

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1822

INTRODUCER: Senator Benacquisto

SUBJECT: School Choice

DATE: March 24, 2011

REVISED: 3/24/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Favorable
2.	Hamon	Meyer, C.	BC	Pre-meeting
3.				
4.				
5.				
6.				

I. Summary:

The bill revises the eligibility criteria for participation in the Opportunity Scholarship Program public school choice option to allow parents of students in failing schools the opportunity to send their children to another public school that is performing satisfactorily. Under the bill, a failing public school is a school that has received a “D” or an “F” grade and is designated as a low performing school. The bill also:

- Allows a parent of a student in a failing school to enroll and transport him or her to a higher performing school in another school district with available space;
- Provides that any student who is assigned to a failing school is eligible for the public school option;
- Allows a student to continue to attend a higher performing public school feeder pattern within the district until high school graduation; and
- Repeals the Opportunity Scholarship Program private school option.

This bill substantially amends sections 1002.38, 1001.42, and 1002.20 of the Florida Statutes.

II. Present Situation:

Opportunity Scholarship Program

The Legislature created the Opportunity Scholarship Program (OSP) in 1999 as part of a broad education reform package known as the A+ Plan.¹ The program was designed to provide parents of students in failing schools the opportunity to send their children to another public school that

¹ ch. 99-398, L.O.F.

is performing satisfactorily or to an eligible private school. For purposes of the OSP, a failing school is a school that has received an “F” grade for two years in a four-year period.² The law permitted an eligible private school—non-sectarian or sectarian—to participate in the program if the school met the requirements set forth in statute.³ Students who attended another public school or who received a scholarship could attend a private school through graduation, if the high school to which the student is assigned is a “D” or “F” school, or if the chosen private school educated students through the twelfth grade.⁴

Legal Challenge to the OSP – Bush v. Holmes

The State Constitution provides, in pertinent part, that “No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”⁵ Article IX, s. 1 of the State Constitution requires “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools...”

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program, which allowed a student attending certain failing public schools to attend a private school, sectarian or nonsectarian, chosen by the parent with the financial assistance of the state, violated Art. IX, s. 1(a) of the State Constitution, which mandates an education through a uniform system of free public schools.⁶

The Supreme Court’s opinion invalidating the OSP provides that the ruling applied prospectively at the end of the 2005-2006 school year to avoid disruption of the students who were using the scholarships.⁷ The opinion did not affect the public school choice provisions of the law.

Public School Participation

The parents of students in failing schools may send their child to another public school in the district that is performing satisfactorily, meaning not less than a “C” grade. In this instance, the district is responsible for transportation.⁸ Alternatively, parents may send their child to a higher performing school in an adjacent school district that has space available.⁹ The parents are responsible for transportation to the school. The receiving district reports the student for funding under the Florida Education Finance Program (FEFP).

A student may participate if he or she:

- Spent the prior school year in attendance at a failing public school;

² s. 1002.38(1), F.S.

³ s. 1002.38(4), F.S., provides eligibility requirements.

⁴ s. 1002.38(2)(b) and (3)(a), F.S.

⁵ Art. I, s. 3, State Constitution.

⁶ *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

⁷ *Id.* at 413.

⁸ s. 1002.38(3)(a) and (e), F.S.

⁹ s. 1002.38(3)(b), F.S.

- Was in attendance elsewhere in the public school system and has been assigned to a failing public school for the next school year; or
- Is entering kindergarten or first grade and has been assigned to a failing public school.

A student is eligible for the public school option until he or she graduates from high school.¹⁰

For 2005-2006, 1,688 students chose to participate in the public school choice aspect of the program.¹¹ The following reflects the number of schools that received an “F” grade for two years in a four-year period and the participation of students in the program for 2006-2007 through 2009-2010:¹²

OSP Participation in Public School Option				
	2006-2007	2007-2008	2008-2009	2009-2010¹³
# Failing Schools	11 in 5 districts	21 in 8 districts	23 in 11 districts	19 in 9 districts
#OSP Students	1,315	1,305	1,280	1,431

For the 2010-2011 school year, 16,966 students in 24 failing schools in 14 districts were eligible for the OSP public school choice option.¹⁴

Differentiated Accountability

Differentiated accountability is the system used by Florida to meet conditions for participation in the federal Elementary and Secondary Education Act¹⁵ that requires states to hold public schools and school districts accountable for making adequate yearly progress toward meeting state proficiency goals. Schools are categorized based upon the school’s grade¹⁶ and the level and rate of change in student performance in reading and mathematics, disaggregated into student subgroups.¹⁷

The law requires the Department of Education (DOE) to provide the most intensive intervention strategies to the lowest performing schools, which are defined as schools that:¹⁸

- Have received a grade of “F” in the most recent school year and in four of the last six years; or

¹⁰ s. 1002.38(3)(a)2., F.S. See also: *Opportunity Scholarship Program Frequently Asked Questions*, DOE, available at <http://www.floridaschoolchoice.org/Information/osp/faqs.asp>.

¹¹ See http://www.floridaschoolchoice.org/Information/OSP/files/Fast_Facts_OSP.pdf.

¹² E-mail, DOE March 19, 2011, on file with the committee.

¹³ There were approximately 5,600 students eligible in 2009-2010.

¹⁴ E-mail, DOE, March 19, 2011, on file with the committee.

¹⁵ 20 U.S.C. ss. 6301 et seq.

¹⁶ s. 1008.34, F.S., requires school grades: “A,” making excellent progress, “B,” making above average progress, “C,” making satisfactory progress, “D,” making less than satisfactory progress, or “F,” failing to make adequate progress.

¹⁷ ch. 2009-144, codified in s. 1008.33, F.S. Six categories, beginning with the highest performing, comprise the differentiated accountability system: Schools Not Required to Participate in Differentiated Accountability Strategies, Prevent I, Correct I, Prevent II, Correct II, and Intervene. See Rule 6A-1.099811, F.A.C.

¹⁸ s. 1008.33(4)(b), F.S.

- Are currently graded “D” or ”F” and meet at least three of the following four criteria:
 - When compared to measurements taken five years previously, the percentage of students who are not proficient in reading has increased.
 - When compared to measurements taken five years previously, the percentage of students who are not proficient in mathematics has increased.
 - At least 65 percent of the school’s students are not proficient in reading.
 - At least 65 percent of the school’s students are not proficient in mathematics.

According to the Department of Education, in 2010, there were 949 schools in the lowest performing categories. Of the 21 schools in the Intervene category, 7 were “D” schools and 7 were “F” schools. Of the 928 schools in the Correct II category, 110 were “D” schools and 48 schools were “F” schools.

III. Effect of Proposed Changes:

The bill revises the definition of a failing school to mean a school that receives a “D” or an “F” grade and that is in one of the two lowest performing categories in one year. Under the bill, a parent may request a scholarship for a student to attend a higher performing public school. The term “scholarship” currently applies to the private school option.

A parent would be able to enroll his or her child in a higher performing school in another district with available space. If a parent chooses another district, the receiving district must accept the student and report him or her for funding. The parent is still responsible for transportation.

A student would have the opportunity to continue to attend a higher performing public school feeder pattern within the district until he or she graduates from high school. A feeder pattern generally refers to elementary, middle and high schools that share the same student populations. Under the bill, a student could remain in the feeder pattern of the school chosen under the OSP.

The bill repeals the provisions related to the OSP private school option to comport with existing case law.

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:**

None.

B. Private Sector Impact:

A parent who chooses to enroll his or her child in a higher performing school in another school district is responsible for providing transportation.

C. Government Sector Impact:

Under the revised criteria in the bill, 92,348 students in 123 additional schools would be eligible for the OSP public school choice option.¹⁹ However, 114 of these schools are Title I schools with 83,358 students. Federal law currently requires designated Title I schools to provide students with the option of transferring to another public school that has made adequate yearly progress (AYP).²⁰ However, choice under the No Child Left Behind Act (NCLB) is limited to schools that meet AYP. Accordingly, this choice option under NCLB has limitations, in that there may be very few schools or no schools in the district that parents could choose.²¹ Additionally, when a district's federal transportation funds are exhausted, the district is no longer required to provide transportation.²² Consequently, there may be parents who would choose the OSP option. The number of students in these Title I schools who may wish to attend a higher performing public school under the provisions of the bill is unknown.

There are an additional nine schools with 8,990 students who are not eligible for school choice under the federal option, but who are eligible under the provisions of the bill.

The number of students who will attend a higher performing school within a district is unknown; however, because the bill expands the eligibility pool from 16,966 students in 2010-2011 to 92,348 students, it is likely that a greater number of students will want to participate. The district would be responsible for the student's transportation. Current law allows districts to use transportation categorical funds or public school choice incentive funds for this purpose.²³ However, state transportation categorical funds provide roughly 50 percent of school district transportation costs, with the balance of funds for transportation being provided from other operating costs, potentially affecting classroom or other services. With the potential for many additional students seeking to attend the public school choice option in the bill, districts will likely incur additional transportation

¹⁹ E-mail, DOE, March 24, 2011, on file with the committee. While 171 schools meet the criteria in the bill, 48 are current OSP schools or charter schools.

²⁰ See 20 U.S.C. §. 6316(b)(1)(E) and 34 CFR 200.44. Under federal law, schools identified for improvement, corrective action, or restructuring must provide students with the option of transferring to another school that is making adequate yearly progress.

²¹ E-mail, DOE, March 24, 2011, on file with the committee.

²² *Id.* The DOE notes that school districts are provided a portion of their Title 1, Part A funds to be used to transport students to other schools. E-mail, DOE, March 24, 2011, on file with the committee.

²³ s. 1002.38(3)(e), F.S.

costs by either busing students who are not already receiving transportation services, restructuring bus routes for students who will not attend the school in their geographic attendance area, or transporting students over longer distances to the higher performing schools.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.