

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Pre-K - 12 Education

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BILL: PCS/CS/SB 1172 (610956)

INTRODUCER: Appropriations Subcommittee on Pre-K-12 Education; Education Committee and Senator Galvano

SUBJECT: Hope Scholarship Program

DATE: February 7, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Androff</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1172 creates the Hope Scholarship Program (HSP) to provide the parent of a public school student who was the victim of a substantiated incident of violence or abuse an opportunity to transfer the student to another public school that has capacity or to request and receive from the state a scholarship for the student to attend an eligible private school. In addition, the bill specifies eligibility criteria, a funding mechanism, and responsibilities for:

- School districts to notify the parents of the victim and the alleged offender within 24 hours after a specified incident and provide a statement of the expected investigative actions and a timeline for reporting the investigation's outcome.
- School principals, or the school principal's designee, to:
  - Investigate the incident and determine whether the incident is substantiated or unsubstantiated and whether the incident is required to be reported.
  - Take all actions necessary to continue educational services of students involved in the reported incident while taking every precaution to keep the victim and alleged offender separated.
  - Keep parents of the victim and alleged offender updated on the status of the investigation and report the findings or outcomes of the investigation.
  - Notify the victim's parent of the availability of the HSP.
- Private schools that participate in the HSP to comply with all requirements for participating in state scholarship programs and:
  - Provide specified documentation and respond to information requests.

- Be academically accountable to the parent for meeting the student's educational needs.
- Maintain a physical location in Florida.
- The Department of Education (DOE) to:
  - Annually verify the eligibility of private schools in the HSP and require notarized compliance certifications from the private schools.
  - Cross-check the list of students participating in the HSP with public school enrollment lists and other state scholarship program participation lists before each HSP payment.
  - Require annual reports by scholarship-funding organizations (SFOs).
  - Contract with an independent entity to provide an annual evaluation of the HSP and school climate.
  - Conduct site visits to participating private schools for specified purposes.
- The Commissioner of Education to deny, suspend, or revoke a private school's participation in the program and to immediately suspend scholarship fund payments under specified circumstances.
- Nonprofit SFOs to establish scholarships for eligible students and provide quarterly and annual reports to the DOE.
- The Auditor General to conduct an annual operational audit of each SFO that participates in the HSP.

The bill specifies that the HSP is funded by taxpayers who make an eligible contribution, limited to a single \$20 payment, at the time of a vehicle purchase or registration in Florida and authorizes a credit of 100 percent of the amount of such eligible contribution by the taxpayer against the sales and use tax on the vehicle purchase or registration.

The Revenue Estimating Conference estimated proposed language similar to the bill would reduce General Revenue Fund receipts by at least \$7.9 million in Fiscal Year 2018-19 and each year thereafter.<sup>1</sup>

The bill appropriates \$2 million in recurring funds from the General Revenue Fund to the DOE to implement the program.

The bill takes effect July 1, 2018, except as otherwise provided.

## II. Present Situation:

Florida law has established various scholarship programs to promote school choice and assist parents in the placement of their children in diverse educational settings including private schools.<sup>2</sup>

### School Safety and Student Discipline

Current law provides for student and parent rights and specifies duties of the district school board and personnel related to student discipline and school safety.

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<sup>1</sup> Florida Office of Economic and Demographic Research, *Revenue Estimating Conference, Proposed Language -- Hope Scholarship*, (Dec. 1, 2017), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/\\_pdf/Impact1201.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact1201.pdf) (last visited Jan. 19, 2018).

<sup>2</sup> Sections 1002.385, 1002.39, and 1002.395, F.S.

### ***Student and Parent Rights***

Parents of public school students are entitled to receive accurate and timely information regarding their child's academic progress and ways to help their child succeed in school.<sup>3</sup> Additionally, Florida law affords students and parents other rights,<sup>4</sup> including, but not limited to, rights regarding the discipline of a public school student.<sup>5</sup>

A student may be suspended pursuant to a district school board's rules.<sup>6</sup> A good faith effort must be made to immediately inform the parent, by telephone, of the suspension and related reason.<sup>7</sup> Each suspension must be reported in writing within 24 hours to the parent by U.S. mail.<sup>8</sup> A good faith effort must be made to use parental assistance before suspension, unless the situation requires immediate suspension.<sup>9</sup>

### ***District School Board Duties***

A district school board is responsible for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to the health, safety and welfare of students.<sup>10</sup> Specifically, a district school board must adopt rules for the control, discipline, in-school suspension, suspension, and expulsion of students and decide all cases recommended for expulsion.<sup>11</sup>

Additionally, a district school board must adopt a code of student conduct for elementary, middle, and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents at the beginning of each school year.<sup>12</sup> In addition to the code of student conduct, each school board must adopt policies prohibiting bullying and harassment, hazing, and dating violence and abuse.<sup>13</sup>

### **Bullying and Harassment**

Florida law prohibits bullying or harassment of any student or employee of a public K-12 educational institution in the following situations or instances:<sup>14</sup>

- During any education program or activity conducted by a public K-12 educational institution;
- During any school-related or school-sponsored program or activity or on a school bus of a public K-12 educational institution;

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<sup>3</sup> Section 1002.20, F.S.

<sup>4</sup> Section 1002.20, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 1002.20(4)(a), F.S.

<sup>7</sup> *Id.* at (a)1.

<sup>8</sup> *Id.*

<sup>9</sup> Section 1002.20(4)(a)1., F.S.

<sup>10</sup> Section 1006.07, F.S.

<sup>11</sup> Section 1006.07(1)(a), F.S.

<sup>12</sup> Section 1006.07(2), F.S.

<sup>13</sup> See ss. 1006.07(4) and (6), 1006.135, 1006.14, 1006.147, and 1006.148, F.S.

<sup>14</sup> Section 1006.147(2), F.S.

- Through the use of data or computer software that is accessed through a computer, computer system, or computer network within the scope of a public K-12 institution<sup>15</sup>; or
- Through the use of data or computer software that is accessed at a non-school-related location, activity, function, or program or through the use of technology or an electronic device that is not owned, leased, or used by a school district or school, if the bullying substantially interferes with or limits the victim's ability to participate in or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school.

Bullying, for these purposes, includes cyberbullying and means systematically and chronically inflicting physical hurt or psychological distress on one or more students and may involve: teasing; social exclusion; threat; intimidation; stalking; physical violence; theft; sexual, religious, or racial harassment; public or private humiliation; or destruction of property.<sup>16</sup>

Cyberbullying means bullying through the use of technology or any electronic communication, including electronic mail, internet communications, instant messages, or facsimile communication.<sup>17</sup> Cyberbullying includes the creation of a webpage or weblog in which the creator assumes the identity of another person, or the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions of bullying.<sup>18</sup> Cyberbullying also includes the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons if the distribution or posting creates any of the conditions enumerated in the definition of bullying.<sup>19</sup>

Harassment means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:<sup>20</sup>

- Places a student or school employee in reasonable fear of harm to his or her person or damage or his or her property;
- Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
- Has the effect of substantially disrupting the orderly operation of a school.

### ***School District Policy***

Each school district must adopt and review, at least every 3 years, a policy prohibiting bullying and harassment of a student or employee of a public K-12 educational institution.<sup>21</sup> The school district must involve students, parents, teachers, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of adopting and

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<sup>15</sup> "Within the scope of a public K-12 educational institution" means, regardless of ownership, any computer, computer system, or computer network that is physically located on school property or at a school-related or school-sponsored program or activity. Section 1006.147(3)(d), F.S.

<sup>16</sup> Section 1006.147(3)(a), F.S.

<sup>17</sup> Section 1006.147(3)(b), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 1006.147(3)(d), F.S.

<sup>20</sup> Section 1006.147(3)(c), F.S.

<sup>21</sup> Section 1006.147(4), F.S.

reviewing the policy.<sup>22</sup> The law outlines minimum components that the policy must contain, which includes, but is not limited to the following:<sup>23</sup>

- A description of the type of behavior expected from each student and employee of a public K-12 educational institution, including statement prohibiting and defining bullying and harassment.
- The consequences for a student or employee who commits an act of bullying or harassment or who is found to have wrongfully and intentionally accused another of an act of bullying or harassment.
- A procedure for receiving reports of an alleged act of bullying or harassment and for the prompt investigation of such incident, including allowing a person to anonymously report such an act. However, formal disciplinary action is not permitted to be based solely on an anonymous report.<sup>24</sup>
- A procedure to immediately notify the parents of a victim of bullying or harassment and the parents of the perpetrator of an act of bullying or harassment, as well as notification to all local agencies where criminal charges may be pursued against the perpetrator.
- A procedure to refer victims and perpetrators of bullying or harassment for counseling.
- A procedure for publicizing the policy, which must include publishing the policy in the code of student conduct and in all employee handbooks.

### ***School Safety Information***

The School Environmental Safety Incident Reporting (SESIR) System assists schools, districts, and the Florida Department of Education (DOE) staff in assessing the extent and nature of problems in school safety.<sup>25</sup> The SESIR system requires all public schools, including charter schools and traditional public schools to report 26 types of serious safety incidents that occur on school grounds, on school transportation, and at off-campus, school-sponsored events.<sup>26</sup> SESIR data is reported statewide and by school district within the Florida Statewide Report on School Safety and Discipline and must include the disciplinary action taken for each reported incident (e.g., suspension, expulsion, corporal punishment).<sup>27</sup> DOE also collects annual data on the types and number of disciplinary action administered for student violations of district school board rules.<sup>28</sup>

The Youth Risk Behavior Survey is a statewide survey of Florida high school students administered every other year by the Department of Health, in collaboration with the DOE that monitors health-risk behaviors that contribute to the leading causes of death and disability among youth, including behaviors that contribute to unintentional injuries and violence.<sup>29</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at (4)(a)-(n).

<sup>24</sup> Section 1006.147(4)(f), F.S.

<sup>25</sup> Florida Department of Education, *School Environmental Safety Incident Reporting (SESIR)*, <http://www.fldoe.org/schools/safe-healthy-schools/safe-schools/sesir-discipline-data/> (last visited January 19, 2018).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Florida Department of Health, *Behavioral Risk Factor Surveillance System*, <http://www.floridahealth.gov/statistics-and-data/survey-data/florida-youth-survey/youth-risk-behavior-survey/index.html> (last visited Jan. 19, 2018).

## Florida Tax Credit Scholarship

The Florida Tax Credit Scholarship Program (FTC) was established in 2001<sup>30</sup> to provide an income tax credit for corporations that contribute money to non-profit scholarship-funding organizations (SFOs) that award scholarships to students from families with limited resources.<sup>31</sup> The purpose of the FTC is to enable taxpayers to make private, voluntary contributions to SFOs for children of families that have limited financial resources to expand educational opportunities for these children to achieve a greater level of educational excellence and improve the quality of education in Florida.<sup>32</sup>

The FTC program is funded with contributions to private nonprofit SFOs from taxpayers who receive a tax credit or credits for use against their tax liability due under one or more of the following:<sup>33</sup>

- 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.

The tax credit is equal to 100 percent of the eligible contributions made.<sup>34</sup> A taxpayer is permitted to submit an application to the Department of Revenue for a tax credit or credits under one or more of the authorized tax liabilities listed above.<sup>35</sup> Florida law provides an annual tax credit cap amount.<sup>36</sup>

## Motor Vehicle Taxes

Florida sales and use tax, plus any applicable discretionary sales surtax, is due on all new or used motor vehicles sold, leased, delivered into, imported into, or used in Florida, unless a specific exemption applies.<sup>37</sup> Florida sales and use tax is due on the sales price of the motor vehicle, including any separately itemized charge or fee for items, such as:<sup>38</sup>

- Any accessory sold with the vehicle;
- Preparation, settlement, or closing fees;
- Freight, handling, or delivery of the motor vehicle to the dealer;
- Commission; and
- Any other expense or cost of the dealer that the dealer requires the purchaser to pay.

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<sup>30</sup> Section 5, ch. 2001-225, L.O.F.

<sup>31</sup> Section 1002.395, F.S.

<sup>32</sup> Section 1002.395(1)(b), F.S.

<sup>33</sup> Section 1002.395(5), F.S.

<sup>34</sup> Sections 220.1875 and 1002.395(5), F.S.

<sup>35</sup> Section 1002.395(5)(b), F.S.

<sup>36</sup> Section 1002.395(5)(a)1.-2., F.S.

<sup>37</sup> Sections 212.02, 212.05, 212.07, 212.08, F.S.; Rule 12A-1.007, F.A.C.; see *Florida Department of Revenue, Sales and Use Tax on Motor Vehicles*, available at [http://floridarevenue.com/Forms\\_library/current/gt800030.pdf](http://floridarevenue.com/Forms_library/current/gt800030.pdf).

<sup>38</sup> *Id.*

Any separately itemized fee or charge mandated by a state law for titling, licensing, or registering the motor vehicle, or for recording a lien on the motor vehicle, is not subject to tax.<sup>39</sup> Florida collects a six percent sales tax rate on the purchase of all vehicles.<sup>40</sup>

### **Private Schools and Programs**

Florida law defines a private school to mean a nonpublic school defined as an individual, association, corporation, or other such entity, that designates itself as an educational center that includes elementary, secondary, business, technical, or trade school below college level. The definition also includes any organization that provides instructional services that meet the intent of Florida law, or that gives preemployment or supplementary training in technology or in fields of trade or industry that offers academic, literary, or career training below college level. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school.<sup>41</sup>

Florida law authorizes any 25 or more adults, who are legal residents of Florida and the county in which a corporation may be formed, to form a private school corporation and prescribes requirements related to such corporations' charter, dissolution, consolidation, operations, and powers and duties.<sup>42</sup>

School attendance requirements are specified in the Florida Statutes.<sup>43</sup> Regular school attendance means the actual attendance of a student during the school day in:<sup>44</sup>

- 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 that meets the requirements of chapter 1002; or
- A private tutoring program that meets the requirements of chapter 1002.

### **III. Effect of Proposed Changes:**

This bill establishes the Hope Scholarship Program (HSP) to provide the parent of a public school student who was the victim of a substantiated incident of violence or abuse an opportunity to transfer the student to another public school that has capacity or to request and receive from the state a scholarship for the student to enroll in and attend an eligible private school. In addition, the bill specifies eligibility criteria, a funding mechanism, and responsibilities for:

- School districts to notify the parents of the victim and the alleged offender within 24 hours after a specified incident and provide a statement of the expected investigative actions and a timeline for reporting the investigation's outcome.
- School principals, or the school principal's designee, to:
  - Investigate the incident and determine whether the incident is substantiated or unsubstantiated and whether the incident is required to be reported.

<sup>39</sup>Sections 212.02, 212.05, 212.07, 212.08, F.S.; Rule 12A-1.007, F.A.C.; see *Florida Department of Revenue, Sales and Use Tax on Motor Vehicles*, available at [http://floridarevenue.com/Forms\\_library/current/gt800030.pdf](http://floridarevenue.com/Forms_library/current/gt800030.pdf).

<sup>40</sup> *Id.*

<sup>41</sup> Section 1002.01(2), F.S.

<sup>42</sup> Chapter 623, F.S.

<sup>43</sup> Section 1003.21, F.S.

<sup>44</sup> Section 1003.01(13), F.S.

- Take all actions necessary to continue educational services of students involved in the reported incident while taking every precaution to keep the victim and alleged offender separated.
- Keep parents of the victim and alleged offender updated on the status of the investigation and report the findings or outcomes of the investigation.
- Notify the victim's parent of the availability of the HSP.
- Private schools that participate in the HSP to comply with all requirements for participating in state scholarship programs and:
  - Provide specified documentation and respond to information requests.
  - Be academically accountable to the parent for meeting the student's educational needs.
  - Maintain a physical location in Florida.
- The Department of Education (DOE) to:
  - Annually verify the eligibility of private schools in the HSP and require notarized compliance certifications from the private schools.
  - Cross-check the list of students participating in the HSP with public school enrollment lists and other state scholarship program participation lists before each HSP payment.
  - Require annual reports by scholarship-funding organizations (SFO).
  - Contract with an independent entity to provide an annual evaluation of the HSP and school climate.
  - Conduct site visits to participating private schools for specified purposes.
- The Commissioner of Education to deny, suspend, or revoke a private school's participation in the program and to immediately suspend scholarship fund payments under specified circumstances.
- Nonprofit SFOs to establish scholarships for eligible students and provide quarterly and annual reports to the DOE.
- The Auditor General to conduct an annual operational audit of each SFO that participates in the HSP.

The bill specifies that the HSP is funded by taxpayers who make an eligible contribution, limited to a single \$20 payment, at the time of a vehicle purchase or registration in Florida and authorizes a credit of 100 percent of the amount of such eligible contribution by the taxpayer against the sales and use tax on the vehicle purchase or registration.

### **Student Eligibility Criteria (Section 1)**

Section 1 creates s. 1002.40, F.S., which establishes the Hope Scholarship Program. This section provides that, beginning with the 2018-2019 school year, on a first-come, first-serve basis and contingent upon available funds, a student enrolled full-time in a Florida public school in kindergarten through grade 12 is eligible for the HSP if all of the following conditions are met:

- The student is the victim of a substantiated incident of battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, harassment, assault, or battery; threat or intimidation; or fighting at school.
- The incident is formally reported by the victim or the victim's parent to the principal.
- Through an investigation, the principal finds that the incident is substantiated.



- The principal's investigation remains open or the district's resolution of issues related to the incident remain unresolved after timely notification, deliberative evaluation, and 30 days of responsible and appropriate action taken in accordance with the law.

Section 1 specifies that a scholarship payment may not be made if a student is:

- Enrolled in a public school, including, but not limited to, the Florida School for the Deaf and the Blind, the College-Preparatory Boarding Academy, the Florida Virtual School, a developmental research school, or a charter school authorized under Florida law;
- Enrolled in a school operating for the purpose of providing educational services to youth in the Department of Juvenile Justice commitment programs;
- 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
- Receiving another state school choice scholarship.
- Participating in a home education program as defined in law.<sup>45</sup>

### **School District Duties (Section 1)**

Section 1 provides that within 24 hours of receipt of a formal report of a specified incident, the school principal must provide a copy of the report to the victim's parent and the alleged offender's parent. The report must include a statement of the expected investigative actions and the timeline for reporting outcome of the investigation. Within 24 hours after receipt of the formal report, the principal must also provide the superintendent with a copy of the report and verification that the parents of the victim and the alleged offender have been provided a copy of the incident report and other required information.

#### ***Investigation***

The principal must investigate the incident to determine whether the incident is substantiated or unsubstantiated, and if the incident must be reported. At his or her discretion, the principal may determine the extent to which each student was engaged in instigating, or reacting to a physical altercation, and may consider such information when evaluating and determining appropriate disciplinary actions and investigation outcomes.

Section 1 specifies that during the investigation period, the principal and the superintendent must take all actions necessary to continue the educational services of students involved in the reported incident while taking every reasonable precaution to keep the alleged offender separated from the victim or any sibling of the victim while on school grounds or on school transportation, pursuant to law.<sup>46</sup> After a principal determines that an alleged incident is unsubstantiated or the resolution of issues related to a substantiated incident or within 15 days after the incident was reported, whichever occurs first, the principal must report to the victim's parent and the alleged offender's parent the findings, outcome, or status of the investigation. The principal must

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<sup>45</sup> A home education program means the sequentially progressive instruction of a student directed by his or her parent to satisfy the attendance requirements specified in law. Section 1002.01(1), F.S.

<sup>46</sup>The bill references provisions in state law regarding district school board duties relating to student discipline and school safety, policy for zero tolerance of crime and victimization, and prohibition on bullying and harassment. Sections 1006.09, 1006.13, and 1006.147, F.S.

continue to provide such reports to the parents at least every 15 days until the investigation concludes and issues associated with the incident are resolved.

### ***HSP Notification***

Section 1 directs that if the principal's investigation into the incident remains open for more than 30 days after the date a substantiated incident was reported or issues associated with the incident remain unresolved, the school district must

- Notify the victim's parent of the availability of the HSP and offer that parent an opportunity to enroll his or her student in another public school or to request and receive a scholarship to attend an eligible private school, subject to available funding.
- Provide written notification to the victim's parent of the result of the investigation of the alleged incident. The parent must provide this notification to the SFO that verifies the student's eligibility.

School districts must report and verify student enrollment information during and outside of the regular full-time equivalent student enrollment survey periods as requested by the DOE, in order to facilitate timely, appropriate, and fiscally accountable scholarship payments.

For each student participating in the program in a private school who chooses to participate in the statewide assessments or the Florida Alternate Assessment, the school district in which the student resides must notify the student and his or her parent about the locations and times to take the statewide assessments.

Accordingly, this section establishes a mechanism to investigate and substantiate the incident and inform students and parents about the HSP and the opportunities for such students to participate in statewide assessments.

### **Private School Eligibility (Section 1)**

To be eligible to participate in the HSP, section 1 specifies that private school may be sectarian or nonsectarian and must comply with all requirements for private schools to participate in state school choice scholarship programs.

The private school must provide to the SFO and DOE, upon request, all documentation required for the student's participation, including the private schools and the student's fee schedules. The private school must be academically accountable to the parent for meeting the educational needs of the student by:

- Annually providing to the parent a written explanation of the student's progress.
- Annually administering or making provision for students participating in the program in grades 3 through 10 to take one of the national norm-referenced tests identified by the department or the statewide assessments. A participating school must report a student's scores to his or her parent.
- Cooperating with the student whose parent who chooses to have the student participate in the statewide assessments or, if a private school chooses to offer statewide assessments, administering the assessments at the school.

- A participating private school may choose to offer and administer the statewide assessments to all students who attend the private school in grades 3 through 10.
- A participating private school must submit a request in writing by March 1 of each year in order to administer the statewide assessments in the next school year.
- Employ or contract with teachers who have regular and direct contact with each student receiving an HSP scholarship at the school's physical location.
- Maintain in this state a physical location where a scholarship student regularly attends classes.
- Provide a report from an independent certified public accountant who performs the agreed-upon procedures developed in law if the private school receives more than \$250,000 in funds from state scholarship programs. The report must be annually submitted to the organization that awarded the majority of the school's scholarship funds by September 15. The agreed-upon procedures must be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

Section 1 specifies that the failure of a private school to meet the requirements in law constitutes a basis for the ineligibility of the private school to participate in the program, as determined by the DOE.

### **Department of Education Duties (Section 1)**

Consistent with other state scholarship programs, section 1 requires the Department of Education (DOE) to:

- Establish a toll-free hotline that provides parents and private schools with information on participation in the program;
- Annually verify the eligibility of private schools;
- Require an annual notarized and sworn compliance statement by participating private schools certifying compliance with state laws.
- Cross-check the list of participating students with the public school enrollment lists and participation lists in other state scholarship programs before each HSP payment, in order to avoid duplication.

In addition, the DOE must:

- Maintain a list of nationally norm-referenced tests that meet industry quality standards.
- Require quarterly reports by an eligible nonprofit SFO regarding the number of students participating in the scholarship program, the private schools in which the students are enrolled, and other information deemed necessary by the DOE.

### ***Annual Evaluation***

Section 1 requires the DOE to contract with an independent entity to provide an annual evaluation of the HSP by:

- Reviewing the school climate and code of student conduct of each public school that reported a monthly average of 10 or more substantiated incidents to determine areas in the school or school district procedures involving reporting, investigating, and communicating a parent's and student's rights that are in need of improvement. At a minimum, this review must include:

- An assessment of the investigation time and quality of the response of the school and the school district.
- An assessment of the effectiveness of communication procedures with the students involved in an incident, the students' parents, and the school and school district personnel;
- An analysis of school incident and discipline data;
- The challenges and obstacles relating to implementing recommendations from this review.
- Reviewing the school climate and code of student conduct of each public school, to which a student from a school with a monthly average of 10 or more substantiated incidents transferred, in order to identify best practices and make recommendations to a public school at which the incidents occurred.
- Reviewing the performance of participating students enrolled in a private school in which the majority of the school's total enrolled students in the prior school year participated in any state scholarship program, in which there are at least 10 participating students who have scores for tests administered; and reviewing the school climate and code of conduct of the private school if one or more scholarship participants were involved in a reported incident at the school during the prior school year.
- Surveying the parents of participating students to determine academic, safety, and school climate satisfaction and to identify any challenges or obstacles in addressing the incident or relating to the use of the scholarship.

### ***Statewide Assessments***

Section 1 specifies that upon the request of a participating private school, the DOE must provide, at no cost to the school, the statewide assessments and any related materials for administering the assessments. This section provides that students at a private school may be assessed using the statewide assessments if the addition of those students and the school does not cause the state to exceed its contractual caps for the number of students tested and the number of testing sites. The state must provide the same materials and support that it provides to a public school to the private school. A private school that chooses to administer statewide assessments must follow the requirements related to the student assessment program, test administration and security, SBE rules, and the district-level testing policies established by the district school board.

Accordingly, this section promotes student access to statewide assessments, which may assist the parents and schools in monitoring student performance.

### ***Violations***

Section 1 requires the DOE to establish a process by which individuals may notify the department of any violation by a parent, private school, or school district of state laws relating to HSP participation. The DOE must conduct an inquiry or make a referral to the appropriate agency for an investigation of a written violation if the complaint is signed and legally sufficient. A complaint is legally sufficient if such complaint contains ultimate facts that show that a violation of this section or any rule adopted by the SBE has occurred. In order to determine legal sufficiency, the DOE may require supporting information or documentation from the complainant. A department inquiry is not subject to the public records requirements.

These provisions are consistent with other state scholarship programs.

### ***Site Visits***

Section 1 requires the DOE to conduct site visits to participating private schools. The purpose of the site visits is solely to verify the information reported by the schools concerning the enrollment and attendance of students, the credentials of teachers, background screening of teachers, and teachers' fingerprinting results. The DOE may not make more than seven site visits each year. However, the DOE is authorized to make additional site visits at any time to a school that is the subject of a violation complaint, is identified by an organization for a known or suspected violation, or has received a notice of noncompliance or a notice of proposed action within the current year or the previous two years.

### ***Reporting Requirements***

The DOE must annually, by December 15, report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the DOE's actions with respect to implementing accountability in the HSP, any substantiated allegations or violations of law or rule by an eligible private school under the HSP, and the corrective action taken by the DOE.

### ***Commissioner of Education Authority and Obligations***

Similar to other state scholarship programs, section 1:

- Requires the commissioner to deny, suspend, or revoke a private school's participation in the HSP if it is determined that the private school has failed to comply with the legal requirements of the HSP. However, if the noncompliance is correctable with a reasonable amount of time and if the health, safety, or welfare of students is not threatened, the commissioner is authorized to issue a notice of noncompliance which provides the private school with a timeframe within which to provide evidence of compliance before taking action to suspend or revoke the private school's participation in the program.
- Authorizes the commissioner to deny, suspend or revoke a private school's participation in the program if the commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in a manner contrary to the health, safety, or welfare of the public. In making such determination, the commissioner is authorized to consider factors that include, but are not limited to the following:
  - Acts or omissions by an owner or operator which led to a previous denial or revocation of participation in an education scholarship program;
  - An owner's or operator's failure to reimburse the DOE for scholarship funds improperly received or retained by a school;
  - Imposition of a prior criminal sanction related to an owner's or operator's management or operation of an educational institution;
  - Imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination or revocation related to an owner's or operator's management of an educational institution;
  - Other types of criminal proceedings in which an owner or operator was 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.

For the purposes of the commissioner's authority, the term "owner or operator" includes an owner, operator, superintendent, or principal of, or a person who has equivalent decisionmaking authority over, a private school participating in the scholarship program.

This section also authorizes the commissioner to immediately suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is an imminent threat to the health, safety, or welfare of the students; or fraudulent activity on the part of the private school. In incidents of alleged fraudulent activity with respect to the HSP, DOE's Office of the Inspector General is authorized to release personally identifiable records or reports of student to the following persons or organizations:

- A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena.<sup>47</sup>
- A person or entity authorized by a court of competent jurisdiction in compliance with an order of that court or the attorney issued subpoena.<sup>48</sup>
- Any person, entity, or authority issuing a subpoena for law enforcement purposes when the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.<sup>49</sup>

### **Notification and Appeal Process (Section 1)**

Section 1 provides that if the Commissioner intends to deny, suspend, or revoke a private school's participation in the program, the DOE must notify the private school of such proposed action in writing by certified and regular mail to the private school's address of record. This notification must include the reasons for the proposed action and notice of the timelines and procedures. The private school must have 15 days after receipt of the notice of proposed action to file with the department's agency clerk a request for a proceeding specified in law.<sup>50</sup>

If the private school is entitled to a hearing based on such request, the DOE must refer the request to the Division of Administrative Hearings. Upon receipt of such request, the director of the Division of Administrative Hearings must expedite the hearing and assign an administrative law judge who must commence a hearing within 30 days after the receipt of the formal written request by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript, whichever is later. Each party must be allowed 10 days in which to submit written exceptions to the recommended order. The agency must enter a final order within 30 days after the entry of a recommended order. This section provides that the provisions related to this process may be waived upon stipulation by all parties.

These notification and appeal provisions are consistent with the requirements for other state scholarship programs.

This section also authorizes a private school to appeal the immediate suspension of a scholarship fund payment in the same manner as the appeal of a notice of proposed action.

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<sup>47</sup> Consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

<sup>48</sup> Consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

<sup>49</sup> Consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

<sup>50</sup> The bill refers to a proceeding pursuant to ss. 120.569 and 120.57, F.S.

### **Parent and Student Responsibilities (Section 1)**

Consistent with other state scholarship programs, section 1 emphasizes that a parent who applies for a Hope Scholarship is exercising his or her parental option to place his or her student in an eligible private school.

This section requires a parent to select an eligible private school and apply for the admission of his or her student. The parent must inform the student's school district when the parent withdraws his or her student to attend an eligible private school. Any student participating in the program must comply with the regular attendance requirements in law and remain in attendance throughout the school year unless the student is excused by the school for illness or other good cause. Each parent and student has an obligation to the private school to comply with the private school's published policies. The parent may remove the student from the private school and place the student in a public school in accordance with the HSP, upon reasonable notice to the DOE and the school district.

This section requires a parent to ensure that the student participating in the HSP takes the norm-referenced assessment offered by the private school. The parent may also choose to have the student participate in the statewide assessments<sup>51</sup> and if the private school has not chosen to offer and administer the statewide assessments, the parent is responsible for transporting the student to the assessment site that is designated by the school district.

Upon receipt of a scholarship warrant, the parent to whom the warrant is made must restrictively endorse the warrant to the private school for deposit into the school's account. The parent is prohibited from designating any entity or individual associated with the participating private school as the parent's attorney in fact to endorse a scholarship warrant. A parent who fails to comply with the responsibilities established in this section forfeits the scholarship.

### **Obligations of Nonprofit Scholarship-Funding Organizations (Section 1)**

Section 1 authorizes a nonprofit scholarship-funding organization (SFO) to establish scholarships for eligible students by taking the following actions:

- Receiving applications and determining student eligibility.
- Notifying parents of their receipt of a scholarship on a first-come, first-served basis, based upon available funds.
- Preparing and submitting quarterly and annual reports to the DOE.
- Notifying the department of any violation of the specified provision under the HSP by a private school, parent, or student.

This section authorizes an SFO to use up to 3 percent of eligible contributions received during the state fiscal year in which such contributions are collected for administrative expenses if the organization has operated as an SFO for at least the preceding 3 fiscal years and did not have any findings of material weakness or material noncompliance in its most recent audit.<sup>52</sup> These administrative expenses must be reasonable and necessary for the organization's management

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<sup>51</sup> Section 1008.22, F.S.

<sup>52</sup> The bill references the audit required under the Florida Tax Credit scholarship program. Section 1002.395(6)(m) , F.S.

and distribution of eligible contributions under this section. Additionally, such administrative funds are prohibited from being used for lobbying, political activity, or expenses related to lobbying or political activity. The SFO may use up to one-third of the funds permitted for administrative expenses for expenses related to the recruitment of contributions from taxpayers. These administrative expense-related provisions are consistent with the requirements for other state scholarship programs.

### **Funding and Payment (Section 1)**

Section 1 provides that the maximum amount awarded to a student enrolled in an eligible private school must be determined as a percentage of the unweighted FTE as follows:

- 88 percent for a student enrolled in kindergarten through grade 5.
- 92 percent for a student enrolled in grade 6 through grade 8.
- 96 percent for a student enrolled in grade 9 through grade 12.

A parent who chooses to enroll his or her student in a Florida public school located outside the district in which the student resides must be eligible for a scholarship to transport the student. The maximum amount for a transportation scholarship is \$750. The provisions in this section related to the maximum award amounts are the same as the specifications under the Florida Tax Credit Scholarship program.<sup>53</sup>

This section specifies that when a student enters the program, the SFO must receive all documentation required for the student's participation, including a copy of the report of the original qualifying incident and the private school's and the student's fee schedules. The initial scholarship payment must be made after verification of admission to the private school, and subsequent payments must be made only upon verification of continued enrollment and attendance at the private school.

Payment of the scholarship by the eligible SFO may be by individual warrant made payable to the student's parent or by funds transfer made by debit cards, electronic payment cars, or other means that the department deems commercially viable or cost-effective. If payment is made by warrant, the warrant must be delivered by the eligible SFO to the private school of the parent's choice, and the parent must restrictively endorse the warrant to the private school. If payment is made by funds transfer, the parent must approve each payment before the scholarship funds may be deposited. The SFO must make payment of the scholarship at least on a quarterly basis.

This section also clarifies that moneys received pursuant to the HSP do not constitute taxable income to the qualified student or his or her parent.

### **Auditor General Responsibilities (Section 1)**

Section 1 requires the Auditor General to conduct an annual operational audit of all accounts and records of each SFO that participates in the HSP. As part of this audit, the Auditor General must verify, at a minimum, the total number of students served and transmit that information to the DOE. Additionally, the Auditor General must provide the commissioner with a copy of each

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<sup>53</sup> Section 1002.395(12)(a)1., F.S.



required annual operational audit within 10 days after the audit is finalized. The Auditor General must notify the DOE of any SFO that fails to comply with a request for information.

### **Scholarship Funding Tax Credit (Sections 1, 2, and 13)**

Section 2 creates s. 212.1832, F.S., to establish a credit of 100 percent of an eligible contribution made to an eligible nonprofit SFO against any tax imposed by the state and due under chapter 212 of the Florida Statutes as a result of the purchase or acquisition of a motor vehicle. This credit may not exceed the tax otherwise owed.

Section 1 defines an eligible contribution, or contribution, to mean a monetary contribution from a person required to pay sales and use tax on the purchase or acquisition of a motor vehicle to an eligible SFO. The taxpayer making the contribution is prohibited from designating a specific student as the beneficiary of the contribution.

Section 1 limits each eligible contribution to a single payment of \$20 at the time of purchase of a motor vehicle or a single payment of \$20 at the time of registration of a motor vehicle that was not purchased from a dealer. An eligible contribution must be accompanied by an election to contribute to the program and must be made by the purchaser at the time of purchase or at the time of registration on a form provided by the Department of Revenue (DOR). Contribution payments must be made to a dealer at the time of purchase of a motor vehicle, or to a designated DOR agent at the time of registration of a motor vehicle that was not purchased from a dealer.

Section 1 prescribes that a tax collector, designated DOR agent, or a dealer must:

- Provide the purchaser with the contribution election form.
- Collect eligible contributions and remit to the SFO, on or before the 20th day of each month, the total amount of contributions made and collected during the preceding calendar month.
- Report on each return filed with the DOR the total amount of credits allowed under the HSP during the preceding calendar month.

Section 2 directs the DOR, for purposes of the distributions of tax revenue, to disregard any tax credits allowed under the HSP to ensure that any reduction in tax revenue received that is attributable to the tax credits results only in a reduction in distributions to the General Revenue Fund.

Additionally, section 13 authorizes the DOR to adopt emergency rules to administer the specified HSP provisions.

### **Fraud Penalty (Section 1)**

Section 1 includes accountability provisions to specify that a person who, with intent to unlawfully deprive or defraud the program of its moneys, fails to remit a contribution collected under the HSP is guilty of the theft of charitable funds, punishable as follows:

- If the total amount stolen is less than \$300, the offense is a misdemeanor of the second degree, punishable by up to 60 days imprisonment or with a fine of up to \$500. Upon a second conviction, the offender is guilty of a misdemeanor of the first degree, punishable by up to 1 year imprisonment or with a fine of up to \$1,000. Upon a third or subsequent

conviction, the offender is guilty of a felony of the third degree, punishable by up to 5 years imprisonment or with a fine of up to \$5,000.

- If the total amount stolen is \$300 or more, but less than \$20,000, the offense is a felony of a third degree punishable by up to 5 years imprisonment or with a fine of up to \$5,000.
- If the total amount stolen is \$20,000 or more, but less than \$100,000, the offense is a felony of the second degree, punishable by up to 15 years imprisonment or with a fine of up to \$10,000.
- If the total amount stolen is \$100,000 or more, the offense is a felony of the first degree, punishable by up to 30 years imprisonment or with a fine of up to \$10,000.

A person convicted of an offense under the HSP must be ordered by the sentencing judge to make restitution to the organization in the amount that was stolen from the program.

### **Private Schools and Programs (Sections 3, 6, 7, 8, 10, 11 and 12)**

Section 3 amends s. 1002.01, F.S., to modify the definition of private school to mean a school that registers with the DOE in addition to meeting the other criteria specified in law.

This section also defines a state scholarship program by listing the four state scholarship programs under chapter 1002: the Gardiner Scholarship Program, the McKay Scholarship Program, the Florida Tax Credit Scholarship, and the Hope Scholarship Program.

Section 10 and 11 repeal private school corporations established under chapter 623 of the Florida Statutes,<sup>54</sup> and related provisions, effective July 1, 2019.

Sections 12 repeals s. 1002.43, F.S., establishing private tutoring programs as a means for meeting regular school attendance requirements. Sections 6, 7, and 8 conform cross-references to the Gardiner Scholarship Program, the McKay Scholarship Program, and the Florida Tax Credit Scholarship Program accordingly.

### **Other Provisions (Sections 4, 5, 9, and 14)**

Section 4 amends s. 1002.20, F.S., to update the name of the Personal Learning Scholarship Accounts Program to the Gardiner Scholarship Program, consistent with law.

Section 5 amends s. 1003.01, F.S., to revise the definition of regular school attendance to mean full-time attendance in a specified school or program, and removing reference to private tutoring programs.

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<sup>54</sup> Private School Corporations pursuant to chapter 623 of the Florida Statutes were established under the “Private School Corporation Law of 1959” as a set of statutory requirements individuals use to establish business organizations through charters approved by a judge of the circuit court for the county in which a corporation will operate. Section. 1, ch. 59-113, L.O.F. Although section 623.02 of the Florida Statutes requires the corporation to include the words “private school” in its name, chapter 623 do not address or cross-reference academic, curricular, attendance, or other health, safety, welfare requirements specified under the School Code (Chapters 1000-1013, F.S.), or any other provisions of the Florida Statutes It is unclear how many, if any, such corporations exist because Florida law does not require state-level accounting of such corporations by the Department of Education or another state agency.

Section 9 amends s. 1003.26, F.S., to conform to the revised definition of regular school attendance.

Section 14 appropriates \$2 million in recurring funds to the Department of Education to implement the HSP.

The bill takes effect July 1, 2018, except for the repeal of chapter 623 of the Florida Statutes, which is effective July 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference estimated proposed language similar to SB 1172, except that the pertinent language in the proposal contained a description of what the contribution form, on which the necessary contribution election must be made, will contain.<sup>55</sup> This contribution form description may impact the participation rate, which could affect the bill's fiscal impact.<sup>56</sup>

Based on the proposed language with the form description, the Revenue Estimating Conference estimates that the proposed language will reduce General Revenue Fund receipts by at least \$7.9 million in Fiscal Year 2018-19 and each year thereafter.<sup>57</sup>

B. Private Sector Impact:

Private schools that enroll students who receive a Hope Scholarship Program award may see an increase in revenue.<sup>58</sup>

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<sup>55</sup> Florida Office of Economic and Demographic Research, *Revenue Estimating Conference, Proposed Language -- Hope Scholarship*, (Dec. 1, 2017), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/\\_pdf/Impact1201.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact1201.pdf) (last visited Jan. 19, 2018).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Florida Department of Education, *2018 Agency Legislative Bill Analysis: HB 1*, (Nov. 3, 2017), at 12. HB 1 is substantively the same as SB 1172.

**C. Government Sector Impact:**

The bill appropriates \$2 million in recurring funds from the General Revenue Fund to the Department of Education to implement the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 212.08, 1002.01, 1002.20, 1003.01, 1002.385, 1002.39, 1002.395, and 1003.26.

This bill creates sections 1002.40 and 212.1832 of the Florida Statutes.

This bill repeals chapter 623 and section 1002.43 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**Recommended CS by Appropriations Subcommittee on PreK-12 Education on February 8, 2018:**

The committee substitute:

- Clarifies that a student may transfer to another public school that has capacity under the Hope Scholarship Program (HSP).
- Defines “principal” to mean the principal or his or her designee.
- Requires the school district to provide written notification to the victim’s parent of the result of the investigation of the alleged incident. The parent must provide this notification to the scholarship-funding organization (SFO) that verifies the student’s eligibility.
- Authorizes payment of the scholarship by the SFO by funds transfer made by debit cards, electronic payment cars, or other means that the department deems commercially viable or cost-effective.
- Appropriates \$2 million in recurring funds to the Department of Education to implement the HSP.

**CS by Education on January 22, 2018:**

The committee substitute retains the substance of the bill with some modifications. Specifically, the committee substitute modifies the provisions in the bill related to:

- Student eligibility criteria to require a formal report and a principal’s determination that a reported incident is substantiated.
- School district obligations to specify responsibilities for the principal regarding the investigation, substantiation, resolution, and reporting of specified incidents.

- Department of Education’s (DOE’s/department’s) obligations regarding:
  - Contracting with an independent entity to require the entity to review the school climate and code of student conduct of the private school if one or more scholarship participants were involved in a reported incident at the school during the prior school year.
  - Scope of site visits by the department to include conditions specified in law in addition to the conditions specified in the bill.
  - Scope of follow-up site visits by the department to include visit to a school that is the subject of a violation complaint or is identified by an organization for a known or suspected violation.

The committee substitute also adds to the bill, provisions to:

- Clarify the definition of private school to mean a private school that registers with the DOE, in accordance with the law, in addition to meeting other criteria specified in law.
- Define a scholarship program to include the four state scholarship programs under chapter 1002 of the Florida Statutes.
- Revise the definition of regular school attendance to mean full-time attendance in a specified school or program, and adds related conforming provisions.

Finally, the committee substitute:

- Eliminates obsolete private tutoring programs.
- Repeals private schools established under chapter 623, private school corporations, and related provisions, effective July 1, 2019.
- Updates the name of the Personal Learning Scholarship Accounts Program to the Gardiner Scholarship Program, consistent with the law.
- Changes the effective date from upon becoming law to July 1, 2018, unless otherwise provided

**B. Amendments:**

None.