

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1 The Hope Scholarship Program

**SPONSOR(S):** Donalds

**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Innovation Subcommittee	9 Y, 5 N	Dehmer	Healy
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

### SUMMARY ANALYSIS

School boards must adopt rules, policies, and procedures for addressing disciplinary issues and providing for a safe and orderly school environment. Each school board must adopt a code of student conduct that is based upon its rules governing student conduct and discipline. In addition to the code of student conduct, each school board must adopt policies prohibiting bullying and harassment, hazing, and dating violence and abuse and for emergency preparedness and response.

Bullying and violence in schools causes students to experience trauma, which lowers a student's attention, cognition, memory, grade point average and student reading ability. It also increases a student's anger, frustration, anxiety, suspensions, expulsions, absenteeism and dropout rate.

The bill establishes the Hope Scholarship Program, which provides the parent of a public school student who was subject to an incident of battery, harassment, hazing, bullying, kidnapping, physical attack, robbery, sexual offense, harassment, assault, battery, threat, intimidation or fighting at school with the opportunity to transfer the student to another public school or to receive a scholarship for the student to attend a private school. If the student enrolls in a public school outside the district, the student is eligible for a transportation scholarship limited to \$750.

The bill establishes the duties and responsibilities of the Department of Education, the Commissioner of Education, scholarship funding organizations, parents, students and the Auditor General.

The bill establishes guidelines for funding and payment of the Hope Scholarship Program.

The bill allows taxpayers to receive tax credits for eligible contributions to fund the Hope Scholarship Program

See fiscal impact on state government.

The bill takes effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### School Safety and Student Discipline

Florida law requires each district school board to provide for the proper accounting for all students; for the attendance and control of students at school; and for proper attention to health, safety, and other matters relating to the welfare of students. School boards must adopt rules, policies, and procedures for addressing disciplinary issues and providing for a safe and orderly school environment.<sup>1</sup> Each school board must adopt a code of student conduct that is based upon its rules governing student conduct and discipline.<sup>2</sup> The code of student conduct must include, but is not limited to:

- consistent policies and specific grounds for disciplinary action;
- penalties and procedures for acts requiring discipline, including in-school suspension, out-of-school suspension, expulsion, and corporal punishment;
- an explanation of the rights and responsibilities of students with regard to attendance, respect for persons and property, knowledge and observation of rules of conduct, the right to learn, free speech and student publications, assembly, privacy, and participation in school programs and activities;
- a dress code policy and penalties and procedures for addressing dress code violations;
- notice that student possession of alcohol, drugs, weapons, or firearms; violence against school district personnel; disruptive behavior on a school bus; sexual harassment; and threats or false reports made against school property, personnel, or transportation are grounds for disciplinary action and may result in the imposition of criminal penalties;
- policies for the assignment of violent or disruptive students to alternative educational programs;<sup>3</sup>
- student eligibility standards and related student disciplinary actions regarding student participation in extracurricular activities which must provide that:
  - a student not suspended or expelled is eligible to participate in extracurricular activities;
  - a student's eligibility to participate may not be affected by recruiting allegations until a final determination has been reached;
  - a student may not participate in a sport if the student participated in that same sport at another school during the same school year unless the student:
    - is a dependent child of active duty military personnel whose move resulted from military orders;
    - has been relocated due to a foster care placement in a different school zone;
    - has moved due to a court-ordered change in custody due to separation or divorce or the serious illness or death of a custodial parent; or
    - is authorized for good cause in district or charter school policy.

At the beginning of each school year, the code of student conduct must be:

- distributed to all teachers, school personnel, students, and parents;
- made available in the school district's student handbook or similar publication; and
- discussed in student classes, school advisory council meetings, and parent and teacher association or organization meetings at the beginning of the school year.<sup>4</sup>

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

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

<sup>3</sup> *Id.*

The law provides an extensive description of the roles, duties, and authority of each personnel classification charged with maintaining a safe and orderly school environment and enforcing disciplinary violations.<sup>5</sup> Each district school superintendent must, among other things, recommend to the district school board plans for promoting the welfare of students, including attendance, discipline, health and safety, and other matters. Each superintendent must fully support the disciplinary authority of school principals, classroom teachers, and school bus drivers.<sup>6</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 and for emergency preparedness and response.<sup>7</sup> Current law prohibits bullying or harassment:

- of any public K-12 student or employee during a public K-12 education program or activity;
- during a school-related or school-sponsored activity;
- on a public K-12 school bus;
- using a computer system or network that is within the scope of the K-12 educational institution;<sup>8</sup> or
- using technology or electronic devices that are not owned or otherwise controlled by a school if the bullying substantially interferes with the victim's ability to participate in or benefit from the activities offered by a school.<sup>9</sup>

Each school district's bullying and harassment policy must:

- prohibit, define and describe the behaviors that constitute bullying and harassment;
- establish procedures for reporting and investigating acts of bullying and harassment;
- establish procedures for making referrals to law enforcement;
- provide instruction to students, parents, teachers and others on recognizing behavior that leads to bullying and harassment and taking preventative action;
- establish procedures for including incidents of bullying or harassment in the school's required report of data concerning school safety and discipline;<sup>10</sup> and
- establish procedures for referring victims and perpetrators to counseling.<sup>11</sup>

Each school principal must ensure that standardized forms prescribed by the rule of the State Board of Education are used to report data concerning school safety and discipline to the department. The school principal must develop a plan to verify the accuracy of reported incidents.<sup>12</sup>

DOE uses The School Environmental Safety Incident Reporting (SESIR) System to compile data on incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events. In the 2015-16 school year, over 47,000

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<sup>4</sup> *Id.*

<sup>5</sup> See ss. 1003.32 (classroom teachers and school principals), 1006.08 (superintendents), 1006.09 (school principals), and 1006.10, F.S. (school bus drivers).

<sup>6</sup> Section 1006.08(1), F.S.

<sup>7</sup> See ss. 1006.07(4) and (6), 1006.135, 1006.14, 1006.147, and 1006.148, F.S.

<sup>8</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>9</sup> Section 1006.147(2), F.S.

<sup>10</sup> Section 1006.147(4)(f), (h), (k), and (l), F.S. The School Environmental Safety Incident Reporting (SESIR) System is used by the DOE to compile data on incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events. Florida Department of Education, *Statewide Report on School Safety and Discipline Data*, <http://www.fldoe.org/safeschools/sesir.asp>. (last visited October 27, 2017).

<sup>11</sup> Section 1006.147(4)(j), F.S.

<sup>12</sup> Section 1006.09(6), F.S.

Florida public school students reported incidents that include battery, bullying, harassment, hazing, physical attacks, and sexual assault, battery and harassment:<sup>13</sup>

BATTERY	2,516
BULLYING	2,867
FIGHTING	21,957
HARASSMENT	1,832
HAZING	6
PHYSICAL ATTACK	10,342
SEXUAL ASSAULT	25
SEXUAL BATTERY	28
SEXUAL HARASSMENT	1,805
SEX OFFENSES	1,581
THREAT/INTIMIDATION	4,314

However, there is evidence to suggest that the number of reported incidents through SESIR is much lower than actual incidents. The Department of Health, in collaboration with the DOE, administers the Youth Risk Behavior Survey (YRBS) that is a statewide, school-based confidential survey of Florida's public high school students. The purpose of the YRBS is to monitor priority health-risk behaviors that contribute substantially to the leading causes of death, disability, and social problems among youth, which contribute to patterns in adulthood. In 2015, 123,500 high school students reported being bullied on school property during the past 12 months.<sup>14</sup> In addition, 8.1 percent of high school students did not go to school because they felt unsafe at school or on their way to or from school.<sup>15</sup>

#### Florida Tax Credit Scholarship Program

The Florida Tax Credit Scholarship Program (FTC Program)<sup>16</sup> was established to encourage taxpayers to make private, voluntary contributions to non-profit scholarship-funding organizations (SFOs), expand educational opportunities for families that have limited financial resources, and enable Florida's children to achieve a greater level of excellence in their education.<sup>17</sup> The FTC Program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine, and spirits.<sup>18</sup> The tax credit is equal to 100 percent of the eligible contributions made.<sup>19</sup>

SFOs use these contributions to award scholarships to eligible low-income students for private school tuition and fees or transportation expenses to a Florida public school located outside of the school district in which the student resides.<sup>20</sup>

<sup>13</sup> Florida Department of Education, *Statewide Report on School Safety and Discipline Data*, <http://www.fldoe.org/safeschools/sesir.asp> (last visited October 27, 2017).

<sup>14</sup> Presentation by Department of Health to the PreK-12 Innovation Subcommittee, Oct. 25, 2017, *available at* <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2908&Session=2018&DocumentType=Meeting%20Packets&FileName=pki%2010-25-17.pdf>

<sup>15</sup> Department of Health, Youth Risk Behavior Survey, *available at*, <http://www.floridahealth.gov/statistics-and-data/survey-data/florida-youth-survey/youth-risk-behavior-survey/documents/2015-yrbs-summary-tables.pdf>

<sup>16</sup> Section 1002.395, F.S.

<sup>17</sup> Section 1002.395(1)(b), F.S.

<sup>18</sup> Section 1002.395(1) and (5), F.S.

<sup>19</sup> Sections 220.1875 and 1002.395(5), F.S.

<sup>20</sup> Section 1002.3953 (6)(d), F.S. An eligible contribution is a monetary contribution from a taxpayer to an eligible nonprofit SFO. The taxpayer may not designate a specific child as the beneficiary of the contribution. Section 1002.395(2)(e), F.S.

To participate, a charitable organization must submit an initial application for approval or renewal to the Office of Independent Education and Parental Choice by September 1<sup>st</sup> of each year before the school year for which the SFO intends to offer scholarships. Among other things, the application for initial approval must include:

- a copy of the organization's incorporation documents and registration with the Division of Corporations of the Department of State and IRS determination letter as a not-for-profit corporation;
- a description of the organization's financial plan and the geographic region it will serve.
- a description of the criteria and methodology it will use to evaluate scholarship eligibility and application process including deadlines and fees; and
- a copy of a surety bond or letter of credit in an amount equal to 25 percent of the scholarship funds anticipated for each school year or \$100,000, whichever is greater.<sup>21</sup>

An application for renewal must include all items listed above for initial approval as well as:

- A surety bond or letter of credit equal to the amount of undisbursed donations held by the organization, which must be at least \$100,000, not to exceed \$25 million.
- The organization's completed IRS Form 990.
- A copy of its audit reports.<sup>22</sup>
- An annual report documenting the number of applications received, applications approved, funds received, scholarships funded, and expenditures of administrative funds.<sup>23</sup>

Within 30 days of receipt of the finalized application the Commissioner of Education must recommend approval or disapproval of the application to the State Board of Education. The state board must then consider the application and recommendation at the next scheduled meeting.<sup>24</sup>

State universities and independent colleges and universities are exempt from the SFO application process, including its surety bond requirements. Instead, they must register with DOE.<sup>25</sup>

SFOs must:

- Comply with federal law<sup>26</sup> prohibiting discrimination based on race, color, or national origin by any program receiving federal financial assistance.
- Require owners and operators to undergo Level 2 background screening<sup>27</sup> upon employment or engagement of services and every five years thereafter. Owners and operators must also be screened against an additional list of financial crimes. Owners or operators that fail the Level 2 background screening are ineligible to provide scholarships.
- Not own or operate a private school that is participating in the FTC Program.
- Provide scholarships from eligible contributions to eligible students on a first-come, first-served basis unless the student qualifies for priority.
- Allow a student in foster or out-of-home care to apply for a scholarship at any time.
- Not restrict or reserve scholarships for use at a particular private school or provide a scholarship to the child of an owner or operator.
- Allow an eligible student to attend any eligible private school and allow a parent to transfer a scholarship during the academic year to another eligible private school.

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<sup>21</sup> Section 1002.395(16)(a), F.S.

<sup>22</sup> Section 1002.395(6)(m), F.S.

<sup>23</sup> Section 1002.395(16)(b), F.S.

<sup>24</sup> Section 1002.395(16)(d), F.S.

<sup>25</sup> Section 1002.395(16)(i), F.S. .

<sup>26</sup> See 42 U.S.C. s. 2000d.

<sup>27</sup> Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 53 offenses. See s. 435.04, F.S.

- Maintain separate accounts for scholarship and operating funds.
- Expend for annual or partial-year scholarships an amount equal to or greater than 75 percent of the net eligible contributions remaining after administrative expenses during the state fiscal year in which such contributions are collected. Remaining net eligible contributions in excess of 25 percent shall be transferred to other eligible nonprofit scholarship-funding organizations to provide scholarships for eligible students.
- Allow for the transfer of funds to another eligible SFO, limited to the greater of \$500,000 or 20 percent of the total contributions received by the SFO making the transfer, if additional funds are required to meet scholarship demands. Such a transfer must be approved by DOE beforehand.
- Maintain a surety bond or letter of credit equal to the amount of undispersed donations, which may be adjusted quarterly to equal the actual amount of undisbursed funds. This requirement is waived if the cost of acquiring a surety bond or letter of credit exceeds the average 10-year cost of acquiring a surety bond or letter of credit by 200 percent. This requirement is also waived for a state university. The surety bond or letter of credit must specify that any claim against the bond or letter of credit may be made only by an eligible nonprofit SFO.
- Provide the Auditor General and DOE with an annual financial audit of its accounts and records conducted by an independent certified public accountant.
- Submit to an annual operational audit of its accounts and records by the Auditor General, including any contracts for services with related entities, to determine compliance with program requirements.
- Prepare and submit quarterly reports to DOE.<sup>28</sup>

A SFO may use up to three percent of eligible contributions received during the state fiscal year for administrative expenses if the SFO has operated as an eligible nonprofit scholarship-funding organization for at least the preceding three years and did not have any findings of material weakness or material noncompliance in its most recent audit. Administrative funds may not be used for lobbying or political activity.<sup>29</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. 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:

- 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.

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>30</sup>

Florida collects a 6 percent state sales tax rate on the purchase of all vehicles.<sup>31</sup>

<sup>28</sup> Section 1002.395(6)(a)-(c), (f), (h)-(q), F.S.; s. 11.45(2)(k), F.S. (operational audit).

<sup>29</sup> Section 1002.395(6)(j)1., F.S.

<sup>30</sup> 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>31</sup> Florida: Sales Tax Handbook *at* <https://www.salestaxhandbook.com/florida/sales-tax-vehicles>

## Effect of Proposed Changes

The bill establishes the Hope Scholarship Program (HSP), which provides the parent of a public school student subjected to an incident at school the opportunity to transfer the student to a public school within the school district, receive a scholarship to transport the student to a public school in another school district, or receive a scholarship for the student to attend a private school. For purposes of the program an incident includes battery, harassment, hazing, bullying, kidnapping, physical attack, robbery, sexual offense, harassment, assault, battery, threat, intimidation or fighting at school. School means any educational program or activity conducted by a public K-12 educational institution, any school-related or school-sponsored program or activity, and riding on a school bus, as defined in s. 1006.25(1), including waiting at a school bus stop.

Beginning with the 2018-2019 school year, contingent on funds, scholarships are awarded on a first-come, first-served basis.

A student is ineligible for the HSP if the 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, a developmental research school or a charter school;
- enrolled in a Department of Juvenile Justice commitment program;
- enrolled 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 two courses per school year; or
- receiving any other state sponsored K-12 educational scholarship.

Once an incident is reported to the school principal, the school principal must provide a copy of the incident report to the parent and investigate the incident to determine if the incident must be reported to the DOE. Upon conclusion of the investigation or within 15 days after receipt of the report of the incident, whichever occurs first, the school district must notify the parent of the HSP and offer that parent an opportunity to enroll their student in another public school or to receive a Hope Scholarship to attend an eligible private school. If the student enrolls in a public school outside the district, the student is eligible for a transportation scholarship limited to \$750.

The Department of Education must contract with an independent entity to conduct an annual evaluation of the program. The entity must review the school climate and code of student conduct at each public school at which 10 or more reported incidents occurred to determine areas for improvement. The review must include an assessment of the investigation of incidents; analysis of school incident and discipline data; the effectiveness of communication with students, parents, and personnel; and challenges and obstacles to implementing recommendations. The entity must also identify best practices from the schools to which students transferred.

The entity will also review the performance of participating students enrolled in private schools at which at least 51 percent of total enrolled students are program participants. Parents of participating students will be surveyed to determine academic, safety, and school climate satisfaction and to identify any challenges or obstacles in addressing the incident or use of the scholarship.

The bill requires school districts to notify scholarship students in private schools who wish to participate in the statewide student assessment program or the Florida Alternate Assessment of the locations and times to take all statewide assessments.

Private schools that participate in the HSP must meet the same requirements for participation established by Florida Tax Credit Scholarship Program.

Likewise, the commissioner has the same duties and responsibilities over private schools established in the Florida Tax Credit Program.

A participating SFO will be governed by the same statutory requirements as outlined in the Florida Tax Credit Scholarship Program.

The bill specifically requires the SFO to:

- receive applications and determine student eligibility;
- notify parents of their receipt of a scholarship on a first-come, first-served basis, based upon the funds provided; and
- notify the DOE of any violations regarding the program.

The bill requires the Auditor General (AG) to conduct an annual operational audit of accounts of each participating SFO, which must include a verification of students served and transmission of that information to the DOE. The AG also must notify the DOE of any SFO that fails to comply with a request for information.

The scholarship amount is calculated as a percentage of the unweighted FTE as follows:

- Eighty-eight percent for students in grades K-5.
- Ninety-two percent for students in grades 6-8.
- Ninety-six percent for students enrolled in grades 9-12.

The HSP is funded by taxpayers who make an eligible contribution to a scholarship funding organization. The eligible contribution provides the taxpayer with a credit against any tax due as a result of the purchase or acquisition of a motor vehicle. The credit may not exceed the amount of taxes owed. Each eligible contribution is limited to a single payment of \$20 at the time of purchase of a motor vehicle or at the time of registration of a motor vehicle that was not purchased from a dealer. The purchaser elects whether or not to contribute at the time of the purchase or registration of the vehicle. Contributions must be made to a dealer at the time of purchase or to an agent of the Department of Revenue (DOR) at the time of registration, if the vehicle was not purchased from a dealer.

The bill provides that a tax collector or any person or firm authorized to sell or issue a motor vehicle license who is designated as an agent of the DOR or who is a dealer must:

- provide the purchaser a contribution election form, as prescribed by the DOR, at the time of purchase or at the time of registration if the vehicle is not purchased from a dealer;
- collect eligible contributions;
- remit to the SFO on or before the 20th day of each month the total amount of contributions made to the SFO and collected during the preceding calendar month; and
- report on each return filed with the DOR the total amount of credits allowed under during the preceding calendar month.

The SFO must report to the DOR, on or before the 20th day of each month, the total amount of contributions received in the preceding calendar month. The report must include the federal employer identification number of each tax collector, authorized agent of the DOR or dealer who remitted contributions to the SFO during that reporting period.

A person who, with intent to unlawfully deprive or defraud the program of money, fails to remit HSP contributions is guilty of theft of charitable funds and is punishable as follows:

- If the amount stolen is less than \$300, the offense is a second-degree misdemeanor. Upon a second conviction, the offender is guilty of a first-degree misdemeanor. Upon a third or subsequent conviction, the offender is guilty of a third degree felony.
- If the amount stolen is \$300 or more, but less than \$20,000, the offense is a third-degree felony.
- If the amount stolen is \$20,000 or more, but less than \$100,000, then offense is a second-degree felony.
- If the amount stolen is \$100,000 or more, the offense is a first-degree felony.

The sentencing judge must order an offender to make restitution to the SFO in the amount stolen.

## B. SECTION DIRECTORY:

**Section 1.** Creates s. 1002.40, F.S., establishing the Hope Scholarship Program.

**Section 2.** Creates s. 212.1832, F.S., establishing the tax credits for contributions to the Hope Scholarship Program.

**Section 3.** Allows the Department of Revenue to adopt emergency rules to administer this act.

**Section 4.** Provides that this act shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

Section 1 of the bill delineates the Department of Education's obligations for the administration of the Hope Scholarship Program to include contracting with an independent entity to provide an annual evaluation of the program. At this time, the fiscal impact to the department is indeterminate.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference has not yet evaluated the bill for revenue impacts. However, the tax credits in the bill will have a negative annual impact on General Revenue collections in an amount that is unknown at this time.

Also, see the FISCAL COMMENTS section.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Staff estimates that in Fiscal Year 2016-17 there were between 3.4 million and 4 million purchases of new and used cars and light trucks in Florida. If half of those purchases resulted in contributions to the Hope Scholarship Program, the impact on General Revenue would have been between -\$34 million and -\$40 million in that year.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.