads/2022-2023-FTC-Parent-Handbook-Final-Draft.pdf>.

¹⁴ See s. 1002.395(2)(c), F.S. "Direct certification list" means the certified list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations provided to the DOE by the Department of Children and Families.

¹⁵ United States Department of Health & Human Services, U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, Chart showing multiples of the poverty guidelines for 2022, available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

¹⁶ Section 1002.395(3)(b)1., F.S. In 2021, the Florida Legislature aligned the FTC student eligibility household income requirements to those of the Family Empowerment Scholarship. Chapter 2021-27, L.O.F. Under current law, for eligibility income requirements, the FPL may be increased by 25 percentage points in the fiscal year following a fiscal year in which more than 5 percent of the allowable scholarships have not been funded. The eligibility for the 2021-2022 school year was set at 375 percent of the FPL. *See also Step Up for Students, Florida Tax Credit Scholarship Parent Handbook* (July 2022), at 3, available at <https://www.stepupforstudents.org/wp-content/uploads/2022-2023-FTC-Parent-Handbook-Final-Draft.pdf>.

¹⁷ Section 1002.395(3)(b)2., F.S.

¹⁸ Section 1002.395(3), F.S. (flush left provision at end of subsection).

¹⁹ *Id.*

²⁰ *See Step Up for Students, 2022-2023 Florida Tax Credit Scholarship Parent Handbook* (July 2022), at 4-5, available at <https://www.stepupforstudents.org/wp-content/uploads/2022-2023-FTC-Parent-Handbook-Final-Draft.pdf>;

AAA Scholarship Foundation, *2021-2022 Parent and School Handbook - Florida Income-Based Scholarship Program*, at 5, available at https://www.aaascholarships.org/wp-content/uploads/2022/06/Parent-and-School-Handbook_FL_2021-22_v3_rev20220616.pdf.

²¹ Section 1002.395(4), F.S.

A FTC scholarship may be used to cover the tuition and fees for a student to attend an eligible private school.²² The scholarship amount awarded to a student who received a scholarship in the 2018-2019 school year, who remains eligible, and who is enrolled in an eligible private school is the greater of:²³

- the calculated amount for a student to attend an eligible private school is 95 percent of the unweighted full-time equivalent (FTE) basic program funds²⁴ the student would generate in the school district in which the student resides based on grade level, plus a per-full-time equivalent share of funds for all Florida Education Finance Program (FEFP) categorical programs,²⁵ except for the Exceptional Student Education (ESE) Guaranteed Allocation;²⁶ or
- a percentage of the unweighted FTC funding amount for the 2018-2019 state fiscal year as follows:
 - eighty-eight percent of the unweighted FTE for grades K-5;
 - ninety-two percent of the unweighted FTE for grades 6-8; and
 - ninety-six percent of the unweighted FTE for grades 9-12.

For students initially eligible in the 2019-2020 and 2020-2021 school years, the calculated scholarship amount is 95 percent of the unweighted FTE basic program funds the student would generate in the school district in which the student resides based on grade level, plus a per-full-time equivalent share of funds for all FEFP categorical programs, except for the ESE Guaranteed Allocation.²⁷

Effective with the 2021-2022 school year, the Legislature increased the FTC scholarship amount to be the full amount provided for the student, from the previously 95 percent calculated amount.²⁸ The maximum scholarship award amount for the 2021-2022 school year was \$7,408 per student.²⁹

In lieu of a scholarship for enrollment in a private school, a student may receive a scholarship for transportation to a public school other than the public school to which the student was assigned.³⁰ The transportation scholarship award must be an amount equal to the school district expenditure per student riding a school bus, as determined by the DOE, or \$750, whichever is greater.³¹

During the 2021-2022 school year, 85,612 students were awarded a FTC scholarship.³²

Responsibilities of FTC Scholarship Recipients

Participation in the FTC scholarship requires parents and students to fulfill the following responsibilities:

- Parents must select an eligible private school,³³ apply for admission, and notify the school district when the student is withdrawn from a public school.

²² Section 1002.395(6)(c)1., F.S.

²³ Section 1002.395(11)(a) F.S. (2020).

²⁴ Florida Department of Education, *2021-22 Funding for Florida School Districts*, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf>. Basic program funds are used to fund kindergarten and grades 1-12.

²⁵ Section 1011.62(6)(a), F.S. Categorical program funds are state funding allocations earmarked for certain programs or initiatives that can only be spent for the specific purposes of those programs or initiatives. These funds comprise a portion of total state funds for public school operations and are in addition to base state FEFP funds.

²⁶ Section 1002.395(11)(a)1., F.S.

²⁷ Section 1002.395(11)(a)2., F.S. (2020).

²⁸ Section 1002.395(11)(a)2., F.S. (2021); *See also* s. 5, ch. 2021-27, L.O.F. The calculated scholarship award amount of the full amount provided for the student, effective with the 2021-2022 school year, is for a FTC scholarship recipient initially eligible in the 2019-2020 school year and thereafter, and a student initially eligible in the 2018-2019 school year if the calculated amount is greater than the scholarship award in the 2018-2019 school year.

²⁹ Florida Department of Education, *FTC Scholarship Program: Fact Sheet* (Oct. 2022), available at <https://www.fldoe.org/core/fileparse.php/5606/urlt/FTC-Oct-2022-line.pdf>.

³⁰ Section 1002.395(11)(a)3., F.S.

³¹ *Id.* Effective for the 2022-2023 school year, the previous transportation scholarship amount of up to \$750 was revised to allow for the amount of the transportation expenditure by the school district for the student, or \$750, whichever is greater. Section 13, ch. 2022-154, L.O.F.

³² Florida Department of Education, *Florida Tax Credit Scholarship Program: June 2022 Quarterly Report* (June 2022), available at <https://www.fldoe.org/core/fileparse.php/7558/urlt/FTC-Jun-2022-Q-Report.pdf> [hereinafter *June Quarterly Report*].

- Students must attend school (unless excused by the school for illness or good cause).
- Students and parents must comply with the private school's published policies.
- Parents must ensure student participation in the norm-referenced assessment offered by the private school, unless the private school chooses to administer statewide assessments, in which case, the student must participate in statewide assessments. If the private school the student attends does not administer statewide assessments, a parent may request that the student be administered a statewide assessment in addition to the norm-referenced assessment administered by the private school.
- Parents must restrictively endorse (sign) the scholarship check for the private school and are prohibited from designating any individual or entity associated with their student's private school as their attorney for purposes of endorsing scholarship payment checks or approving a fund transfer before deposit.
- Parents must authorize the SFO to access information necessary to determine income eligibility, including information held by state and federal agencies.³⁴

Disbursement of FTC Scholarship Award

The SFO sends scholarship payment checks quarterly to each student's school of enrollment, after the school completes the attendance verification. The school then notifies the parent that the check has arrived and asks the parent to come in to the school to restrictively endorse (sign) the check in order for the school to deposit the check.³⁵

A SFO may also make scholarship payments directly to eligible private schools by funds transfer (including debit cards, electronic payment cards, or any other means the DOE deems commercially viable or cost-effective). Payments must be approved by the parent before the funds are deposited.³⁶

School Attendance

With few exceptions, Florida law requires all children who will be six years of age on February 1, of each school year and are less than 16 years of age to attend school regularly. Children who will be five years of age by September 1, of each school year are eligible for public kindergarten.³⁷

State law directs district school boards to establish attendance policies defining excused or unexcused absences or tardiness. Specific criteria for determining whether an absence or tardiness is excused or unexcused are determined by the district school board.³⁸ The parent of a student who is absent from school must justify the absence, and the absence is evaluated based on the school board's attendance policies.³⁹

Regular attendance, as required under the law, can be satisfied by attendance in:⁴⁰

- a public school supported by public funds;
- a parochial, religious, or denominational school;
- a private school supported in whole or in part by tuition charges or by endowments or gifts;
- a home education program; or

³³ A private school is eligible to participate in the FTC if they meet statutory criteria for participation in state scholarship programs under s. 1002.421(1), F.S., annually administer or make provisions for students in grades 3 through 10 to participate in one of the nationally norm-referenced tests identified by the DOE or the statewide assessments³³ and report the student's scores to a selected state university, and administer the statewide assessments if the private school chooses to offer the statewide assessments. Section 1002.395(8)(a)-(b), F.S.; *See also* Rule 6A-6.03215, F.A.C.

³⁴ Section 1002.395(7)(a)-(g), F.S.

³⁵ Section 1002.395(11)(b), F.S.

³⁶ *Id.*

³⁷ Section 1003.21(1)(a), F.S.

³⁸ Section 1003.24, F.S. (flush-left provisions at end of section).

³⁹ Section 1003.26, F.S.

⁴⁰ Section 1003.01(13), F.S.

- a private tutoring program.

Home Education Programs

Home education is a parent-directed educational option that satisfies the requirement for regular school attendance. Florida laws protecting home education became effective in 1985. For the 2021-2022 school year 152,109 students participated in home education programs throughout Florida.⁴¹

Home education students are eligible, as provided by law, to participate in a number of district and state programs such as:

- interscholastic extracurricular student activities;⁴²
- the Bright Futures Scholarship Program;⁴³
- dual enrollment programs;⁴⁴
- admission to Florida College System institutions;⁴⁵
- admission to state universities;⁴⁶ and
- a FES-UA scholarship.⁴⁷

Additionally, school districts may provide home education students special education-related services or career and technical courses and programs.⁴⁸ School districts must make industry certification, national assessments, and statewide, standardized assessments offered by the school district available to home education students.⁴⁹ The DOE is also required to provide access to testing and evaluation services at diagnostic and resource centers to home education students.⁵⁰

Effect of Proposed Changes

The bill expands eligibility for FTC scholarships to include any student who is a resident of Florida and is eligible to enroll in kindergarten through grade 12 in a public school. The parent of an eligible student will receive an empowerment savings account to choose among a variety of options to customize their child's K-12 education. In addition to expanding FTC eligibility, the bill makes the following changes:

Personalized Education Programs

The bill establishes the personalized education program as a parent directed educational choice that must be registered with a SFO that administers FTC scholarships. The bill authorizes students in personalized education programs to participate in the FTC scholarship program and establishes personalized education programs as a mechanism to satisfy mandatory school attendance requirements. Students in a personalized education program are provided access to the same programs and services as home education program students.

The bill establishes the following responsibilities for parents and students receiving a FTC scholarship while participating in a personalized education program:

- Apply to an eligible SFO to participate in the program by a date set by the organization. The request must be communicated directly to the organization in a manner that creates a written or electronic record of the request and the date of receipt of the request.

⁴¹ The Florida Department of Education, *Home Education Program*, available at <https://www.fldoe.org/core/fileparse.php/5606/urlt/HomeEd-Sept-2022.pdf>.

⁴² Section 1002.41(4), F.S.

⁴³ Section 1002.41(5), F.S.

⁴⁴ Section 1002.41(6), F.S.

⁴⁵ Section 1002.41(7), F.S.

⁴⁶ Section 1002.41(8), F.S.

⁴⁷ Section 1002.394(4)(b)4., F.S.

⁴⁸ Section 1002.41(10)-(11), F.S.

⁴⁹ Section 1002.41(12), F.S.

⁵⁰ Section 1002.41(9), F.S.

- Sign an agreement with the SFO and annually submit a sworn compliance statement to the organization to satisfy or maintain program eligibility, including eligibility to receive and spend program payments, by:
 - Affirming that the program funds are used only for authorized purposes serving the student's educational needs and that they will not receive a payment, refund, or rebate of any funds provided under this section.
 - Affirming that the parent is responsible for all eligible expenses in excess of the amount of the scholarship and for the education of his or her student.
 - Submitting a student learning plan⁵¹ to the SFO and revising the plan, at least annually before program renewal.
 - Requiring the student to take a nationally norm-referenced test identified by the DOE or a statewide assessment and provide assessment results to the SFO before renewal.
 - Renewing participation in the program each year.
 - Procuring the services necessary to educate the student. When the student receives a scholarship, the district school board is not obligated to provide the student with a free appropriate public education.

For a scholarship student participating in a personalized education program, a SFO must:

- Maintain a signed agreement from the parent which constitutes as complying with the state's attendance requirements.
- Receive eligible student test scores, and beginning with the 2027-2028 school year, annually report the assessment data to the state university selected by the DOE to analyze such data.
- Provide parents with information, guidance, and support to create and annually update a customized student learning plan for their student. The SFO must maintain the plan and allow parents to electronically submit, access, and revise the plan continuously.
- Upon submission by the parent of an annual student learning plan, fund a scholarship for a student determined eligible.

With regard to personalized education program students, the bill prohibits a SFO from further regulating, exercising control over, or requiring documentation beyond the requirements proscribed under the law.

The bill provides the following schedule for funding FTC scholarships to eligible students that are enrolled in a personalized education program:

- For the 2023-2024 school year, no more than 20,000 scholarships may be funded.
- For 2024-2025 through 2026-2027 school years, the number of funded scholarships may increase by 40,000 each year.
- For the 2027-2028 school year, every personalized education program student will have access to an empowerment account to customize their education.

FTC Scholarships

For all students receiving a FTC scholarship, the bill expands the authorized uses of FTC scholarship funds in an empowerment savings account to include:

- Instructional materials, including digital materials and Internet resources.
- Curriculum, which is a complete course of study for a particular content area or grade level, including any required supplemental materials and associated online instruction.
- Tuition or fees associated with full-time or part-time enrollment in a home education program, an eligible postsecondary educational institution or a program offered by the postsecondary educational institution,⁵² an approved preapprenticeship program,⁵³ a private tutoring program,

⁵¹ The bill also defines student learning plan to mean a customized learning plan developed by a parent, at least annually, to guide instruction for their student and identify the goods and services that are needed to address the academic needs of the student.

⁵² Unless the program is subject to a statutory fee exemption or the dual enrollment scholarship.

a virtual program offered by a department-approved private online provider, the Florida Virtual School as a private paying student, or an approved online course.

- Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement Examinations, industry certification examinations, assessments related to postsecondary education, or other assessments.
- Contracted services provided by a public school or school district, including classes. A student who receives services under a contract is not considered enrolled in a public school for scholarship eligibility purposes.
- Tuition and fees for part-time tutoring services or fees for services by a choice navigator.

The bill clarifies that for a scholarship awarded to students enrolled full-time in a private school, funds must be used for tuition and fees at the private school prior to any other authorized use and that parents are responsible for all eligible expenses in excess of the amount of the scholarship.

The bill retains the requirement that priority for FTC scholarships be given to those students whose household income does not exceed 185 percent of the federal poverty level or who are in foster care or out-of-home care. Additionally, the bill expands the eligibility for public school transportation scholarships to all students eligible for a scholarship.

The bill updates the parent and student participation responsibilities for the FTC scholarship by requiring the parent to meet with the private school's principal or the principal's designee to review the school's academic programs and policies, specialized services, code of student conduct, and attendance policies before enrollment. These responsibilities align with those under the FES-EO scholarship program.

The bill updates the requirements of the FTC scholarship to be more closely aligned with the FES-EO by providing that a student is not eligible for a FTC scholarship while he or she 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 authorized under the law, or a charter school. For purposes of this paragraph, a 3- or 4-year-old child who receives services funded through the Florida Education Finance Program is considered to be a student enrolled in a public school;
- Enrolled in a school operating for the purpose of providing educational services to youth in a Department of Juvenile Justice commitment program;
- Receiving any other state-sponsored K-12 educational scholarship;
- Not having regular and direct contact with his or her private school teachers unless he or she is enrolled in a home education program or a personalized education program;
- Participating in a private tutoring program unless he or she is enrolled in a home education program or a personalized education program; or
- Participating in virtual instruction that receives state-funding pursuant to the student's participation.

The bill requires a FTC scholarship to remain in force until:

- The SFO determines that the student is not eligible for program renewal;
- The Commissioner of Education suspends or revokes program participation or use of funds;
- The student's parent has forfeited participation in the program for failure to comply with statutorily required parental and student responsibilities;
- The student enrolls in a public school, however, if a student enters a Department of Juvenile Justice detention center for a period of no more than 21 days, the student is not considered to have returned to a public school on a full-time basis for that purpose; or
- The student graduates from high school or attains 21 years of age, whichever occurs first.

The bill requires that a SFO establish and maintain an empowerment savings account for each eligible student and must maintain records of accrued interest retained in the student's account. The parent of

⁵³ Unless the program is subject to a statutory fee exemption.

an eligible student must approve each payment prior to the SFO transferring funds to the account by funds transfer. The SFO may permit eligible students to use program funds by paying for the authorized use directly, then submitting a reimbursement request to the eligible SFO. A SFO is authorized to require direct purchases for items that are at or below market rate through an online platform. Reimbursements are allowed for items not on the platform.

A student's empowerment savings account must be closed, and any remaining funds will revert to the state, after:

- Denial or revocation of program eligibility by the commissioner for fraud or abuse, including, but not limited to, the student or student's parent accepting any payment, refund, or rebate, in any manner, from a provider of any services; or
- Two consecutive fiscal years in which an account has been inactive.

Additionally, the SFO is required to verify a student's eligibility each fiscal year, prior to granting a scholarship for that fiscal year. A student whose participation in the program is not renewed may continue to spend scholarship funds that are in his or her account from prior years unless the account must be closed. The bill establishes a cap of \$24,000.00 as the maximum amount a SFO is permitted to maintain in an individual student's empowerment savings account for a FTC scholarship.

The bill permits reimbursements for program expenditures to continue until the account balance is expended or remaining funds have reverted to the state.

The bill defines a choice navigator to mean an individual who assists parents with the selection, application, and enrollment in educational options that address the academic needs of their student. A choice navigator must be a person who holds a valid Florida educator's certificate, a person who holds an adjunct teaching certificate, a person who has a bachelor's degree or a graduate degree in the subject area in which instruction is given, a person who has demonstrated a mastery of subject area knowledge, or a person certified by a nationally or internationally recognized research-based training program as approved by the department.

The bill expands the definition of eligible postsecondary educational institution to include approved higher education institutions which participate in distance education through reciprocity agreements.⁵⁴

The bill revises the definition of an eligible contribution under FTC to mean a monetary contribution from a taxpayer, subject to the restrictions provided in s. 1002.395, to an eligible SFOs pursuant to ss. 212.099, 212.1832, 1002.395, and 1002.40.

Family Empowerment Scholarship Program

Present Situation

The FES program provides children of families in Florida with educational options to achieve success in their education, including children of families with limited financial resources, children of law enforcement and military families, and children with disabilities.⁵⁵ The scholarship program includes two types of scholarships where one assists eligible students to pay for the tuition and fees associated with attendance at a private school or transportation to another public school (FES-EO), and the other provides access to additional education options for a student with a disability by covering the cost of a variety of approved items, including: contracted services, curriculum, instructional materials, tutoring, specified education programs, and specialized services (FES-UA).⁵⁶ Each scholarship has unique

⁵⁴ The National Council for State Authorization Reciprocity Agreements (NC-SARA) is a private nonprofit organization with the goal of improving student access to distance learning. NC-SARA helps states, institutions, policymakers, and students understand the purpose and benefits of participating in these reciprocity agreements. There are currently more than 2,200 institutions in 49 member states, including Florida, participating in such reciprocity agreements, greatly expanding access to educational options for Florida's students. NC-SARA, *About NC-SARA*, <https://www.nc-sara.org/about-nc-sara> (last visited Feb. 16, 2023).

⁵⁵ Section 1002.394, F.S. *see also* Rule 6A-6.0952, F.A.C.

⁵⁶ Section 1002.394(3)(a) and (3)(b), F.S. The John M. McKay Scholarship for Students with Disabilities Program and the Gardiner Scholarship Program were previously offered as two separate scholarships for students with disabilities before the programs were

student eligibility requirements, program requirements, award calculation methodologies, and allowable expenditures.⁵⁷

FES-EO Eligibility

A student is eligible for a scholarship to attend private school if the student meets the following criteria:⁵⁸

- The student is on the direct certification list (list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution on Indian Reservations program) or the student's household income level does not exceed 185 percent of the federal poverty level (FPL) (\$51,337.50⁵⁹ for a family of four) for the 2022-2023 school year;
- The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care;
- The student's household income level does not exceed an adjusted maximum percent of the FPL, which is set at 400 percent of the FPL (\$111,000⁶⁰ for a family of four) for the 2022-2023 school year;⁶¹
- The student is a sibling of a student who is participating in the FES-EO and the siblings reside in the same household;
- The student is a dependent child of a member of the United States Armed Forces, including a reservist;⁶² or
- The student is a dependent child of a law enforcement officer.

A student is ineligible for a scholarship under the FES-EO or FES-UA if the student is:⁶³

- 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;
- receiving any other state-sponsored K-12 educational scholarship;
- not having regular and direct contact with his or her private school teacher, unless the student has an eligible disability and is awarded a scholarship under the FES-UA and the student is enrolled in the private school's transition-to-work program or a home education program;
- participating in a private tutoring program, unless the student has an eligible disability and is awarded a scholarship under the FES-UA; or
- participating in a virtual instruction program.

FES-EO eligibility continues for a student receiving a scholarship to attend private school until the student returns to a public school, graduates from high school, or turns 21 years old, whichever occurs first, regardless if the student's household income exceeds the FPL cap in subsequent years.⁶⁴ A

consolidated under the FES-UA. The Gardiner Scholarship was repealed effective July 1, 2021, s. 2, ch. 2021-27 L.O.F. The McKay Scholarship was repealed effective July 1, 2022, s. 3, ch. 2021-27, L.O.F.

⁵⁷ Section 1002.394, F.S.

⁵⁸ Section 1002.394(3)(a)1.-6., F.S.

⁵⁹ Step Up for Students, *2022-2023 Family Empowerment Scholarship for Educational Options Parent Handbook* (July 2022), at 3, available at <https://www.stepupforstudents.org/wp-content/uploads/2022-2023-FES-EO-Parent-Handbook-Final-Draft.pdf>.

⁶⁰ *Id.*

⁶¹ Section 1002.394(3)(a)3., F.S. The Federal Poverty Level may be increased by 25 percentage points in the fiscal year following a fiscal year in which more than 5 percent of the allowable scholarships have not been funded. The eligibility for the 2021-2022 school year was set at 375 percent of the FPL.

⁶² A member of the United States Armed Forces means a member of the Army, Navy, Air Force, Coast Guard, Marine Corps, or Space Force, including a Reservist. Rule 6A-6.0952(2)(f), F.A.C.

⁶³ Section 1002.394(6)(a)-(f), F.S.

⁶⁴ Section 1002.394(5)(a), F.S.

scholarship recipient who maintains continued eligibility is not required to reapply annually, however, a SFO may require a recipient to annually confirm their continued participation in the program.⁶⁵

Number of Available FES-EO and FES-UA Awards

For the 2019-2020 school year, a maximum program capacity for FES-EO scholarships was established at 18,000 students. Beginning in the 2020-2021 school year, the maximum number of students participating in the scholarship program increases by one percent of the state's total K-12 full-time equivalent student membership each year.⁶⁶ The maximum program capacity does not include the following students who are excluded:⁶⁷

- Students who are a dependent child of a law enforcement officer or a member of the United States Armed Forces, a foster child, or an adopted child; or
- Students who meet the eligibility requirements of being on the direct certification list or meet household income requirements or students placed in foster care or out-of-home care and either spent the prior school year in attendance at a Florida public school, or beginning in the 2022-2023 school year, is eligible to enroll in kindergarten.

In the 2021-2022 school year, 77,141 FES-EO scholarships were awarded to eligible students seeking a scholarship to attend private school.⁶⁸

For the 2022-2023 school year, the maximum number of FES-UA scholarships is established at 26,500 students.⁶⁹ Beginning with the 2023-2024 school year, and annually thereafter, the maximum number of students participating in the scholarship program annually increases by one percent of the state's total exceptional student education full-time equivalent student membership, not including gifted students.⁷⁰

The maximum program capacity does not include the following students who are excluded:⁷¹

- Students who received specialized instructional services under the Voluntary Prekindergarten Education Program during the previous school year;
- Students who are a dependent child of a law enforcement officer or a member of the United States Armed Forces, a foster child, or an adopted child; or
- Students who spent the prior school year in attendance at a Florida public school or received a McKay Scholarship in the 2021-2022 school year.

In the 2021-2022 school year, 25,049 FES-UA scholarships were awarded to eligible students with a disability.⁷²

Priority for FES-EO Awards

A participating SFO must award a FES-EO scholarship in accordance with the priorities established in law. For a student seeking a scholarship to attend private school, the award priority must be given to a

⁶⁵ See Step Up for Students, *2022-2023 Family Empowerment Scholarship for Educational Options Parent Handbook* (July 2022), at 12-13, available at <https://www.stepupforstudents.org/wp-content/uploads/2022-2023-FES-EO-Parent-Handbook-Final-Draft.pdf>; AAA Scholarship Foundation, *2021-2022 Parent and School Handbook-Florida Income-Based Scholarship Program*, at 5, available at https://www.aaascholarships.org/wp-content/uploads/2022/06/Parent-and-School-Handbook_FL_2021-22_v3_rev20220616.pdf.

⁶⁶ Section 1002.394(12)(a)1., F.S.

⁶⁷ Section 1002.394(12)(a)1.a.-b., F.S.

⁶⁸ Adam Emerson, Florida Department of Education, *School Choice Overview*, presentation before the Choice & Innovation Subcommittee, (Jan. 19, 2023).

⁶⁹ Section 1002.394(12)(b)1., F.S.

⁷⁰ Section 1002.394(12)(b)1., F.S.

⁷¹ Section 1002.394(12)(b)1.a.-c., F.S. See also Florida Department of Education, State Board of Education August 18, 2021 Agenda, *Family Empowerment Scholarship Program Presentation*, at 5, available at <https://www.fldoe.org/core/fileparse.php/19998/urlt/6-3.pdf>.

⁷² Adam Emerson, Florida Department of Education, *School Choice Overview*, presentation before the Choice & Innovation Subcommittee, (Jan. 19, 2023).

student whose household income level does not exceed 185 percent of the FPL or who is in foster care or out-of-home care.⁷³

FES-EO Award Amount

The FES-EO is funded through the Florida Education Finance Program (FEFP) with a scholarship awarded by a SFO.⁷⁴ A FES-EO scholarship award amount for a student to attend an eligible private school is calculated as 100 percent of the school districts funding per student, including all categorical funds, except for the exceptional student education (ESE) guaranteed allocation.⁷⁵ The DOE determines the appropriate student scholarship funding amount and cross-checks scholarship students with public school enrollment to avoid duplication.⁷⁶

Upon receiving documentation which verifies a student's participation in the scholarship from the SFO, the DOE must transfer scholarship funds to the SFO for disbursement to parents of participating FES-EO students.⁷⁷ Initial scholarship payments are made after the SFO verifies the student's admission acceptance to an eligible private school, with all subsequent scholarship payments occurring upon verification of continued enrollment and attendance at the private school.⁷⁸ Any scholarship payment made by warrant must be delivered by the SFO to the private school of the parent's choice, and the parent must restrictively endorse (sign) the payment.⁷⁹

For each FES-EO scholarship, the DOE must cross-check the list of participating scholarship students with public school enrollment and adjust payments to a SFO and school districts based upon these results when the FEFP is recalculated.⁸⁰

Responsibilities of FES-EO Recipients

Parents and students receiving a FES-EO scholarship must fulfill the following responsibilities:⁸¹

- Select the private school and apply for the admission of his or her student.
- Request the scholarship by a date established by the organization, in a manner that creates a written or electronic record of the request and the date of receipt of the request.
- Inform the applicable school district when the parent withdraws his or her student from a public school to attend an eligible private school.
- Require his or her student participating in the program to remain in attendance throughout the school year unless excused by the school for illness or other good cause.
- Meet with the private school's principal or the principal's designee to review the school's academic programs and policies, customized educational programs, code of student conduct, and attendance policies prior to enrollment.
- Require that the student participating in the scholarship program takes the norm-referenced assessment offered by the private school.⁸²

⁷³ Section 1002.394(3)(a), F.S. (flush left provision at end of subparagraph).

⁷⁴ Section 1002.394(8)(a)2., (11)(a)1., (11)(b)1., and (12)(a), F.S. The department must notify the SFO that scholarships may not be awarded in a school district in which the scholarship award will exceed 99 percent of the school district's share of the state FEFP funds as calculated by the department. Section 1002.394(8)(a)13., F.S.

⁷⁵ Section 1002.394(12)(a)2., F.S. *See also* Step Up For Students, *Income-Based Scholarship Programs Basic Scholarship Amounts for 2022-23*, available at https://www.stepupforstudents.org/wp-content/uploads/Step-Up-For-Students_Income-Based-Scholarship-Amounts.pdf.

⁷⁶ *Id.*

⁷⁷ Section 1002.394(12)(a)5., F.S. Scholarship payments are made to the SFO on or before September 1, November 1, February 1, and April 1 of each year. Rule 6A-6.0952, F.A.C.

⁷⁸ Section 1002.394(12)(a)6., F.S.

⁷⁹ Section 1002.394(12)(a)6., F.S. *See also* s. 1002.394(10)(a)7., F.S.

⁸⁰ Section 1002.391(8)(a)14., F.S. The FEFP is calculated five times throughout the year to arrive at each year's final appropriations. *See* Florida Department of Education, *2021-22 Funding for Florida School Districts*, at 25, available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf>.

⁸¹ Section 1003.394(10)(a)6., F.S.

⁸² The parent and student may also elect to participate in the statewide, standardized assessment administered by the school district.

The parent is responsible for transporting the student to the assessment. Section 1003.394(10)(a)6., F.S.

- Restrictively endorse the warrant, issued in the name of the parent, to the private school for deposit into the private school's account. The parent may not designate any entity or individual associated with the participating private school as the parent's attorney in fact to endorse a scholarship warrant.

Responsibilities of FES-UA Recipients

Parents and students receiving a FES-UA scholarship must fulfill the following responsibilities:

- Apply to an eligible nonprofit scholarship-funding organization to participate in the program by a date set by the organization.
- Sign an agreement with the organization and annually submit a sworn compliance statement to the organization to satisfy or maintain program eligibility, including eligibility to receive and spend program payments by:
 - Affirming that the student is enrolled in a program that meets regular school attendance requirements.
 - Affirming that the program funds are used only for authorized purposes serving the student's educational needs; that any prepaid college plan or college savings plan funds contributed will not be transferred to another beneficiary while the plan contains funds contributed from the FES-UA scholarship; and that they will not receive a payment, refund, or rebate of any funds provided under this section.
 - Affirming that the parent is responsible for all eligible expenses in excess of the amount of the scholarship and for the education of his or her student by, as applicable:
 - Requiring the student to take a norm-referenced assessment or the statewide, standardized assessment;
 - Providing an annual home education program evaluation; or
 - Requiring the child to take any preassessments and postassessments selected by the provider if the child is 4 years of age and is enrolled in a program provided by an eligible Voluntary Prekindergarten Education Program provider.⁸³
 - Affirming that the student remains in good standing with the provider or school if those options are selected by the parent.
 - Enrolling his or her child in a program from a Voluntary Prekindergarten Education Program provider, a school readiness provider, or an eligible private school if either option is selected by the parent.
 - Renewing participation in the program each year.
 - Procuring the services necessary to educate the student.

Authorized uses for FES-EO Awards

A FES-EO scholarship may be used to cover the tuition and fees for a student to attend an eligible private school.⁸⁴ The scholarship award may be used to cover the cost of any assessment fee required by the participating private school and any costs to provide a digital device, including internet access, to the student.⁸⁵ A scholarship in the amount of \$750 or an amount equal to the school district expenditure per student riding a bus, whichever is greater, may also be awarded to an eligible student⁸⁶ enrolled in a Florida public school which is different from the school to which the student was assigned or in a lab school, if the school district does not provide the student with transportation to the school.⁸⁷

Authorized uses for FES-UA Awards

⁸³ A student with disabilities for whom the physician or psychologist who issued the diagnosis or the IEP team determines that a preassessment and postassessment is not appropriate is exempt from this requirement. Section 1003.394(10)(b)2.c.(III), F.S.

⁸⁴ Section 1002.394(12)(a)2., F.S.

⁸⁵ *Id.*

⁸⁶ Section 1002.394(12)(a)4., F.S. The student must be on the direct certification list, the student's household income level does not exceed 185 percent of the federal poverty index, or the student is placed in foster care or in out-of-home care.

⁸⁷ Section 1002.394(12)(a)4., F.S. The district expenditure per student riding a schoolbus is the amount determined by the DOE.

A FES-UA scholarship for an eligible student with a disability may be used to cover the following expenses:⁸⁸

- 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;
 - A complete course of study for a particular content area or grade level, including any required supplemental materials and associated online instruction;
 - Specialized services⁸⁹ by approved providers or by a hospital in this state which are selected by the parent;
 - Tuition or fees associated with full-time or part-time enrollment in a home education program, an eligible private school, an eligible postsecondary educational institution or a program offered by the postsecondary educational institution, a private tutoring program authorized, a virtual program offered by an approved private online provider, the Florida Virtual School as a private paying student, or an approved online course;
 - Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement Examinations, industry certification examinations, assessments related to postsecondary education, or other assessments;
 - Contributions to the Stanley G. Tate Florida Prepaid College Program or the Florida College Savings Program for the benefit of the eligible student;
-
- Contracted services provided by a public school or school district, including classes;⁹⁰
 - Tuition and fees for part-time tutoring services;
 - Fees for specialized summer education programs or specialized after-school education programs;
 - Transition services provided by job coaches;
 - Fees for a home education student's annual evaluation of educational progress by a state-certified teacher;
 - Tuition and fees associated with a Voluntary Prekindergarten Education Program or school readiness program;
 - Fees for services provided at a center that is a member of the Professional Association of Therapeutic Horsemanship International; or
 - Fees for services provided by a therapist who is certified by the Certification Board for Music Therapists or credentialed by the Art Therapy Credentials Board, Inc.

Effect of Proposed Changes

FES-EO Scholarship

The bill expands eligibility for FES-EO scholarships to include any student who is a resident of Florida and is eligible to enroll in kindergarten through grade 12 in a public school. The parent of an eligible student will receive an empowerment savings account to customize their child's K-12 education.

The bill expands the authorized uses of FES-EO scholarship funds in an empowerment savings account to include:

- Instructional materials, including digital materials and Internet resources.
- Curriculum, which is a complete course of study for a particular content area or grade level, including any required supplemental materials and associated online instruction.
- Tuition or fees associated with full-time or part-time enrollment in a home education program, an eligible postsecondary educational institution⁹¹ or a program offered by the postsecondary

⁸⁸ Section 1002.394(4)(b)1.-15., F.S.

⁸⁹ Specialized services may include, but are not limited to, applied behavior analysis services, services provided by speech-language pathologists, occupational therapy services, services provided by physical therapists, or services provided by listening and spoken language specialists.

⁹⁰ A student who receives services under such a contract is not considered enrolled in a public school for scholarship eligibility purposes.

educational institution,⁹² an approved preapprenticeship program,⁹³ a private tutoring program, a virtual program offered by a department-approved private online provider, the Florida Virtual School as a private paying student, or an approved online course.

- Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement Examinations, industry certification examinations, assessments related to postsecondary education, or other assessments.
- Contracted services provided by a public school or school district, including classes. A student who receives services under a contract is not considered enrolled in a public school for scholarship eligibility purposes.
- Tuition and fees for part-time tutoring services or fees for services by a choice navigator.

To reflect the expanded authorized uses beyond just tuition and fees at a private school, the bill provides that the scholarship amount shall be the calculated amount the student would have generated through the FEFP, rather than the lesser amount of either the calculated funds or the cost of tuition and fees. However, the bill clarifies that for a scholarship awarded to students enrolled full-time in a private school, funds must be used for tuition and fees at the private school prior to any other authorized use and that parents are responsible for all eligible expenses in excess of the amount of the scholarship.

The bill retains the requirement that priority for FES-EO scholarships be given to those students whose household income does not exceed 185 percent of the federal poverty level or who are in foster care or out-of-home care. Additionally, the bill expands the eligibility for public school transportation scholarships to all students eligible for a scholarship. The bill removes the existing FES-EO scholarship growth provisions.

The bill requires a FES-EO scholarship to remain in force until:

- The SFO determines that the student is not eligible for program renewal;
- The Commissioner of Education suspends or revokes program participation or use of funds;
- The student's parent has forfeited participation in the program for failure to comply with statutorily required parental and student responsibilities;
- The student enrolls in a public school, however, if a student enters a Department of Juvenile Justice detention center for a period of no more than 21 days, the student is not considered to have returned to a public school on a full-time basis for that purpose; or
- The student graduates from high school or attains 21 years of age, whichever occurs first.

The bill requires that a SFO establish and maintain an empowerment savings account for each eligible student and must maintain records of accrued interest retained in the student's account. The parent of an eligible student must approve each payment prior to the SFO transferring funds to the account by funds transfer.

A SFO may permit a FES-EO student to use program funds by paying for the authorized use directly, then submitting a reimbursement request to the eligible SFO. A SFO is authorized to require direct purchases by a FES-EO student for items that are at or below market rate through an online platform. Reimbursements are allowed for items not on the platform.

A student's empowerment savings account must be closed, and any remaining funds will revert to the state, after:

- Denial or revocation of program eligibility by the commissioner for fraud or abuse, including, but not limited to, the student or student's parent accepting any payment, refund, or rebate, in any manner, from a provider of any services; or
- Two consecutive fiscal years in which an account has been inactive.

⁹¹ "Eligible postsecondary educational institution" includes institutions that offer distance learning under a reciprocity agreement. *See, supra*, text accompanying note 54.

⁹² Unless the program is subject to a statutory fee exemption or the dual enrollment scholarship.

⁹³ Unless the program is subject to a statutory fee exemption.

Additionally, the SFO is required to verify a student's eligibility each fiscal year, prior to granting a scholarship for that fiscal year. A student whose participation in the program is not renewed may continue to spend scholarship funds that are in his or her account from prior years unless the account must be closed. The bill establishes a cap of \$24,000.00 as the maximum amount a SFO is permitted to maintain in an individual student's empowerment savings account for a FES-EO scholarship.

The bill permits reimbursements for program expenditures to continue until the account balance is expended or remaining funds have reverted to the state.

FES-UA Scholarship

To increase the number of eligible students with disabilities served by the scholarship, the bill increases the scholarship capacity from 1 to 3 percent of the state's total exceptional student education student membership annually.

The bill authorizes a SFO that administers FTC scholarships to use any excess tax credit funds, after all FTC scholarships have been funded, to fund eligible FES-UA students on a waitlist. FES-UA scholarships funded with excess tax credit funds are not included in the calculation when the SFO determines the maximum number of allowable FES-UA scholarships.

The bill also expands the authorized uses of a FES-UA scholarship to include preapprenticeship programs or fees for services provided by a choice navigator. Additionally, FES-UA students may now use scholarship funds for distance learning at postsecondary educational institutions with reciprocity agreements.

The bill requires that private schools accepting FES-UA scholarships discuss with the parent, before enrollment, the school's academic programs, and policies and specialized services which may meet the student's individual needs.

The bill establishes a cap of \$50,000.00 as the maximum amount a SFO is permitted to maintain in an individual student's empowerment savings account for a FES-UA scholarship.

DOE Scholarship Oversight and SFO Administration

Present Situation

DOE Oversight

The DOE must fulfill the following responsibilities for all state scholarship programs:⁹⁴

- Annually verify the private schools eligible to participate.
- Establish a toll-free hotline to provide parents and private schools with information about participating in 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 school, the statewide assessments and any related materials for administering the assessments.
- Conduct site visits to schools entering a scholarship program for the first time. A 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.
- Maintain a list of nationally norm-referenced tests identified for purposes of satisfying scholarship program assessment requirements.⁹⁵

⁹⁴ Section 1002.421(2)(a), F.S.
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The DOE is authorized to conduct site visits to any private school participating in a state 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.⁹⁶ 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 which describes 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.⁹⁷

The DOE is required to issue a project grant award to a state university, to which participating private schools must report the scores of participating scholarship students on the nationally norm-referenced tests or the statewide assessments administered by the private school in grades 3 through 10.⁹⁸ The state university must annually report to the DOE on the student performance of participating students:⁹⁹

- On a statewide basis. The report shall also include, to the extent possible, a comparison of scholarship students' performance to the statewide student performance of public school students with socioeconomic backgrounds similar to those of students participating in the scholarship program; and
- On an individual school basis. The annual report must include student performance for each participating private school in which at least 51 percent of the total enrolled students in the private school participated the FTC program in the prior school year.

Scholarship Funding Organizations

Florida's scholarship programs are administered by DOE approved non-profit scholarship-funding organizations (SFO).¹⁰⁰ Presently, there is one application cycle annually for entities desiring to serve as a SFO. Applications, containing the information required by law, must be submitted to the DOE by September 1 of the year before the school year the organization intends to offer scholarships.¹⁰¹ A SFO must be a state university; or an independent college or university that is eligible to participate in the William L. Boyd, IV, Effective Access to Student Education Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; or is a Florida based charitable organization that complies with scholarship program requirements.¹⁰² There are currently two SFOs approved to administer the FES-EO, the FES-UA, the FTC, the HOPE, and the Reading Scholarship Programs.¹⁰³

As a part of their duties of management and distribution of scholarships, current law authorizes a SFO to use from tax credit contributions received up to 2.5 percent (FES) and 3 percent (FTC) of the total amount of scholarships funded by the organization for administrative expenses.¹⁰⁴

Effect of Proposed Changes

⁹⁵ Sections 1002.394(8)(a)3. and 1002.395(9)(e), F.S.

⁹⁶ Section 1002.421(2)(b), F.S.

⁹⁷ Section 1002.421(2)(c), F.S.

⁹⁸ Section 1002.395(9)(f), F.S.

⁹⁹ Section 1002.395(9)(f)1., F.S.

¹⁰⁰ Florida Department of Education, *Scholarship Funding Organizations*, <https://www.fldoe.org/schools/school-choice/k-12-scholarship-programs/sfo/> (last visited Jan. 12, 2023).

¹⁰¹ Section 1002.395(15), F.S.

¹⁰² Section 1002.395(1)(f), F.S.

¹⁰³ Florida Department of Education, *Scholarship Funding Organizations*, <https://www.fldoe.org/schools/school-choice/k-12-scholarship-programs/sfo/> (last visited Jan. 12, 2023). Specifically, the A.A.A. Scholarship Foundation administers FTC, FES-EO, and FES-UA scholarships while Step Up for Students administers FTC, FES-EO, FES-UA, HOPE, and Reading Scholarship Program scholarships. See A.A.A. Scholarship Foundation, *Florida Parents*, <https://www.aascholarships.org/parents/florida/> (last visited Jan. 15, 2023) and Step Up For Students, *Scholarships to Give Florida Students Educational Options*, <https://www.stepupforstudents.org/scholarships/> (last visited Jan. 15, 2023).

¹⁰⁴ Sections 1003.394(11)(a)4. and 1003.395(6)(j)1., F.S. For SFOs offering FTC scholarships, the organization may use eligible contributions for administrative expenses only if they have had no findings of material weakness or material noncompliance in its annual financial audit for the preceding 3 fiscal years. Section 1003.395(6)(j)1., F.S.

DOE Oversight

The bill requires the DOE to include coordination with and the reporting by SFOs of personalized education student assessment data in the grant award issued to a state university for the compiling and analysis of scholarship recipient assessment data. The bill expands the required report under this grant to cover all private schools at which a scholarship student attended rather than only those schools where 51 percent or more of the students received scholarships. Additionally, the bill requires the report to include performance on an individual school basis for both FTC and FES-EO scholarships. Beginning with the 2027-2028 school year report, and annually thereafter, the report must include assessment data from personalized education students on a statewide basis reported by SFOs.

The bill also requires that the DOE report as part of the determination of full-time equivalent membership, all students who are receiving a FES scholarship program and funded in the FEFP. The DOE must inform SFOs that students may not be submitted for FES funding after February 1, each year.

The bill requires the DOE to annually publish its list of nationally norm-referenced tests identified for purposes of satisfying scholarship program assessment requirements.

To assist school districts in their budgeting processes, the bill requires the DOE to report to school districts the consensus estimate of FTC and FES-EO enrollment in the subsequent school year.

The bill requires that the DOE have at least two application periods for charitable organizations to apply to be SFOs in Florida.

SFO Administration

To provide guidance to scholarship recipients on allowable expenditures under Florida's scholarship programs, the bill requires SFOs to participate in a joint development of agreed-upon purchasing guidelines. The jointly developed purchasing guidelines must be provided to the Commissioner of Education and published to the SFO's website by December 31, 2023, and annually thereafter, however the SFOs must publish the guidelines within 30 days of any amendments.

The bill authorizes a SFO that administers the FES-EO or FES-UA scholarship to use up to 3 percent of the total funded scholarships for administrative expenses if the SFO expended 75 percent of tax credit revenue on FTC scholarships the prior fiscal year.

The bill authorizes an out-of-state nonprofit organization that administers a scholarship program in another state to use financial audits from the other state program as a basis for satisfying statutory requirements for administrative expenses. An organization would, therefore, be authorized to use contributions for administrative costs, if it can demonstrate 3 years of clear financial audits while administering another state's scholarship program. The audits must be for the preceding three fiscal years and be free of material misstatements and going concern issues.

The bill requires SFOs to notify parents that participation in the FTC or FES-EO scholarship programs does not guarantee enrollment at any particular private school.

Part-time Enrollment in Public Schools

Present Situation

At least 12 states expressly permit students to enroll in public school part-time.¹⁰⁵ These states vary greatly in the scope of the authorization for part-time enrollment, specifically, six permit both home school students and private school students to enroll part-time in public schools while three permit only

¹⁰⁵ ExcelinEd, *Part-time Enrollment Policy Analysis June 2021*, at 1, available at https://excelined.org/wp-content/uploads/2021/06/ExcelinEd_PolicyAnalysis_PartTimeEnrollment_June2021.pdf.

home school students and three permit only private school students to enroll part-time.¹⁰⁶ Additionally in the funding provided to school districts when a student enrolls part-time varies between these states with some providing funding based on instructional time while others provide only a flat rate for part-time students.¹⁰⁷

Florida law does not expressly authorize or prohibit part-time enrollment in public schools. However, for the purpose of funding Florida's school districts, the FEFP does provide a definition of a "part-time student" and authorizes a district to receive funding for the student proportional to the amount of instructional hours provided by the school divided by the minimum term.¹⁰⁸

Effect of Proposed Changes

The bill expressly authorizes any public school in the state, including charter schools, to enroll a student on a part-time basis, subject to space and availability. Students that attend public school part-time generate FTE student membership consistent with the definition of "part-time student" currently in law. The bill clarifies that students enrolled in public school part-time are not considered to be in regular attendance at a public school.

B. SECTION DIRECTORY:

Section 1: Amending s. 212.099, F.S.; conforming a cross-reference.

Section 2: Amending s. 327.371, F.S.; conforming cross-references.

Section 3: Amending s. 1002.01, F.S.; defining the term "personalized education program."

Section 4: Amending s. 1002.394, F.S.; providing and revising definitions; revising student eligibility and ineligibility requirements for the Family Empowerment Scholarship Program; revising the approved uses of scholarship funds; providing that certain scholarships remain in force until certain criteria are met; requiring the closure of a scholarship account and the reversion of funds to the state under certain circumstances; authorizing reimbursements for certain expenditures until certain criteria are met; revising obligations of school districts, the Department of Education, private schools, and eligible nonprofit scholarship-funding organizations; revising responsibilities of parents; requiring scholarship funds to be deposited by funds transfers rather than through warrant endorsement; requiring certain criteria to be met before the funding of certain scholarships; revising provisions for the calculation of an award amount for certain students; prohibiting the transfer of funds to an eligible student's account under certain conditions; deleting obsolete language; conforming provisions and cross-references to changes made by the act.

Section 5: Amending s. 1002.395, F.S.; providing and revising definitions; revising student eligibility and ineligibility requirements for the Florida Tax Credit Scholarship Program; revising obligations of eligible nonprofit scholarship-funding organizations and the department; establishing certain limitations on the number of scholarships funded through the program; revising the approved uses of scholarship funds; revising the amount of funds that must be expended through scholarships; revising responsibilities of parents; requiring scholarship funds to be deposited by funds transfers rather than through warrant endorsement; revising the requirements of a specified annual report; prohibiting the transfer of funds to an eligible student's account under certain conditions; providing that certain scholarships remain in force until certain criteria are met; authorizing reimbursements for certain expenditures until certain criteria are met; requiring the

¹⁰⁶ *Id.* at 3.

¹⁰⁷ *Id.*

¹⁰⁸ Section 1011.61, F.S. The minimum term is 180 actual teaching days or the equivalent on an hourly basis as set forth in rules of the State Board of Education (SBE). A school district may alter the minimum term only as authorized in SBE rule. Section 1011.60(2), F.S.

closure of a scholarship account and the reversion of funds to the state under certain circumstances; requiring the Office of Independent Education and Parental choice to provide a specified number of application periods for specified purposes; deleting obsolete language; conforming provisions and cross-references to changes made by the act.

Section 6: Amending s. 1002.40, F.S.; conforming a cross-reference.

Section 7: Amending s. 1002.421, F.S.; conforming a cross-reference.

Section 8: Creating s. 1002.44, F.S.; authorizing public schools, including charter schools, to enroll certain students on a part-time basis; providing funding for such students; providing that such students are not considered to be in regular attendance at such schools.

Section 9: Amending s. 1003.01, F.S.; conforming a cross-reference.

Section 10: Amending s. 1003.27, F.S.; conforming a cross-reference.

Section 11: Amending s. 1009.30, F.S.; conforming a cross-reference.

Section 12: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Two components of the PCS for CS/HB 1 have a fiscal impact: (1) expanding the eligibility of the FES-EO scholarship program to include any student who is a resident of Florida and is eligible to enroll in kindergarten through 12th grade, and (2) allowing the maximum number of students participating in the FES-UA scholarship program to annually increase by 3 percent of the total eligible exceptional student membership instead of 1 percent. The total fiscal impact of these two components is shown in the below table:

Estimated Fiscal Impact of the PCS for CS/HB 1	
Expanding FES-EO Eligibility	\$112.1 million
Increasing FES-UA Annual Percent Increase	\$97.5 million
Total Amount	\$209.6 million

A more detailed summary of the fiscal impact for each component is provided below:

Expanding the Eligibility of the FES-EO Scholarship Program

The fiscal impact of this component would be the estimated number of students currently enrolled at a private school participating in either the FES or FTC scholarship programs (*or both*) but who are not currently receiving a scholarship. **NOTE:** Any current public school student who may elect to “choice” a scholarship due to the expanded eligibility is already funded in the Florida Education Finance Program (FEFP); therefore, there would be no fiscal impact.

For private schools currently participating in either the FES or FTC scholarship programs, their total Fiscal Year student enrollment was 302,491.¹⁰⁹ Applying the three-year average growth in private school enrollments, the estimated number of students enrolled in these participating private schools for Fiscal Year 2023-2024 is 327,653.¹¹⁰ Based on historical renewal rates, this number is reduced by 211,023 which represents the estimated number of FES and FTC scholarship students who will renew their existing scholarships for Fiscal Year 2023-2024. Based on this reduction, the total estimated number of private school students enrolled in participating private schools who would be eligible for a new FES-EO scholarship in Fiscal Year 2023-2024 is 116,603.

Based on a 50 percent student participation rate, it is estimated that 58,315 private school students would be awarded a new FES-EO scholarship in Fiscal Year 2023-2024. Since the eligibility requirements for the FTC and FES-EO scholarships are the same, the PCS requires that a scholarship-funding organization fund FTC scholarships prior to funding the FES-EO scholarship. As such, the fiscal for this component is detailed in the below table:

Fiscal Year 2023-2024				
Estimated Eligible Private School Students without Scholarship	50% Student Participation Rate	Number Funded as FTC Scholarships	Balance Funded as FES-EO Scholarships	Fiscal Impact
116,630	58,315	43,408	14,907	\$112.1 million

Increasing the Annual Increase for FES-UA from 1 Percent to 3 Percent

The calculation of the annual increase is based upon the total eligible exceptional student education full-time equivalent students funded in the FEFP; which at the current 1 percent is 4,814 students. The fiscal impact of the increase to 3 percent is provided in the below table:

Fiscal Year 2023-2024			
Current 1 percent Increase	3 Percent Annual Increase	Difference	Fiscal Impact
4,814	14,442	9,628	\$97.5 million

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The fiscal impact is based upon the changes made by the PCS for CS/HB 1. On February 6, 2023, the Education Estimating Conference adopted a new full-time equivalent (FTE) student forecast for Fiscal Year 2023-2024 which includes a total of 3,034,172.60 FTE students. Included in this total number is 180,081.92 FES-EO scholarship FTE which will be included in the funding of the FEFP.

¹⁰⁹ Data provided by the Department of Education.

¹¹⁰ The Department of Education collects private school enrollment data at the end of a school year; therefore, the most recent available private school enrollment data is for Fiscal Year 2021-2022.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide any additional rulemaking authority, however, rules adopted under existing authority will need to be amended to conform with the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.