

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 Committee on Education

BILL: CS/SB 48

INTRODUCER: Senator Diaz and others

SUBJECT: Educational Scholarship Programs

DATE: February 3, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	Fav/CS
2.			AED	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 48 consolidates student scholarship programs in order to reduce confusion in the eligibility for and use of awards, and provide parents with more flexibility to meet the educational needs of their child. The bill merges the John M. McKay Scholarship Program for Students with Disabilities (McKay program) with the Gardiner Scholarship Program (Gardiner program) and creates a new scholarship program, the McKay-Gardiner Scholarship Program (McKay-Gardiner program). The bill incorporates the Florida Tax Credit Scholarship Program (FTC program) and Hope Scholarship Program (HSP) into the Family Empowerment Scholarship Program (FES program). In addition, the bill:

- Establishes both scholarship programs as education savings accounts authorizing parents to choose from both public and private options to customize the educational experience to best meet the needs of their child.
- Provides that eligible families may receive an award whether their students are currently attending a public or private school, or a home education program.
- Specifies that prior year scholarship recipients are eligible for a scholarship under the appropriate program.
- Increases the scholarship award to 97.5 percent of the per-student-funding calculation and authorizes up to 2.5 percent as allowable for administrative costs incurred by nonprofit scholarship funding organizations (SFOs).
- Combines specified eligibility requirements from the McKay and Gardiner scholarship programs to establish the McKay-Gardiner program student eligibility requirements and award priorities.

- Modifies FES program student eligibility requirements and award priorities to incorporate FTC program and HSP provisions.
- Establishes the number of McKay-Gardiner program awards at 50,000 full-time equivalent (FTE) students and an annual scholarship growth rate of seven percent.
- Maintains the current FES program annual growth rate of one percent of the public school population, and includes prior year FTC program and HSP recipients outside of the growth cap.
- Establishes common accountability metrics across scholarship programs, maintaining accountability metrics established through the McKay, Gardiner, FTC, and FES programs, and the HSP.
- Requires the Auditor General to conduct an operational audit on nonprofit SFOs at least once every three years.
- Specifies that a private virtual school with at least one administrative office located in Florida meets the physical location requirement for private schools participating in the state school choice scholarship program.

The impact on state funding is indeterminate. The state funding will depend on an official estimate of student FTE participating in the scholarship programs for the 2021-2022 school year, the amount of revenue transferred into the Florida Education Finance Program (FEFP), and the amount of state funds allocated to the FEFP during the appropriation process. See Section V.

The bill takes effect on July 1, 2021.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

Education Choice

Across the United States, an evolving school choice landscape reflects changes in the accessibility and desirability of an array of education options, including traditional and nontraditional public schools, private schools, and homeschooling.¹ Many states are expanding school choice options. All 50 states and the District of Columbia provide parents the ability to send their child to a school outside of their zoned school.² Twenty-seven states and the District of Columbia have enacted policies designed to broaden access to a private education.³ The three primary policies states have adopted that expand private education choices include:⁴

¹ National Center for Education Statistics, *School Choice in the United States 2019* (2019), available at <https://nces.ed.gov/pubs2019/2019106.pdf>.

² National Conference of State Legislatures, *Interactive Guide to School Choice Laws* <https://www.ncsl.org/research/education/interactive-guide-to-school-choice.aspx> (last visited Jan. 28, 2021).

³ National Conference of State Legislatures, *Private School Choice* <https://www.ncsl.org/research/education/private-school-choice635174504.aspx> (last visited Jan. 28, 2021).

⁴ School vouchers are state-funded scholarships that pay for students to attend private school rather than public school. Scholarship tax credits allow individuals and corporations to allocate a portion of their owed state taxes to private nonprofit scholarship organizations that issue public and private school scholarships to K-12 students. Education Savings Accounts are

- School vouchers;
- Scholarship tax credits; and
- Education savings accounts.

Education Choice in Florida

Approximately 48 percent of Florida's Pre-Kindergarten through grade 12 students participate in education choice programs in Florida.⁵ Students in all programs must meet school attendance requirements through:⁶

- Enrolling in a public school;
- Enrolling in a private school;⁷
- Participating in a home education program directed by his or her parent;⁸ or
- Enrolling in a private tutoring program.⁹

To help students take advantage of educational choice options, Florida offers multiple student scholarship programs for students who meet the eligibility requirements. Of these:

- Two scholarship programs serve students with disabilities:
 - The John M. McKay Scholarship for Students with Disabilities Program (McKay program),¹⁰ a school voucher program; and
 - The Gardiner Scholarship Program (Gardiner program),¹¹ an education savings account program.
- Two scholarship programs serve students from low-income families:
 - The Florida Tax Credit Scholarship Program (FTC program),¹² a tax-credit scholarship program; and
 - The Family Empowerment Scholarship Program (FES program),¹³ a school voucher program.

Florida also offers a second tax-credit scholarship, the Hope Scholarship Program (HSP), serving students who have reported an incident of battery, harassment, hazing, bullying or other encounter as defined in law.¹⁴

state-funded grants deposited into special savings accounts from which parents can withdraw funds for certain educational expenses. *Id.*

⁵ Step Up For Students, *Helping public education fulfill the promise of equal opportunity*, Presentation to the Committee on Education, The Florida Senate (Jan. 12, 2021), available at https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf.

⁶ Section 1003.01(13), F.S.

⁷ A private school is defined as an individual, association, co-partnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade and is below college level. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. A home education program is not considered a private school. Section 1002.01(2), F.S.

⁸ A home education program is defined as the sequentially progressive instruction of a student directed by his or her parent in order to satisfy attendance requirements. Section 1002.01(1), F.S.

⁹ Section 1002.43, F.S.

¹⁰ Section 1002.39, F.S., and Rule 6A-6.0970, F.A.C.

¹¹ Section 1002.385, F.S., and Rule 6A-6.0961, F.A.C.

¹² Section 1002.395, F.S., and Rule 6A-6.0960, F.A.C.

¹³ Section 1002.395(8)(a), F.S.

¹⁴ Section 1002.40, F.S., and Rule 6A-6.0951, F.A.C.

Selected Scholarship Research

In a 2019 study, the Urban Institute found that students who participated in the FTC program for four or more years were up to 46 percent more likely to attend college than their public-school peers.¹⁵

A 2020 study by the National Bureau of Economic Research found that as the FTC program expanded, public schools most impacted by the competition had higher test scores, fewer suspensions, and reduced absenteeism.¹⁶

The Office of Program Policy Analysis and Government Accountability reported in 2010 that the state saved \$36.2 million, which was \$1.44 for every \$1 lost in tax credits in fiscal year 2008-2009.¹⁷

Additional studies have found that students participating in the FTC program are typically from the lowest performing schools, yet students achieve the same test score gains in reading and math as students of all income levels nationally.¹⁸

Scholarships for Students with Disabilities

Present Situation

The John M. McKay Scholarship for Students with Disabilities Program

The McKay program was established in 1999 and provides public school students with a defined disability¹⁹ and an Individual Education Plan (IEP)²⁰ or a 504 accommodation plan issued under

¹⁵ Urban Institute, *The Effects of Statewide Private School Choice on College Enrollment and Graduation* (2017), available at <https://www.urban.org/research/publication/effects-statewide-private-school-choice-college-enrollment-and-graduation>. Step Up For Students, *Helping public education fulfill the promise of equal opportunity*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf.

¹⁶ NBER Working Papers Series, *Effects of Scaling Up Private School Choice Programs on Public School Students* (2020), available at https://www.nber.org/system/files/working_papers/w26758/w26758.pdf. *Supra* note 15 Step Up For Students.

¹⁷ While the Florida Tax Credit Scholarship Program reduces the amount of tax revenues received by the state, it produces a net fiscal benefit. This occurs because education spending for students receiving scholarships is reduced by more than the amount of revenue lost. Office of Program Policy Analysis and Government Accountability, *Florida Tax Credit Scholarship Program Fiscal Year 2008-2009 Fiscal Impact* (2010), available at <https://32n7ya2og9cc21471x4e0my6-wpengine.netdna-ssl.com/wp-content/uploads/2015/09/2010-oppaga-research-memo.pdf>. *Supra* note 15 Step Up For Students.

¹⁸ Cassandra M.D. Hart, University of California Davis, School of Education, *Selection in Means-tested School Voucher Program* (2011), available at <https://32n7ya2og9cc21471x4e0my6-wpengine.netdna-ssl.com/wp-content/uploads/2015/09/selection-in-means-tested-school-voucher-programs-2012.pdf>.

¹⁹ Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; another health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder. Section 1002.39(1), F.S.

²⁰ All students who are between the ages of three to 21 and have a disability have the right to a free, appropriate public education. Section 1003.5716, F.S. The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a student with a disability. Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 9.

s. 504 of the Rehabilitation Act of 1973²¹ the option to attend a different public school or private school.²²

A student is not eligible for an award under the McKay program if the student is:²³

- Enrolled in a Department of Juvenile Justice (DJJ) program or the Florida School for the Deaf and Blind;
- Participating in a home education or private tutoring program, or a virtual school that receives state funding unless the participation is limited to no more than two courses per year;
- Not having regular or direct contact with teachers;
- Issued a temporary 504 accommodation plan valid for 6 months or less; or
- Receiving any other educational scholarship pursuant to law.

The term of the scholarship continues until the student returns to public school, graduates from high school, or reaches 22 years of age. Students who are between the ages of 17 and 22 may participate in a transition-to-work program offered through their private school. The transition-to-work program includes academic instruction, work skills training, and a volunteer or paid work experience.²⁴

School districts are required to comply with multiple obligations, including:²⁵

- Notifying parents of eligible students of the scholarship.
- Maintaining scholarship information on the district website.
- Allowing the parent to enroll their child in a public school other than the one assigned and provide transportation.
- Providing IEP evaluation and student assessment services.

Private schools participating in the scholarship program must comply with laws governing private schools in general, and specific requirements in each scholarship program.²⁶

The McKay program is funded through the Florida Education Finance Program (FEFP), and requires the student to be enrolled and reported for funding by a Florida school district the year prior to applying for a scholarship. During the 2019-2020 school year, \$221.5 million in scholarship payments were distributed to 1,547 private schools serving 30,185 students. The

²¹ U.S. Department of Labor, Section 504, Rehabilitation Act of 1973 *available at* <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973> (last visited Jan. 28, 2021). The Section 504 plan identifies the services and accommodations necessary for a student to access instruction and may include accommodations in the classroom and for local and state assessments. Florida Department of Education, *Accommodations, Assisting Students with Disabilities* (2018), *available at* <http://www.fldoe.org/core/fileparse.php/7567/urlt/0070069-accomm-educator.pdf>. at 3.

²² Section 1002.39(1), F.S.

²³ Section 1002.39(3), F.S.

²⁴ Section 1002.39(9), F.S.

²⁵ Section 1002.39(5), F.S.

²⁶ Section 1002.421(1), F.S.

average scholarship for a student with an IEP was \$8,473. The average scholarship for a student with a 504 accommodation plan was \$4,676.²⁷

The Gardiner Scholarship Program

The Gardiner program was established in 2014 to provide eligible students with a disability²⁸ a scholarship that can be used to meet the individual educational needs of the student. In order to be eligible for receipt of a scholarship, a student with a defined disability must be a Florida resident, at least three years of age before September 1 or eligible to enroll in kindergarten through grade 12, and:

- Have an IEP written in accordance the rules of the State Board of Education (SBE)²⁹ or the rules of another state; or
- Have the diagnosis of a specified disability from a physician or psychologist who holds an active license.³⁰

Students are not eligible while enrolled in a public school or DJJ program, or receiving any other educational scholarship specified in law.³¹

The scholarship is directly administered by state-approved nonprofit scholarship funding organizations (SFOs).³² Moneys through scholarships can be used to meet the education needs of students including, but not limited to:³³

- Instructional materials;
- Curriculum;
- Specialized services, programs, and courses;³⁴
- Tuition and fees,³⁵

²⁷ Florida Department of Education, Office of Independent Education and Parental Choice, *McKay Scholarship Program* (2020), available at <https://www.fldoe.org/core/fileparse.php/5606/urlt/McKay-Aug.pdf>.

²⁸ Disability means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy; Down syndrome; an intellectual disability; Phelan-McDermid syndrome; Prader-Willi syndrome; spina bifida; being a high-risk child; muscular dystrophy; Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; deaf; visually impaired; traumatic brain injured; hospital or homebound; or identification as dual sensory impaired. The term “hospital or homebound” includes a student who has a medically diagnosed physical or psychiatric condition or illness and who is confined to the home or hospital for more than 6 months. Section 1002.385(2), F.S.

²⁹ Rule 6A-6.0961, F.A.C. See also Rules 6A-6.03028, 6A-6.030281, 6A-6.03029, and 6A-6.03311, F.A.C.

³⁰ Florida Department of Education, Office of Independent Education and Parental Choice, *Gardiner Scholarship Program* (2020), available at <http://www.fldoe.org/core/fileparse.php/5606/urlt/Gardiner.pdf>. See s. 1002.385(3), F.S.

³¹ Section 1002.385(4), F.S.

³² See s. 1002.385(12), F.S.

³³ Section 1002.385(5), F.S.

³⁴ *Id.* Specialized services may include applied behavior analysis, services provided by speech-language pathologists, occupational therapy services, services provided by physical therapists, and services provided by listening and spoken language specialists. Specialized programs and courses include summer and after-school education programs and music and art therapy.

³⁵ Tuition or fees may include full-time or part-time enrollment in a home education program, an eligible private school, an eligible postsecondary educational institution or a program offered by the postsecondary institution, a private tutoring program, a virtual program, part-time tutoring, assessments, specialized programs including Voluntary Prekindergarten Education programs. Section 1002.385(5), F.S.

- Transition services provided by job coaches;³⁶ and
- Contributions to a college prepaid account.

The term of the scholarship continues until one of the following occurs:³⁷

- The parent does not renew scholarship eligibility;
- The nonprofit SFO determines that the student is ineligible;
- The Commissioner of Education (commissioner) suspends or revokes scholarship participation or use of funds;
- The student's parent fails to comply with parent and student responsibilities for scholarship participation;³⁸
- The student enrolls in a public school; or
- The student graduates from high school or attains 22 years of age.

Any remaining funds revert to the state after denial or revocation of scholarship eligibility by the commissioner for fraud or abuse, or after three consecutive fiscal years in which an account has been inactive or three consecutive years after high school completion or graduation during which the student is not enrolled in an eligible postsecondary educational institution or a program offered by the institution.³⁹

Parents must meet a number of requirements for Gardiner program participation, which include annually submitting a notarized, sworn compliance statement affirming:⁴⁰

- The student is enrolled in a program meeting attendance requirements.
- Funds are used as authorized.
- The parent is responsible for the child's education by meeting specified requirements.
- The student remains in good standing with the provider or school.

Funding is based on the student's matrix level of services. The funding for a student without a matrix of services is based on the matrix that assigns the student to support Level III of services. If the parent chooses to request and receive a matrix of services⁴¹ from the school district, when the school district completes the matrix, the amount of the payment is adjusted. The amount of the scholarship award is 90 percent of the calculated amount.⁴² The full amount of the award is deposited in the student's account once the scholarship has been verified and approved. The nonprofit SFO may use up to three percent of the total amount of all Gardiner program scholarships awarded for administrative expenses. The funds used for administrative expenses

³⁶ "Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promote movement from school to post-school activities, including postsecondary education; vocational training; integrated employment; supported employment; continuing and adult education; adult services; independent living, or community participation. Section 413.20(26), F.S.

³⁷ Section 1002.385(6), F.S.

³⁸ Section 1002.385(11), F.S.

³⁹ *Id.*

⁴⁰ Section 1002.385(11), F.S.

⁴¹ The Commissioner of Education must specify a matrix of services and intensity levels to be used by districts in the determination of the two weighted cost factors for exceptional students with the highest levels of need. Section 1011.62(1)(c). *See also* Rule 6A-6.0961, F.A.C.

⁴² Section 1002.385(13), F.S.

must originate from eligible tax credit contributions authorized under the FTC program and HSP.⁴³

The Gardiner program has experienced significant growth over the seven years since it was established. For the 2014-2015 school year, scholarships totaling \$15 million were awarded to 1,559 students.⁴⁴ For the 2020-2021 school year, \$184.1 million has been awarded to 17,508 students through scholarships.⁴⁵ The average scholarship amount is approximately \$10,464 per student.⁴⁶

Effect of Proposed Changes

CS/SB 48 repeals s. 1002.385, F.S., relating to the Gardiner Scholarship Program and s. 1002.39, F.S., relating to the John M. McKay Scholarships for Students with Disabilities Program, and creates a new education savings account scholarship program: s. 1002.381, F.S., relating to the McKay-Gardiner Scholarship Program (McKay-Gardiner).

McKay-Gardiner Scholarship Program

The bill merges the McKay and the Gardiner scholarship programs into a single scholarship program, the McKay-Gardiner Scholarship Program, with a common set of eligibility requirements and scholarship award-funding structure. In order to be eligible for receipt of a scholarship, a student must be a resident of this state, three or four years of age or eligible to enroll in kindergarten through grade 12, have a disability as specified in law and have:

- An IEP⁴⁷ written in accordance to the rules of the SBE⁴⁸ or the rules of another state;
- A diagnosis of a defined disability from a physician or psychologist who holds an active license; or
- A 504 accommodation plan issued under s. 504 of the Rehabilitation Act of 1973.⁴⁹

Similar to the Gardiner program,⁵⁰ the bill specifies that a student is not eligible for an award under the McKay-Gardiner program if he or she is enrolled in a public school or DJJ program, issued a temporary 504 accommodation plan, does not have regular or direct contact with teachers unless enrolled in a transition-to-work program, or is receiving any other educational scholarship pursuant to law.

The bill specifies that eligible students are awarded scholarships using the following priority order:

- A student who received a McKay or Gardiner program scholarship in the prior year;
- A student retained on the previous school year's wait list; and
- Other eligible students.

⁴³ Section 1002.395(6)(j), F.S.

⁴⁴ Florida Department of Education, Office of Independent Education and Parental Choice, *Gardiner Scholarship Program* (2020), available at <https://www.fldoe.org/core/fileparse.php/5606/urlt/Gardiner.pdf>.

⁴⁵ *Id.* Data for 2020-2021 is current as of Nov. 16, 2020.

⁴⁶ *Id.*

⁴⁷ *Supra* note 20.

⁴⁸ Rule 6A-6.0961, F.A.C. *See also* Rules 6A-6.03028, 6A-6.030281, 6A-6.03029, and 6A-6.03311, F.A.C.

⁴⁹ *Supra* note 21.

⁵⁰ *See* Section 1002.385(4), F.S.

The bill maintains that the scholarship is directly administered by state-approved nonprofit SFOs. Similar to the Gardiner program,⁵¹ scholarship funds can be used to meet the education needs of students, which include all authorized uses under the Gardiner program, but adds:

- Instructional materials including digital devices and internet access.
- Curriculum including teacher's manuals.
- Specialized services, programs, and courses, including classes related to art, music or theater.
- Tuition and fees, including fees for summer and after-school programs.
- Transition services provided by private schools or job coaches.
- Transportation not to exceed \$750 per year.

The term of the scholarship under the bill remains similar to the conditions for termination under the Gardiner program.⁵² Private schools participating the scholarship program must continue to comply with current law,⁵³ and the bill allows for a private school to discount tuition if the private school deems it necessary. School districts must also continue to notify parents of eligible students about the scholarship and provide IEP evaluation and assessment services.

The bill requires the DOE to distribute scholarship funds on a quarterly basis, and adds requirements from the FES program and the FTC program to maintain and publish a list of nationally norm-referenced tests identified for purposes of satisfying assessment requirements, verify nonprofit SFO eligibility, and maintain scholarship information on the DOE website. Additionally, the bill maintains DOE obligations from the Gardiner program, including:

- Maintaining a list of approved providers.
- Requiring nonprofit SFOs to verify eligible educational expenses.
- Requiring quarterly reports of nonprofit SFOs.
- Cross-checking student participation and avoid duplicate payments to nonprofit SFOs.
- Investigating written complaints by a parent, student, private school, public school, school district, SFO, provider, or other party.

The bill requires that parents must meet a number of requirements similar to the Gardiner program,⁵⁴ including to annually submit a sworn compliance statement affirming:

- The student is enrolled in a program meeting attendance requirements.
- Funds are used as authorized.
- The parent is responsible for the child's education by meeting specified requirements.
- The student remains in good standing with the provider or school.

Under the bill, nonprofit SFOs participating in the McKay-Gardiner program may use up to 2.5 percent of the student generated funding for administrative purposes and must comply with a number of requirements to administer the program, including:

- Requirements from the FTC program,⁵⁵ which include:
 - Complying with federal antidiscrimination provisions.⁵⁶

⁵¹ See Section 1002.385(5), F.S.

⁵² See Section 1002.385(6), F.S.

⁵³ Section 1002.421, F.S.

⁵⁴ See Section 1002.385(11), F.S.

⁵⁵ Section 1002.395(4), F.S.

⁵⁶ 42 U.S.C. s. 2000d.

- Complying with background check requirements.
- Prohibiting an owner or operator from participating in the program or restricting scholarships.
- Providing an annual financial audit conducted by an independent certified public accountant to the Auditor General.
- Monitoring compliance of private schools.
- Notifying the DOE of any violations of law.
- Requirements from the Gardiner program,⁵⁷ which include:
 - Maintaining separate accounts for students.
 - Receiving applications, determining eligibility, and awarding scholarships.
 - Verifying qualifying educational expenditures.
 - Returning program funds as required.
 - Notifying parents of IEP evaluations and reevaluations.
 - Submitting timely reports to the DOE and Auditor General.

The bill also retains the nonprofit SFO application process from the FTC program.⁵⁸

The bill establishes the McKay-Gardiner program for up to 50,000 full-time equivalent (FTE) students with a seven percent annual scholarship growth rate. The funding is generated through the FEFP per student calculation based on the grade level, district school to which the student would have been assigned, and the level of services generated by the students. The scholarship award is 97.5 percent of the calculated amount. However, under the McKay-Gardiner program the funds are disbursed quarterly to the parent, rather than under the Gardiner program where all funds are distributed at the beginning of the school year or upon program enrollment.

Similar to the Gardiner program, any remaining funds revert to the state after denial or revocation of scholarship eligibility by the commissioner for fraud or abuse, or after two consecutive fiscal years in which an account has been inactive or three consecutive years after high school completion or graduation during which the student is not enrolled in an eligible postsecondary educational institution or a program offered by the institution.

Similar to public school districts, the bill requires the Auditor General to conduct an operational audit on an approved nonprofit SFO at least once every three years,⁵⁹ rather than annually under the Gardiner program.

⁵⁷ Section 1002.385(12), F.S.

⁵⁸ See Section 1002.395(15), F.S.

⁵⁹ Since 2015, the Auditor General has conducted annual operational audits of the accounts and records of eligible nonprofit scholarship-funding organizations. As recent audits have not disclosed significant control deficiencies or noncompliance, the Legislature should consider amending ss. 11.45(2)(l), 1002.385(14)(a), and 1002.40(12)(a), F.S., to require the Auditor General to conduct operational audits at least once every 3 years of the accounts and records of eligible nonprofit scholarship-funding organizations. Auditor General, *Auditor General Annual Report 2020 November 1, 2019, Through October 31, 2020* (2020) available at https://flauditor.gov/pages/pdf_files/annual%20report%202020.pdf at 7.. Section 11.45(2)(f), F.S.

Scholarship Programs for Lower-Income Families

Present Situation

Florida Tax Credit Scholarship Program

The FTC program was established in 2001⁶⁰ to authorize private, voluntary contributions from corporate donors to eligible SFOs that award scholarships to eligible children from low-income families.⁶¹ State law requires the nonprofit SFOs to use the contributions received to provide scholarships to eligible students for the cost of private school tuition or transportation to a public school that is different from the school to which the student was assigned.

To be eligible for an award under the FTC program, a student must meet at least one of the following criteria:

- The student is on the direct certification list⁶² or the student's household income level does not exceed 260 percent of the federal poverty level; or
- The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care as defined in law.

A student who initially receives a scholarship remains eligible to participate until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student's household income level. A sibling of a student who is participating in the scholarship program is eligible for a scholarship if the student resides in the same household as the sibling.⁶³

A student is not eligible for a scholarship while he or she is enrolled in a public school or DJJ program; receiving another state educational scholarship pursuant to Florida law; enrolled in a home education or private tutoring program, or enrolled in the Florida School for the Deaf and the Blind. The student is also limited to participating in no more than two state-funded virtual courses per year.⁶⁴

Nonprofit SFOs must comply with requirements relating to administration of the program, which include complying with federal antidiscrimination laws, background checks, and private school choice. In addition, nonprofit SFOs must:⁶⁵

- Give first priority to eligible students who received an FTC program scholarship during the previous school year; and must also prioritize new applicants whose household income levels

⁶⁰ Section 5, ch. 2001-225, L.O.F.

⁶¹ The program allows a corporation to receive a dollar-for-dollar tax credit up to 100% of its state income tax liability. The program also includes credits against the insurance premium tax for contributions to eligible nonprofit SFOs, credits against severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders, and alcoholic beverage taxes on beer, wine, and spirits. The maximum amount the state may award is \$873 million in credits for the 2020-21 fiscal year. Department of Education, *Florida Tax Credit Scholarship Program September 2020 Quarterly Report (2020)*, available at: <http://www.fldoe.org/core/fileparse.php/7558/urlt/FTC-Sept-2020-Q-Report.pdf>.

⁶² Direct certification list means the certified list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations provided to the Department of Education by the Department of Children and Families. Section 1002.395(2)(c), F.S.

⁶³ Section 1002.395(3), F.S.

⁶⁴ Section 1002.395(4), F.S.

⁶⁵ Section 1002.395(6), F.S.

do not exceed 185 percent of the federal poverty level or who are in foster care or out-of-home care.

- Provide a scholarship to an eligible student on a first-come, first-served basis unless the student qualifies for priority established in law.
- Apply all funds available under the FTC program and the HSP for renewal scholarship awards before awarding any initial scholarships. The bill also requires each eligible nonprofit SFO to refer any student eligible for an FTC program scholarship who did not receive a renewal or initial scholarship based solely on the lack of available funds through the FTC program or HSP to another eligible nonprofit SFO that may have funds available.

During the 2019-20 school year, FTC program scholarships in the amount of \$670 million were awarded to a total of 111,219 students enrolled in 1,870 participating Florida private schools. The maximum scholarship amount per student in the 2019-2020 school year was \$7,408.⁶⁶ As of January 2021, 100,008 scholarships were awarded to students for the 2020-2021 school year.⁶⁷

Family Empowerment Scholarship Program

The FES program was established in 2019⁶⁸ to provide educational options to eligible children of families with limited financial resources. A student who receives a scholarship remains eligible to participate until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student's household income level.⁶⁹ Similar to the McKay program,⁷⁰ the FES program is funded through the FEFP.

To be eligible for an award under the FES program, a student must meet the following criteria:⁷¹

- The student is:
 - On the direct certification list pursuant to law or the student's household income level does not exceed 300 percent of the federal poverty level; or
 - Currently placed, or during the previous fiscal year was placed, in foster care or in out-of-home care as defined in law.
- The student is eligible to enroll in kindergarten or has spent the prior school year in attendance at a Florida public school. However, a dependent child of a member of the United States Armed Forces who transfers to a school in this state from out of state or from a foreign country due to a parent's permanent change of station orders or a foster child is exempt from the prior public school attendance requirement.
- The parent has obtained acceptance for admission of the student to a private school that is eligible for the program and the parent has requested a scholarship from DOE at least 60 days before the date of the first scholarship payment.

⁶⁶ Florida Department of Education, *Fact Sheet, Florida Tax Credit Scholarship Program (2020)*, available at <https://www.fldoe.org/core/fileparse.php/5606/urlt/FTC-Sept-2020-line.pdf>.

⁶⁷ Florida Department of Education, *K-12 Scholarships*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf.

⁶⁸ Section 6, ch. 2019-21, L.O.F.

⁶⁹ Section 1002.394(1), F.S.

⁷⁰ See Section 1002.39(10), F.S.

⁷¹ Section 1002.394(3), F.S.

A sibling of a student who is participating in the FES program is eligible for a scholarship if the student resides in the same household as the sibling.⁷²

A student is not eligible for a scholarship while he or she is enrolled in a public school or DJJ program; receiving another state educational scholarship pursuant to Florida law; enrolled in a home education or private tutoring program, a virtual program that receives state funding pursuant to the student's participation, or enrolled in the Florida School for the Deaf and the Blind.⁷³

School districts must provide information on the district's website and inform all households within the district receiving free or reduced priced meals under the National School Lunch Act⁷⁴ of their ability to apply for the scholarship. School districts must also notify the student and parent about, and provide services for, statewide assessment participation.⁷⁵

The DOE is required to:⁷⁶

- Publish and update, as necessary, information on the DOE website about the FES program, including, but not limited to, student eligibility criteria, parental responsibilities, and relevant data.
- Cross-check the list of participating scholarship students with the public school enrollment lists before each scholarship payment to avoid duplication.
- Maintain and publish a list of nationally norm-referenced tests identified for purposes of satisfying the FES program testing requirement.
- Establish and notify nonprofit SFO's of specified deadlines.

Among other requirements, to be eligible to participate in the FES program, a private school must annually administer or make provision for participating students in grades three through ten to take one of the nationally norm-referenced tests identified by the DOE or take the statewide standardized assessments. A participating private school must report a student's scores to his or her parent and to a state university for the purpose of annual performance data reporting.⁷⁷

An eligible nonprofit SFO:⁷⁸

- Must verify the household income level of students and submit the verified list of students and related documentation to the DOE.
- May use up to one percent of the total amount of all FES program scholarships awarded for administrative expenses. The funds used for administrative expenses must originate from eligible tax credit contributions authorized under the FTC program and HSP.⁷⁹

⁷² Section 1002.394(3), F.S.

⁷³ Section 1002.394(5), F.S.

⁷⁴ 42 U.S.C s. 1751, et seq. The National School Lunch Program (NSLP) is a federally assisted meal program operating in public and nonprofit private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to children each school day. The program was established under the National School Lunch Act, signed by President Harry Truman in 1946. USDA Food and Nutrition Service, *National School Lunch Program*, <https://www.fns.usda.gov/nslp> (last visited Jan. 29, 2021).

⁷⁵ Section 1002.394(6), F.S.

⁷⁶ Section 1002.394(7), F.S.

⁷⁷ Section 1002.394(8), F.S.

⁷⁸ Section 1002.394(10), F.S.

⁷⁹ Section 1002.395(6)(j), F.S.

- Must, in a timely manner, submit any information requested by the DOE relating to the scholarship.
- Must notify the DOE of any violation by a parent or private school of FES program requirements.

Funding is based on the student's grade level and school district in which the student was assigned plus specified categorical programs.⁸⁰ The amount of the scholarship award is 95 percent of the calculated amount. The amount of the award is deposited quarterly in the student's account once the scholarship has been verified and approved.⁸¹

The FES program was initially established for up to 18,000 eligible students annually beginning with the 2019-2020 school year, and served 17,823.⁸² Beginning in the 2020-2021 school year, the number of students participating in the FES annually increases by one percent of the state's total public school student enrollment.⁸³ As of January 2021, 36,384 scholarships were awarded to students for the 2020-2021 school year.⁸⁴

Hope Scholarship Program

The HSP was established in 2018⁸⁵ to provide the parent of a public school student an opportunity to transfer the student to another public school or to request a scholarship for the student to enroll in and attend an eligible private school if that student has been subjected to battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses; threat or intimidation; or fighting at school.⁸⁶

Once a parent or child submits a report of an incident, the school principal must provide a copy of the report to the parent and investigate the incident. Once the investigation is complete, or within 15 days after the incident was reported, whichever occurs first, the principal must notify the parent about the HSP.⁸⁷

⁸⁰ In addition to the basic amount for current operations for the FEFP specified in law, the Legislature may appropriate categorical funding for specified programs, activities, or purposes. Section 1011.62(6), F.S.

⁸¹ Section 1002.394(11), F.S.

⁸² Florida Department of Education, *K-12 Scholarships*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf.

⁸³ Section 1002.394(11)(a), F.S.

⁸⁴ Florida Department of Education, *K-12 Scholarships*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf.

⁸⁵ Section 16, ch. 2018-6, L.O.F.

⁸⁶ Section 1002.40(1) and (6), F.S.

⁸⁷ Section 1002.40(6), F.S.

A tax credit⁸⁸ is available for use by a person who makes an eligible contribution.⁸⁹ Eligible contributions used to fund the HSP may be used to fund FTC scholarships, with conditions. A nonprofit SFO may carry forward to the next state fiscal year no more than five percent of net eligible contributions to the HSP.⁹⁰

The HSP served 388 students in the 2019-2020 school year.⁹¹ As of January 2021, 476 scholarships were awarded to students for the 2020-2021 school year.⁹²

Effect of Proposed Changes

CS/SB 48 modifies s. 1002.394, F.S., relating to the Family Empowerment Scholarship Program, s. 1002.395, F.S., relating to the Florida Tax Credit Scholarship Program, s. 1002.40, F.S., relating to the Hope Scholarship Program, and related statutes.

Family Empowerment Scholarship Program

The bill incorporates the FTC program and HSP into the FES program with a common set of eligibility requirements and scholarship award funding structure. A student is eligible for an award under the FES program if the student is eligible to enroll in kindergarten through grade 12 and is:

- On the direct certification list or the student's household income does not exceed 300 percent of poverty; which is a higher maximum income level than the FTC program, which is 260% of the poverty level.
- Currently placed or placed during the previous fiscal year in foster or out-of-home care;
- A sibling of a participating student residing in the same household; or
- Enrolled in a public school and reported an incident of being subjected to battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, threat or intimidation; or fighting at school.

The bill removes the requirement that a student must spend the prior year in attendance at a Florida public school. Therefore, under the bill students participating in a home education or private tutoring program may be eligible to apply for a scholarship, which may likely increase the number of families eligible for an award under the FES program.

The bill establishes scholarship award priorities in the following order:

- A student who received an FTC program or HSP award in the 2020-2021 school year and a student who received an FES program award the previous school year.

⁸⁸ The purchaser of a motor vehicle is granted a credit of 100 percent of an eligible contribution made to an eligible nonprofit scholarship-funding organization for the Hope Scholarship Program against any tax imposed by the state and collected from the purchaser by a dealer, designated agent, or private tag agent as a result of the purchase or acquisition of a motor vehicle, except that a credit may not exceed the tax that would otherwise be collected from the purchaser by a dealer, designated agent, or private tag agent. Section 212.1832(1), F.S.

⁸⁹ Section 1002.40(13), F.S.

⁹⁰ Section 1002.40(11)(i), F.S.

⁹¹ Florida Department of Education, *K-12 Scholarships*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at

https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf.

⁹² *Id.*

- A student placed in foster care, a sibling of a participating student, or a student who reported an incident of being subjected to battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses; threat or intimidation; or fighting at school.
- A student who's household income does not exceed 185 percent of the federal poverty level.
- A student who's household income does not exceed 300 percent of the federal poverty level.

The bill modifies the FES program from a voucher program to an education savings account program and authorizes scholarship funds to be used to meet the education needs of students, including:

- Instructional materials including digital devices and internet access.
- Curriculum including teacher's manuals.
- Tuition and fees, including fees for summer and after-school programs, and annual assessments and evaluations.
- Transportation not to exceed \$750 per year.

The bill includes a number of provisions parents must meet to maintain eligibility, including to annually submit a sworn compliance statement similar to the McKay-Gardiner program. The bill modifies specific parent responsibilities relating to private schools by removing provisions requiring that the student must attend a private school, and modifying assessment provisions to apply to parents choosing to send their child to a private school.

The bill specifies that nonprofit SFOs must comply with a number of requirements similar to the McKay-Gardiner program to administer the FES program, and allows for SFOs to use up to 2.5 percent, increasing from one percent, of the student generated funding for administrative purposes. In addition, the bill maintains that nonprofit SFOs must:

- Verify household income.
- Allow specified eligible students to apply for a scholarship at any time.
- Have an annual financial audit conducted by an independent certified public accountant.

The bill also retains the nonprofit SFO application process from the FTC program.⁹³

The bill maintains the current annual growth rate of one percent of the public school student enrollment and adds to the program prior year FTC program and HSP scholarship recipients outside of the enrollment cap. The funding is generated through the FEFPP per student calculation based on the grade level and the district school to which the student would have been assigned, and increases the scholarship award from 95 percent to 97.5 percent of the calculated amount. An eligible student may also choose a transportation award limited to \$750 to attend a public school that is different from the student's assigned school. The bill authorizes nonprofit SFOs to report students for funding at the time of each student membership survey in order to receive quarterly scholarship disbursements from the DOE.

The bill adds to the FES program similar policies from the Gardiner program relating to scholarship terms and commissioner responsibilities. The bill specifies that any remaining funds revert to the state after denial or revocation of scholarship eligibility by the commissioner for

⁹³ See Section 1002.395(15), F.S.

fraud or abuse, or after two consecutive fiscal years in which an account has been inactive or two consecutive years after high school completion or graduation during which the student is not enrolled in an eligible postsecondary educational institution or a program offered by the institution.

In addition, the bill:

- Requires private schools participating the scholarship program to comply with current law,⁹⁴ and allows a private school to discount tuition if the private school deems it necessary.
- Requires school districts to notify parents about the scholarship and removes the requirement for school districts to report scholarship students for funding.
- Similar to public school districts, requires the Auditor General to conduct an operational audit on an approved nonprofit SFO at least once every three years,⁹⁵ rather than annually.

Florida Tax Credit Scholarship Program

The bill modifies the title of s. 1002.395, F.S. from the Florida Tax Credit Scholarship Program to the Florida K-12 Education Funding Tax Credit Program. The bill enables taxpayers to designate portions of certain tax payments as contributions to K-12 education funding. The bill also requires that contributions be deposited into a designated student fund and used for K-12 education funding.

The bill removes other substantive provisions and incorporates certain provisions into the FES program, including:

- Obligations of eligible nonprofit SFO's;
- Obligations of the DOE; and
- Nonprofit SFO application requirements.

Hope Scholarship Program

The bill modifies the title of s. 1002.40, F.S., from the Hope Scholarship Program to the Florida K-12 Education Funding Tax Credit Program. The bill enables taxpayers to designate portions of certain tax payments as contributions to K-12 education funding. The bill also requires that:

- Eligible contributions be deposited into a designated student fund and used for K-12 education funding.⁹⁶
- The Department of Revenue and DOE collaboratively develop a contribution election form that includes a brief description of each scholarship program available and the type of student served under each program.

The bill removes other substantive provisions and incorporates certain provisions into the FES program, including:

⁹⁴ Section 1002.421, F.S.

⁹⁵ See *supra* note 54. Section 11.45(2)(f), F.S.

⁹⁶ Under current law, a taxpayer makes an eligible contribution to an SFO and receives a credit against any tax due as a result of buying a motor vehicle. Because the contribution is made directly to the SFO, which also distributes scholarship funds, the law prohibits the taxpayer from designating funds to a particular student as a beneficiary of the contribution. However, under the bill contributions are no longer made directly to the SFO. The taxpayer may designate a portion of the taxes paid to K-12 education funding, to be deposited into a specified state fund. Because contributions under the bill are not made directly to an SFO this prohibition specified in law is no longer necessary.

- Eligibility requirements; and
- Requiring an annual evaluation of public schools with ten or more students transferring to another public school or private school due to bullying or other qualifying incident.

Other Bill Provisions

The bill also:

- Modifies other tax credit-related statutes to conform to the bill.
- Modifies controlled open enrollment preferential treatment⁹⁷ to include McKay-Gardiner program award recipients for students choosing to attend a public school other than the one assigned.
- Allows for a private virtual school with a least one administrative office located in the state to meet the physical location requirement for private school participating in the state school scholarship program.
- Includes the teacher salary allocation in the per student scholarship amount calculation, which is currently excluded under s. 1011.62(18), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The revenue estimating conference has not yet reviewed the fiscal impact of this bill.

⁹⁷ Section 1002.31(2)(c), F.S.

B. Private Sector Impact:

Eligible families may have the opportunity to save money for private school and educational services to meet the educational needs of their child. There may also be increased usage of private educational services as authorized in the bill. In addition, certain tax payers may designate more funding for education through authorized tax credits.

C. Government Sector Impact:

The impact on state funding is indeterminate. The state funding will depend on an official estimate of student full-time equivalent (FTE) participation in the scholarship programs for the 2021-2022 school year, the amount of revenue transferred into the Florida Education Finance Program (FEFP), and the amount of state funds allocated to the FEFP during the appropriation process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.45, 211.0251, 212.099, 212.1831, 212.1832, 213.053, 220.1105, 220.13, 220.186, 220.1875, 561.1211, 624.51055, 1002.20, 1002.23, 1002.31, 1002.394, 1002.395, 1002.40, 1002.411, 1002.421, 1009.971, 1009.98, 1009.981, 1011.61, and 1011.62.

This bill creates section 1002.381 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 1002.385 and 1002.39.

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

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

CS by Education on February 3, 2021:

The committee substitute makes a technical change to redesignate paragraphs in s. 1002.395, F.S.

B. Amendments:

None.