

CS/HB 859

2012

1 A bill to be entitled  
2 An act relating to the Florida Tax Credit Scholarship  
3 Program; amending s. 1002.395, F.S.; revising student  
4 eligibility requirements for participation in the  
5 program; increasing the tax credit cap amount  
6 applicable to the program; revising provisions  
7 relating to the reporting of test scores by private  
8 schools participating in the program; providing that a  
9 private school may choose to offer and administer  
10 statewide assessments at the school; revising  
11 Department of Education duties relating to site  
12 visits; requiring the department to provide at no cost  
13 statewide assessments and related materials to a  
14 school that makes such a request; requiring a school  
15 district to coordinate with the department to provide  
16 statewide assessments and related materials to a  
17 participating private school upon the department's  
18 request; revising the conditions upon which the  
19 Commissioner of Education may base the denial,  
20 suspension, or revocation of a private school's  
21 participation in the program or the suspension of  
22 scholarship fund payment; amending s. 1002.20, F.S.;  
23 conforming provisions; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Subsection (3), paragraph (a) of subsection  
28 (5), paragraph (e) of subsection (7), paragraph (c) of

29 subsection (8), paragraphs (j) and (n) of subsection (9),  
 30 subsection (10), and paragraphs (a) and (c) of subsection (11)  
 31 of section 1002.395, Florida Statutes, are amended, and  
 32 paragraph (p) is added to subsection (9) of that section, to  
 33 read:

34 1002.395 Florida Tax Credit Scholarship Program.—

35 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

36 (a) The Florida Tax Credit Scholarship Program is  
 37 established.

38 (b) Contingent upon available funds, ~~+~~

39 ~~1.~~ a student is eligible for a Florida tax credit  
 40 scholarship under this section if the student meets one or more  
 41 of the following criteria:

42 1. The student qualifies for free or reduced-price school  
 43 lunches under the National School Lunch Act or is on the direct  
 44 certification list and:

45 a. Was counted as a full-time equivalent student during  
 46 the previous state fiscal year for purposes of state per-student  
 47 funding;

48 b. Received a scholarship from an eligible nonprofit  
 49 scholarship-funding organization or from the State of Florida  
 50 during the previous school year; or

51 c. Is eligible to enter kindergarten through fifth ~~or~~  
 52 ~~first~~ grade. ~~+~~ ~~or~~

53 ~~2.~~ The student is currently placed, or during the  
 54 previous state fiscal year was placed, in foster care as defined  
 55 in s. 39.01.

56 ~~3.2.~~ The ~~A~~ student continues ~~may continue~~ in the

57 scholarship program as long as the student's household income  
58 level does not exceed 230 percent of the federal poverty level.

59 4.3. The student, who is a first-time tax credit  
60 scholarship recipient, is a sibling of a student who is  
61 continuing in the scholarship program and who resides in the  
62 same household as the student ~~shall also be eligible as a first-~~  
63 ~~time tax credit scholarship recipient~~ if the sibling meets one  
64 or more of the criteria specified in subparagraphs ~~subparagraph~~  
65 1. and 2. and as long as the student's and sibling's household  
66 income level does not exceed 230 percent of the federal poverty  
67 level.

68 (c) Household income for purposes of a student who is  
69 currently in foster care as defined in s. 39.01 shall consist  
70 only of the income that may be considered in determining whether  
71 he or she qualifies for free or reduced-price school lunches  
72 under the National School Lunch Act.

73 (5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

74 (a)1. The tax credit cap amount is \$229 ~~\$140~~ million in  
75 the 2012-2013 ~~2010-2011~~ state fiscal year.

76 2. In the 2013-2014 ~~2011-2012~~ state fiscal year and each  
77 state fiscal year thereafter, the tax credit cap amount is the  
78 tax credit cap amount in the prior state fiscal year. However,  
79 in any state fiscal year when the annual tax credit amount for  
80 the prior state fiscal year is equal to or greater than 90  
81 percent of the tax credit cap amount applicable to that state  
82 fiscal year, the tax credit cap amount shall increase by 25  
83 percent. The department shall publish on its website information  
84 identifying the tax credit cap amount when it is increased

85 pursuant to this subparagraph.

86 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM  
87 PARTICIPATION.—

88 (e) The parent shall ensure that the student participating  
89 in the scholarship program takes the norm-referenced assessment  
90 offered by the private school. The parent may also choose to  
91 have the student participate in the statewide assessments  
92 pursuant to s. 1008.22. If the parent requests that the student  
93 participating in the scholarship program take statewide  
94 assessments pursuant to s. 1008.22 and the private school has  
95 not chosen to offer and administer the statewide assessments,  
96 the parent is responsible for transporting the student to the  
97 assessment site designated by the school district.

98 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An  
99 eligible private school may be sectarian or nonsectarian and  
100 must:

101 (c) Be academically accountable to the parent for meeting  
102 the educational needs of the student by:

103 1. At a minimum, annually providing to the parent a  
104 written explanation of the student's progress.

105 2. Annually administering or making provision for students  
106 participating in the scholarship program in grades 3 through 10  
107 to take one of the nationally norm-referenced tests identified  
108 by the Department of Education or the statewide assessments  
109 pursuant to s. 1008.22. Students with disabilities for whom  
110 standardized testing is not appropriate are exempt from this  
111 requirement. A participating private school must report a  
112 student's scores to the parent. A participating private school

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113 must annually report by August 15 the scores of all  
114 participating students ~~and~~ to the independent research  
115 organization ~~selected by the Department of Education as~~  
116 described in paragraph (9)(j).

117 3. Cooperating with the scholarship student whose parent  
118 chooses to have the student participate in the statewide  
119 assessments pursuant to s. 1008.22 or, if a private school  
120 chooses to offer the statewide assessments, administering the  
121 assessments at the school.

122 a. A participating private school may choose to offer and  
123 administer the statewide assessments to all students who attend  
124 the private school in grades 3 through 10.

125 b. A participating private school must submit a request in  
126 writing to the Department of Education by March 1 of each year  
127 in order to administer the statewide assessments in the  
128 subsequent school year.

129  
130 The inability of a private school to meet the requirements of  
131 this subsection shall constitute a basis for the ineligibility  
132 of the private school to participate in the scholarship program  
133 as determined by the Department of Education.

134 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of  
135 Education shall:

136 (j) Select an independent research organization, which may  
137 be a public or private entity or university, to which  
138 participating private schools must report the scores of  
139 participating students on the nationally norm-referenced tests  
140 or the statewide assessments administered by the private school

141 in grades 3 through 10.

142 1. The independent research organization must annually  
143 report to the Department of Education on the year-to-year  
144 learning gains of participating students:

145 a. On a statewide basis. The report shall also include, to  
146 the extent possible, a comparison of these learning gains to the  
147 statewide learning gains of public school students with  
148 socioeconomic backgrounds similar to those of students  
149 participating in the scholarship program. To minimize costs and  
150 reduce time required for the independent research organization's  
151 analysis and evaluation, the Department of Education shall  
152 conduct analyses of matched students from public school  
153 assessment data and calculate control group learning gains using  
154 an agreed-upon methodology outlined in the contract with the  
155 independent research organization; and

156 b. According to each participating private school in which  
157 there are at least 30 participating students who have scores for  
158 tests administered during or after the 2009-2010 school year for  
159 2 consecutive years at that private school.

160 2. The sharing and reporting of student learning gain data  
161 under this paragraph must be in accordance with requirements of  
162 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy  
163 Act, and shall be for the sole purpose of creating the annual  
164 report required by subparagraph 1. All parties must preserve the  
165 confidentiality of such information as required by law. The  
166 annual report must not disaggregate data to a level that will  
167 identify individual participating schools, except as required  
168 under sub-subparagraph 1.b., or disclose the academic level of

169 individual students.

170 3. The annual report required by subparagraph 1. shall be  
171 published by the Department of Education on its website.

172 (n)1. Conduct ~~random~~ site visits to private schools  
173 participating in the Florida Tax Credit Scholarship Program. The  
174 purpose of the site visits is solely to verify the information  
175 reported by the schools concerning the enrollment and attendance  
176 of students, the credentials of teachers, background screening  
177 of teachers, and teachers' fingerprinting results. The  
178 Department of Education may not make more than seven ~~random~~ site  
179 visits each year; however, the department may make additional  
180 site visits at any time to any school that has received a notice  
181 of noncompliance or a notice of proposed action within the  
182 previous 2 years ~~and may not make more than one random site~~  
183 ~~visit each year to the same private school.~~

184 2. Annually, by December 15, report to the Governor, the  
185 President of the Senate, and the Speaker of the House of  
186 Representatives the Department of Education's actions with  
187 respect to implementing accountability in the scholarship  
188 program under this section and s. 1002.421, any substantiated  
189 allegations or violations of law or rule by an eligible private  
190 school under this program concerning the enrollment and  
191 attendance of students, the credentials of teachers, background  
192 screening of teachers, and teachers' fingerprinting results and  
193 the corrective action taken by the Department of Education.

194 (p) Upon the request of a participating private school,  
195 provide at no cost to the school the statewide assessments  
196 required under s. 1008.22 and any related materials for

197 | administering the assessments.

198 | (10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

199 | (a) Upon the request of any eligible nonprofit  
 200 | scholarship-funding organization, a school district shall inform  
 201 | all households within the district receiving free or reduced-  
 202 | priced meals under the National School Lunch Act of their  
 203 | eligibility to apply for a tax credit scholarship. The form of  
 204 | such notice shall be provided by the eligible nonprofit  
 205 | scholarship-funding organization, and the district shall include  
 206 | the provided form, if requested by the organization, in any  
 207 | normal correspondence with eligible households. If an eligible  
 208 | nonprofit scholarship-funding organization requests a special  
 209 | communication to be issued to households within the district  
 210 | receiving free or reduced-price meals under the National School  
 211 | Lunch Act, the organization shall reimburse the district for the  
 212 | cost of postage. Such notice is limited to once a year.

213 | (b) Upon the request of the Department of Education, a  
 214 | school district shall coordinate with the department to provide  
 215 | to a participating private school the statewide assessments  
 216 | required under s. 1008.22 and any related materials for  
 217 | administering the assessments.

218 | (11) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

219 | (a)1. The Commissioner of Education shall deny, suspend,  
 220 | or revoke a private school's participation in the scholarship  
 221 | program if it is determined that the private school has failed  
 222 | to comply with the provisions of this section. However, in  
 223 | instances in which the noncompliance is correctable within a  
 224 | reasonable amount of time and in which the health, safety, or

225 welfare of the students is not threatened, the commissioner may  
 226 issue a notice of noncompliance that shall provide the private  
 227 school with a timeframe within which to provide evidence of  
 228 compliance prior to taking action to suspend or revoke the  
 229 private school's participation in the scholarship program.

230 2. The Commissioner of Education may deny, suspend, or  
 231 revoke a private school's participation in the scholarship  
 232 program if the commissioner determines that:

233 a. An owner or operator of a private school has exhibited  
 234 a previous pattern of failure to comply with this section or s.  
 235 1002.421; or

236 b. An owner or operator of the private school is operating  
 237 or has operated an educational institution in this state or  
 238 another state or jurisdiction in a manner contrary to the  
 239 health, safety, or welfare of the public.

240  
 241 In making the ~~this~~ determination under this subparagraph, the  
 242 commissioner may consider factors that include, but are not  
 243 limited to, acts or omissions by an owner or operator that led  
 244 to a previous denial or revocation of participation in an  
 245 education scholarship program; an owner's or operator's failure  
 246 to reimburse the Department of Education or a nonprofit  
 247 scholarship-funding organization for scholarship funds  
 248 improperly received or retained by a school; imposition of a  
 249 prior criminal sanction, ~~or~~ civil fine, administrative fine,  
 250 license revocation or suspension, or program eligibility  
 251 suspension, termination, or revocation ~~sanction~~ related to an  
 252 owner's or operator's management or operation of an educational

253 institution; or other types of criminal proceedings in which the  
 254 owner or operator was found guilty of, regardless of  
 255 adjudication, or entered a plea of nolo contendere or guilty to,  
 256 any offense involving fraud, deceit, dishonesty, or moral  
 257 turpitude.

258 (c) The commissioner may immediately suspend payment of  
 259 scholarship funds if it is determined that there is probable  
 260 cause to believe that there is:

261 1. An imminent threat to the health, safety, and welfare  
 262 of the students;

263 2. A previous pattern of failure to comply with this  
 264 section or s. 1002.421; or

265 3.2. Fraudulent activity on the part of the private  
 266 school. Notwithstanding s. 1002.22, in incidents of alleged  
 267 fraudulent activity pursuant to this section, the Department of  
 268 Education's Office of Inspector General is authorized to release  
 269 personally identifiable records or reports of students to the  
 270 following persons or organizations:

271 a. A court of competent jurisdiction in compliance with an  
 272 order of that court or the attorney of record in accordance with  
 273 a lawfully issued subpoena, consistent with the Family  
 274 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

275 b. A person or entity authorized by a court of competent  
 276 jurisdiction in compliance with an order of that court or the  
 277 attorney of record pursuant to a lawfully issued subpoena,  
 278 consistent with the Family Educational Rights and Privacy Act,  
 279 20 U.S.C. s. 1232g.

280 c. Any person, entity, or authority issuing a subpoena for

281 law enforcement purposes when the court or other issuing agency  
 282 has ordered that the existence or the contents of the subpoena  
 283 or the information furnished in response to the subpoena not be  
 284 disclosed, consistent with the Family Educational Rights and  
 285 Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

286  
 287 The commissioner's order suspending payment pursuant to this  
 288 paragraph may be appealed pursuant to the same procedures and  
 289 timelines as the notice of proposed action set forth in  
 290 paragraph (b).

291 Section 2. Paragraph (b) of subsection (6) of section  
 292 1002.20, Florida Statutes, is amended to read:

293 1002.20 K-12 student and parent rights.—Parents of public  
 294 school students must receive accurate and timely information  
 295 regarding their child's academic progress and must be informed  
 296 of ways they can help their child to succeed in school. K-12  
 297 students and their parents are afforded numerous statutory  
 298 rights including, but not limited to, the following:

299 (6) EDUCATIONAL CHOICE.—

300 (b) Private school choices.—Parents of public school  
 301 students may seek private school choice options under certain  
 302 programs.

303 1. Under the McKay Scholarships for Students with  
 304 Disabilities Program, the parent of a public school student with  
 305 a disability may request and receive a McKay Scholarship for the  
 306 student to attend a private school in accordance with ~~the~~  
 307 ~~provisions of~~ s. 1002.39.

308 2. Under the Florida Tax Credit Scholarship Program, the

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309 | parent of a student who qualifies for free or reduced-price  
310 | school lunch or who is currently placed, or during the previous  
311 | state fiscal year was placed, in foster care as defined in s.  
312 | 39.01 may seek a scholarship from an eligible nonprofit  
313 | scholarship-funding organization in accordance with ~~the~~  
314 | ~~provisions of s. 1002.395.~~

315 |       Section 3. This act shall take effect upon becoming a law.