

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7045 PCB EEC 21-01 School Choice
SPONSOR(S): Appropriations Committee, Education & Employment Committee, Fine
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education & Employment Committee	18 Y, 3 N	Fudge	Hassell
1) Appropriations Committee	20 Y, 5 N, As CS	Potvin	Pridgeon

SUMMARY ANALYSIS

Florida provides a variety of school choice options, including the following five scholarship programs, that allow parents of eligible students to choose the educational option that may better serve their student's particular needs: the John M. McKay Scholarship Program (McKay); the Gardiner Scholarship Program (GSP); the Family Empowerment Scholarship Program (FES); the Florida Tax Credit Scholarship Program (FTC); and the Hope Scholarship Program (HSP).

The bill repeals the GSP and transitions students to the FES, revises the current McKay scholarship amount, and repeals the McKay scholarship effective July 1, 2022 and transitions the McKay scholarship students to the FES.

The bill revises the requirements for the FES by:

- Expanding program eligibility to include students who are dependents of a member of the United States Armed Forces and is a sibling of a student with a disability receiving a FES scholarship, removing the prior public attendance requirement and eliminating the need for scholarship students to renew program participation for students seeking an educational choice scholarship.
- Excluding students from the maximum number of students participating if they are a dependent child of a member of the Armed Forces, a foster child, or an adopted child; or meet certain eligibility requirements and attended public school in the prior school year. In addition, up to 15,000 FTC students whose scholarship may not have been renewed due to a lack of available funds are also excluded from the program maximum.
- Expanding eligibility to students with disabilities currently authorized under McKay and GSP.
- Transitioning the funding of scholarships for students with disabilities to the FES program funded in the Florida Education Finance Program (FEFP) with the amount dependent on the student's matrix of services or physician or psychologist's diagnosis.
- Establishing an initial maximum program capacity of 20,000 students, annually increasing by 1 percent of the state's total exceptional student education full-time equivalent enrollment. However, students who received a GSP or McKay scholarship in the 2020-2021 school year receive the greater of the prior award amount or the new award amount.
- Excluding students from the maximum number of students participating if they are a student with a disability who: received specialized instructional services in VPK; attended public school in the prior school year; are a dependent child of a member of the Armed Forces, a foster child, or an adopted child; and students who received a McKay Scholarship in the 2021-2022 school year.

The bill revises the frequency of FTC operational audits by the Auditor General from every year to at least once every three years.

The bill increases the scholarship amount for the FTC, FES, and HSP to the full amount provided for the student, from the current 95 percent of the calculated amount and increases the administrative fee from 3 percent to 2.5 percent for the scholarship funding organizations administering the FES.

The bill requires all FES scholarships to be funded in the FEFP with state funds only. Based on the most recent scholarship awards data, it is estimated that a maximum of 61,082 new scholarship students may be funded in the FEFP which will have a fiscal impact on the FEFP. See Fiscal Analysis.

Except as otherwise provided, the bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

For decades, Florida has been a national leader in providing high quality education options for thousands of parents and students. In addition to a myriad of public options, Florida offers four scholarship programs that allow parents of eligible students to register and attend private schools that may better serve a student's particular needs. Research shows students participating in another scholarship program were 15 percent more likely to enroll in a public college than their peers.¹ Private schools must meet specific criteria in order to be eligible to participate in these programs² and the Department of Education (DOE)³ and Commissioner of Education (commissioner)⁴ are tasked with implementation and oversight responsibilities. In 2018, the Legislature strengthened the oversight and accountability measures for all scholarship programs in the state.⁵ In addition, because a majority of private schools participate in more than one scholarship program, the Legislature consolidated all the common criteria relating to private school participation into a single statute.⁶

The Gardiner Scholarship Program

The Gardiner Scholarship Program (GSP) was created in 2014 and provides parents of eligible students with disabilities more flexibility to customize their child's education.⁷ Funds are distributed to qualified⁸ scholarship-funding organizations (SFOs) to establish accounts for eligible students.⁹ Parents must use GSP funds to meet the individual educational needs of their child, and are authorized to use funds from their account to pay for approved items,¹⁰ including:

- instructional materials;¹¹
- curriculum;¹²
- specialized services such as occupational therapy or applied behavior analysis;¹³
- tuition and fees for expenses such as specialized education programs or tutoring;¹⁴ or
- contributions to a college prepaid account.¹⁵

In order to be eligible for the GSP, a student must:

- be a resident of the state;

¹ Urban Institute, *The Effects of Statewide Private School Choice on College Enrollment and Graduation – Evidence from the Florida Tax Credit Scholarship Program*, September 2017, available at:

https://www.urban.org/sites/default/files/publication/93471/the_effects_of_statewide_private_school_choice_on_college_enrollment_and_graduation_1.pdf.

² Section 1002.421(1), F.S.

³ Section 1002.421(2), F.S.

⁴ Section 1002.421(3), F.S.

⁵ Section 1002.421, F.S. as amended by s. 18, ch. 2018-6, L.O.F.

⁶ Section 1002.421, F.S. In the 2020-21 school year, 2,199 of private schools are participating in more than one scholarship program. There were a total of 2,233 participating private schools as of March 10, 2021. Email, Florida Department of Education, Legislative Affairs (March 11, 2021).

⁷ Section 1002.385(1), F.S.

⁸ Section 1002.385(2)(e), F.S.

⁹ Section 1002.385(3)(a)1.-4., F.S.

¹⁰ Section 1002.385(5), F.S.

¹¹ *Id.* at (5)(a).

¹² *Id.* at (5)(b).

¹³ *Id.* at (5)(c), and (g)

¹⁴ *Id.* at 5(d), (e), and (h)-(p).

¹⁵ *Id.* at 5(f).

- be 3 or 4 years old on or before September 1 of the year in which the parent applies for a scholarship, or be eligible to enroll in kindergarten through grade 12; and
- have a qualifying disability¹⁶ documented by an Individual Educational Plan (IEP)¹⁷ or a diagnosis of a disability by a licensed physician or psychologist.¹⁸

As of October 2020, 17,508 students were awarded Gardiner scholarships.¹⁹ The average scholarship amount is \$10,464 per student.²⁰

The McKay Scholarship for Students with Disabilities Program

The McKay Scholarship for Students with Disabilities Program (McKay Scholarship) provides scholarships for eligible students with disabilities to attend a public or private school of their choice.²¹ 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.²²

A student with a disability may receive a McKay Scholarship to attend a public or private school if he or she has an IEP or a 504 Accommodation Plan (504 Plan)²³ and:

- received specialized instructional services under the Voluntary Prekindergarten Education Program (VPK)²⁴ during the previous school year; or
- spent the *prior school year in attendance* at a Florida public school or the Florida School for the Deaf and the Blind.²⁵

For purposes of scholarship eligibility, the term “prior school year in attendance” means the student was enrolled and reported by:

- a school district for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys in kindergarten through grade 12, which includes time spent in a Department of Juvenile Justice commitment program if funded under the FEFP;
- the Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12; or
- a school district for funding during the preceding October and February FEFP surveys and the student was at least four years old when enrolled and reported and eligible for services under the school attendance requirements for prekindergarten aged children with disabilities.²⁶

¹⁶ Section 1002.385(2)(d), F.S. Qualifying disabilities include: Autism spectrum disorder, cerebral palsy, Down syndrome, intellectual disability, Phelan-McDermid syndrome, Prader-Willi syndrome, spina bifida, high-risk, muscular dystrophy, Williams syndrome, rare diseases, anaphylaxis, deaf, visually impaired, traumatic brain injured, hospital or homebound, or dual sensory impaired.

¹⁷ An IEP is developed for students with disabilities ages three through 21. The IEP team must include the parent; at least one Exceptional Student Education (ESE) teacher of the child; at least one general education teacher of the child; a representative of the school district, and when appropriate, the student with the disability. The IEP team develops annual goals, both academic and functional, for the student based on his or her strengths, needs, and the effect of the disability. Once the goals are determined, the team decides what type of special education services and supplementary aids the student needs and how often and where the services should be provided, e.g., in the general education class or in the ESE classroom. 34 C.F.R. s. 300.320 and .321; rule 6A-6.03028(3), F.A.C.

¹⁸ Section 1002.385(3)(a)1.-4., F.S.

¹⁹ Florida Department of Education, Office of Intendent Education & Parental Choice, *Gardiner Scholarship Program Fact Sheet* (October 2020), available at <http://www.fldoe.org/core/fileparse.php/5606/urlt/Gardiner.pdf>.

²⁰ *Id.*

²¹ Section 1002.39(1), F.S.

²² *Id.* Flush left provision.

²³ A student’s 504 plan must be at least six months in duration in order for the student to be eligible for a scholarship. Rule 6A-6.0970(1)(b)3., F.A.C.

²⁴ A child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK Program and has a current IEP developed by the district school board. Section 1002.66, F.S.; *see also* s. 1002.53, F.S.

²⁵ Section 1002.39(2)(a), F.S.

²⁶ Section 1002.39(2)(a)2., F.S. Although not required to attend a public school, children with disabilities who attain the age of three years are eligible for admission to public special education programs and related services. Section 1003.21(1)(e), F.S.

The parent of an eligible student with disabilities may choose from several options including:

- attendance at another public school within the school district;²⁷
- attendance at an eligible public school in an adjacent school district that has space and provides the services identified in the student's IEP or 504 Plan;²⁸ or
- attendance at an eligible private, sectarian or nonsectarian school.²⁹

The student's parent must file a notice of intent with the DOE by completing an online application using DOE's website.³⁰ If the parent chooses the private school option, the notice must be filed prior to withdrawing the student from public school.³¹ Once a completed notice has been filed, the parent will receive immediate online confirmation, which includes a notice of potential eligibility or ineligibility.³² If a student is deemed ineligible to participate, the reason for the ineligibility and instructions for contacting the school district to address the ineligibility will be provided.³³

During the 2019-2020 school year, \$221.5 million in scholarship payments were distributed to 1,547 private schools serving 30,185 students.³⁴ The average scholarship for a student with an IEP was \$8,473, and for a student with a 504 plan, the average scholarship was \$4,676.³⁵

The Family Empowerment Scholarship Program

The Family Empowerment Scholarship Program (FES) was established in 2019 to provide children of Florida families that have limited financial resources with educational options to achieve success in their education.³⁶ The FES provides 18,000 students annually on a first-come, first-served basis education opportunities for academic and career success.³⁷ In the 2019-2020 school year, 17,823 students were served in the FES program.³⁸ Beginning in the 2020-2021 school year, the number of students participating in the FES may annually increase by 1 percent of the state's total public school enrollment.³⁹

A student is eligible for FES if the student meets the following criteria:

- The student is on the direct certification list (list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution on

²⁷ Section 1002.39(5)(a)1., F.S.; rule 6A-6.0970(2), F.A.C.

²⁸ Section 1002.39(5)(e), F.S.; rule 6A-6.0970(2), F.A.C. A 504 Plan is formulated by a team of parents, teachers, and other staff members for a student identified as an individual with a disability under the Rehabilitation Act. The Rehabilitation Act does not list specific illnesses due to the difficulty of creating an all-inclusive list of impairments. The Act defines disability as any physical or mental impairment that "substantially limits one or more major life activities." The 504 Plan provides a description of the accommodations that the school will provide a student. Generally, a student with a 504 Plan does not have an IEP or a matrix of services. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355; Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, available at, www.fldoe.org/core/fileparse.php/7690/urlt/0070055-504bro.pdf.

²⁹ Section 1002.39(2) and (7), F.S.

³⁰ Rule 6A-6.0970(1)(a), F.A.C.

³¹ *Id.* at (1)(a)2.

³² *Id.* at (1)(a)3.

³³ Section 1002.39(1), F.S.; rule 6A-6.0970(1)(a)3., F.A.C.

³⁴ Florida Department of Education, Office of Independent Education & Parental Choice, *McKay Scholarship Program Fact Sheet* (Sept. 2020), available at <http://www.fldoe.org/core/fileparse.php/5606/urlt/McKay-Aug.pdf>.

³⁵ *Id.*

³⁶ Section 1002.394(1), F.S.

³⁷ Section 1002.394(11)(a), F.S.

³⁸ Florida Department of Education, *K-12 Scholarships*, Presentation to the Senate Education Committee (Jan. 12, 2021), at 10, available at, https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8848_MeetingPacket_4961_3.pdf.

³⁹ Section 1002.394(11)(a), F.S.

Indian Reservations program) or the student's household income level does not exceed 185 percent of the federal poverty level⁴⁰ (\$49,025⁴¹ for a family of four);

- The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care;⁴² or
- The student's household income level does not exceed 300 percent of the federal poverty level (\$79,500⁴³ for a family of four);⁴⁴ and
- The student is eligible to enroll in kindergarten or has spent the prior school year in attendance⁴⁵ at a Florida public school⁴⁶ or beginning with the 2020-2021 school year, the student received a Florida Tax Credit Scholarship in the previous school year but did not receive a renewal scholarship due to lack of available funds.⁴⁷

A parent must annually renew participation in the FES⁴⁸ and scholarship awards give priority to students who received a FES scholarship during the previous year and have requested a renewal scholarship award.⁴⁹ Prior to scholarship funds being awarded, the student must be accepted and enrolled in a participating private school.⁵⁰ A private school that is currently eligible to participate in any of the scholarship programs is eligible to participate in the FES.⁵¹

As of January 2021, 36,384 scholarships were awarded to students for the 2020-2021 school year,⁵² with an average scholarship amount of \$6,972.⁵³

The Florida Tax Credit Scholarship Program

The Florida Tax Credit Scholarship Program (FTC Program) was created in 2001⁵⁴ and allows taxpayers to make private, voluntary contributions to SFOs that can then be awarded as scholarships to eligible low-income students for private school tuition and fees. Taxpayers can 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 spirits⁵⁵. The tax credit is equal to 100 percent of the eligible contributions made.⁵⁶ To receive a tax credit the taxpayer must submit an application to the Department of Revenue and specify each tax for which the taxpayer requests a credit and the applicable taxable or state fiscal year

⁴⁰ Section 1002.394(3)(a)1., F.S.

⁴¹ United States Department of Health & Human Services, U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, *2021 Chart with Percentages*, available at <https://aspe.hhs.gov/system/files/aspe-files/107166/2021-percentage-poverty-tool.xlsx>.

⁴² Section 1002.394(3)(a)2., F.S.

⁴³ United States Department of Health & Human Services, U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, *2021 Chart with Percentages*, available at <https://aspe.hhs.gov/system/files/aspe-files/107166/2021-percentage-poverty-tool.xlsx>.

⁴⁴ Section 1002.394(3)(a)3., F.S.

⁴⁵ Prior attendance means the student was enrolled in, and in attendance at, a Florida public school during both the October and February student counts

⁴⁶ Section 1002.394(3)(b)1.-2., F.S. 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, but must meet the other eligibility requirements.

⁴⁷ Section 1002.394(3)(b)1.-3., F.S.

⁴⁸ Section 1002.394(9)(i), F.S.

⁴⁹ Section 1002.394(3)(d)1., F.S.

⁵⁰ Section 1002.394(3)(c), F.S.

⁵¹ Section 1002.394(8)(a), F.S.

⁵² Florida Department of Education, *K-12 Scholarships*, Presentation to the Senate Education Committee (Jan. 12, 2021), at 10, available at, https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8848_MeetingPacket_4961_3.pdf.

⁵³ *Id.* at 18.

⁵⁴ Section 1002.395, F.S.

⁵⁵ Section 1002.395(1) and (5), F.S.

⁵⁶ Sections 220.1875 and 1002.395(5), F.S.

for the credit.⁵⁷ Taxpayers can rescind tax credits, which will become available to another eligible taxpayer in that fiscal year.⁵⁸

For FY 2020-2021, the maximum amount of tax credits available to be awarded is \$873 million.⁵⁹ In any state fiscal year when the annual tax credits granted for the prior state fiscal year are equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, the tax credit cap amount is increased by 25 percent.⁶⁰

A student is eligible for the FTC Program if:

- the student is on the direct certification list (eligible for free or reduced-priced lunch) or the student's household income does not exceed 260 percent of the federal poverty level (\$68,900 for a family of four);⁶¹ or
- the student is currently placed, or during the previous state fiscal year was placed in foster care or in out-of-home care.⁶²

Priority is given to a student whose household income does not exceed 185 percent of the federal poverty level (\$49,025 for a family of four)⁶³ or who is in foster care or out-of-home care.⁶⁴

Scholarship funds may be used to cover the cost of tuition and fees for an eligible private school or transportation to a public school in which a student is enrolled that is different from the school the student was assigned or a lab school.⁶⁵

During the 2019-2020 school year, FTC Program scholarships in the amount of \$670 million were awarded to 111,219 students enrolled in 1,870 participating private schools.⁶⁶ The average scholarship amount for enrollment in an eligible private school is \$6,815 or \$750 for transportation to a public school located outside the district the student resides.⁶⁷ As of January 2021, 100,008 scholarships were awarded to students for the 2020-2021 school year.⁶⁸

Research on the academic performance of FTC Program students is conducted annually. The DOE must provide a grant to a state university to annually report on the student performance of participating students. The report must include, to the extent possible, a comparison of scholarship student performance to the statewide student performance of public school students with socioeconomic backgrounds similar to those of the participating program students. The report must also include student performance for each participating private school with a student population that was at least 51 percent comprised of FTC Program students in the prior school year. The annual report must be published by the DOE on its website.⁶⁹

⁵⁷ Section 1002.395(5)(b), F.S.

⁵⁸ Section 1002.395(5)(e), F.S.

⁵⁹ Florida Department of Education, Office of Independent Education & Parental Choice, *Florida Tax Credit Scholarship Program Fact Sheet* (Oct. 2020), available at <http://www.fldoe.org/core/fileparse.php/5606/urlt/FTC-Sept-2020-line.pdf>.

⁶⁰ Section 1002.395(5)(a)2., F.S.

⁶¹ United States Department of Health & Human Services, U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, *2021 Chart with Percentages*, available at <https://aspe.hhs.gov/system/files/aspe-files/107166/2021-percentage-poverty-tool.xlsx>.

⁶² Section 1002.395(3)(b)1.-2., F.S.

⁶³ United States Department of Health & Human Services, U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, *2021 Chart with Percentages*, available at <https://aspe.hhs.gov/system/files/aspe-files/107166/2021-percentage-poverty-tool.xlsx>.

⁶⁴ *Id.* Flush left provision

⁶⁵ Section 1002.395(6)(d)1.-2., F.S.

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

⁶⁷ Florida Department of Education, *K-12 Scholarships*, Presentation to the Senate Education Committee (Jan. 12, 2021), at 16, available at, https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8848_MeetingPacket_4961_3.pdf.

⁶⁸ *Id.* at 10.

⁶⁹ Section 1002.395(9)(f), F.S.; See Florida State University Learning Systems Institute, *Florida Tax Credit Scholarship Program Evaluation*, <https://lsi.fsu.edu/projects/current-projects/florida-tax-credit-scholarship-program-evaluation/> (last visited March 22, 2021). The Learning Systems Institute (LSI) at Florida State University must conduct a program evaluation of the FTC Program and

Florida law requires the Auditor General to annually conduct operational audits of the accounts and records of eligible nonprofit SFOs receiving eligible contributions under the FTC Program, including any contracts for services with related entities, to determine compliance.⁷⁰ Such audits shall include, but not be limited to, a determination of the eligible nonprofit SFO's compliance.⁷¹ The Auditor General must provide its report on the results of the audits to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Legislative Auditing Committee, within 30 days of completion of the audit.⁷²

The Hope Scholarship Program

In 2018, the Legislature created the Hope Scholarship Program (HSP) to provide the parent of a public school student subjected to a specified incident⁷³ at school the opportunity to transfer the child to another public school or to request a scholarship for the child to enroll in and attend an eligible private school.⁷⁴ A parent may also choose to enroll their child in a public school located outside the district in which the student resides and request a transportation scholarship.⁷⁵ The scholarship program is funded by taxpayers who make eligible contributions to SFOs, and in turn, receive a credit against any tax due as a result of the purchase or acquisition of a motor vehicle.⁷⁶ Contingent upon available funds, scholarships will be awarded on a first-come, first-served basis to eligible students in kindergarten through grade 12 who report an incident to the school principal.⁷⁷ Unallocated HSP funds beyond the authorized 5 percent carry forward may be used to fund the FTC Program under certain circumstances.⁷⁸

The DOE is required to contract with an independent entity to provide an annual evaluation of the HSP by:

- reviewing the school bullying education program, climate, and code of student conduct of each public school from which 10 or more students transferred to another public or private school using the HSP to determine areas in the school or school district procedures involving reporting, investigating, and communicating a parent's and student's rights that are in need of improvement;
- reviewing the school bullying prevention education program, climate, and code of student conduct of each public school to which a student transferred if the student was from a school identified above in order to identify best practices and make recommendations to a public school at which the incidents occurred;
- reviewing the performance of participating students enrolled in a private school in which at least 51 percent of the total enrolled students in the prior school year participated in the program and in which there are at least 10 participating students who have scores for tests administered; and
- surveying the parents of participating students to determine academic, safety, and school climate satisfaction and to identify any challenges to or obstacles in addressing the incident or relating to the use of the scholarship.⁷⁹

participating private schools are required to report the scores of FTC students in grades 3 to 10 on a nationally norm-referenced test or on Florida's standardized assessment to LSI.

⁷⁰ Section 11.45(2)(l), F.S.

⁷¹ See Section 1002.395(6)(j), F.S.

⁷² Section 11.45(2)(l), F.S.

⁷³ Section 1002.40(3), F.S. A specified incident includes: battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, harassment, assault, or battery; threat or intimidation; or fighting at school.

⁷⁴ Section 1002.40(1), F.S.

⁷⁵ Section 1002.40(6)(a), F.S.

⁷⁶ Section 1002.420(2)(d) and (13), F.S.

⁷⁷ Section 1002.420(3) and (6), F.S.

⁷⁸ See s. 1002.40(13), F.S.

⁷⁹ Section 1002.40(8)(d)1.-4., F.S.

As of January 2021, the HSP awarded 390 scholarships for students to attend an eligible private school and 476 scholarships for students to attend another public school.⁸⁰ The average scholarship amount for enrollment in an eligible private school is \$6,815 or \$750 for enrollment in a public school located outside the district the student resides.⁸¹

Effect of Proposed Changes

The Gardiner Scholarship Program (GSP)

The bill repeals the Gardiner Scholarship Program as scholarships for students with eligible disabilities are transitioned to the Family Empowerment Scholarship Program.

The McKay Scholarship Program (McKay Scholarship)

The bill repeals the McKay Scholarship effective July 1, 2022, transitioning students from the McKay Scholarship to the Family Empowerment Scholarship Program. The bill also revises the calculation of the McKay Scholarship to include a per full-time equivalent student share of funds for all categorical programs in the FEFP, as funded in the General Appropriations Act. Currently, McKay Scholarship students only generate the per-student share of three FEFP categorical funds: supplemental academic instruction funds, instructional materials funds, and technology funds. The calculation is determined by the student's level of services matrix or diagnosis. The bill requires the McKay Scholarship to be the calculated amount provided in law or the amount of the private school's tuition and fees, whichever is less.

The Family Empowerment Scholarship Program (FES Program)

The bill substantially changes the FES Program to award scholarships to students seeking educational options as well as those students with disabilities currently receiving scholarships under the GSP and the McKay Scholarship.

FES Program for Educational Options

The bill repeals the prior public attendance requirement for the FES Program, expands eligibility to include a student who is a dependent of a member of the United States Armed Forces and a sibling of a student with a disability receiving a FES scholarship, and prioritizes scholarships for a student whose household income level does not exceed 185 percent of the federal poverty level or who is in foster care or out-of-home care. Students who: are a dependent child of a member of the Armed Forces, a foster child, or an adopted child; students who meet the eligibility requirements of being on the direct certification list or meet household income requirements or students placed in foster care or out-of-home care and attended public school in the prior school year or beginning with the 2022-2023 school year students eligible to enroll in kindergarten are excluded from the maximum number of students who may participate in the program. In addition, up to 15,000 FTC Program scholarship students whose scholarship was not renewed due to a lack of available FTC funds are also excluded from the program maximum.

The bill increases the scholarship amount for a student seeking educational options under the FES Program to the full amount of funds the student would have generated through the FEFP, from the current 95 percent of the calculated amount. The bill authorizes the use of scholarship funds for students seeking additional educational options to include tuition and fees and any costs to provide digital devices to the student, including Internet access, at an eligible private school or transportation to a different Florida public school or lab school. A scholarship for transportation may only be awarded to a student if the student is on the direct certification list, the student's household income level does not exceed 185 percent of the federal poverty index, or the student is placed in foster care or in out-of-

⁸⁰ Florida Department of Education, *K-12 Scholarships*, Presentation to the Senate Education Committee (Jan. 12, 2021), at 10, available at, https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8848_MeetingPacket_4961_3.pdf.

⁸¹ *Id.* at 16.

home care and the school district does not provide the student with transportation to the school. The bill adds the scholarship cap of \$750 found under the current FTC Program for such transportation scholarship award amounts.

The bill provides that a FES Program scholarship for a student seeking additional educational options must remain in place until the student returns to a public school, graduates from high school or reaches the age of 21, whichever occurs first.

FES Program for Students with Disabilities

The bill authorizes a parent of a student with a disability who previously requested a scholarship under the GSP to be eligible to request a scholarship under the FES Program beginning in the 2021-2022 school year and beginning in the 2022-2023 school year for previous McKay Scholarship recipients. The bill authorizes the use of scholarship funds for students with disabilities to include those previously authorized under the GSP and McKay Scholarship, but adds the use of funds for tuition and fees for part-time tutoring services provided by a person certified by a nationally or internationally recognized research-based training program as approved by the DOE. The definitions for the terms of the GSP and the McKay Scholarship are included under the FES Program and the bill provides a definition for a job coach as an individual employed to help people with disabilities learn, accommodate to, and perform their work duties.

The bill provides that a FES Program scholarship for a student with a disability must remain in place under the same terms presently found under the GSP. Those terms include: until the parent does not renew program eligibility; the SFO determines the student is not eligible for program renewal; the Commissioner of Education suspends or revokes program participation or use of funds; the student's parent has forfeited participation in the program for failure to comply with program participation requirements; or the student enrolls in a public school, or the student graduates from high school or attains 22 years of age, whichever occurs first. The bill authorizes reimbursements for program expenditures and the closure of a scholarship account under the same terms as the GSP, but revises the length of time in which an account can be closed due to inactivity from three consecutive fiscal years to two.

The bill revises the calculation of the FES program scholarship for a student with a disability as follows:

- For a student with a Level I to Level III matrix of services⁸² or a diagnosis by a physician or psychologist, the scholarship must be based on the grade level and school district in which the student would have been enrolled as the total funds per unweighted FTE in the FEFP for a student in the basic exceptional student education (ESE) program plus the share of funds for all categorical programs provided in the GAA, except that for the ESE guaranteed allocation, funds must be based on the school district's average ESE guaranteed allocation funds per ESE FTE student.
- For a student with a Level IV or Level V matrix of services,⁸³ the scholarship must be based on the school district the student would have been assigned as the total funds per FTE for the Level IV or Level V ESE student program, plus the share of funds for all categorical programs provided in the GAA.
- For a student who received a Gardiner or McKay scholarship in the 2020-2021 school year, the scholarship amount must be the greater of the amount calculated pursuant to law or the amount the student received for the 2020-2021 school year.

For the 2021-2022 school year, scholarships for up to 20,000 students are established, and beginning in the 2022-2023 school year, the maximum number of students with disabilities participating in the scholarship program may annually increase by 1.0 percent of the state's total ESE FTE enrollment, not including gifted student. Students who: received specialized instructional services in VPK and have a current IEP; attended public school or the Florida School for the Deaf and the Blind in the prior school

⁸² Florida Department of Education, *Exceptional Student Education Florida Education Finance Program Matrix of Services Handbook* (2017), at 9-11, available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/2017MatrixServices.pdf>.

⁸³ *Id.* at 11.

year; are a dependent child of a member of the Armed Forces, a foster child, or an adopted child; and students who received a McKay Scholarship in the 2021-2022 school year are exempt from the limitation on maximum enrollment.

The bill adds the Transition-to-Work Program for students with disabilities under the McKay Scholarship under the FES Program as well as the obligations for the Department of Health, the Agency for Persons with Disabilities, and the DOE to access a list of licensed providers of specialized services presently required under the GSP.

Scholarship Prohibitions

The bill revises the prohibition of FES Program funds to students to include the prohibitions under the GSP and the McKay Scholarship.

School District Obligations

The bill revises the duties of the school district to annually inform households in the district who are eligible to apply for the FES Program on January 1.

The bill revises the obligations of the school district under the FES Program for a student with a disability to include those obligations already provided under the GSP and the McKay Scholarship.

The bill requires the school district to report all students who receive a scholarship under the FES Program to be reported separately from other students reported for purposes of the FEFP. The bill provides that a school district shall be held harmless for student from the weighted enrollment ceiling for group two programs under the FEFP as currently provided in the McKay Scholarship.

Department of Education Obligations

The bill revises the obligations of the DOE under the FES Program to include those obligations currently required under the GSP. Under the FES Program, the DOE must also notify an eligible SFO of any students receiving scholarships by their organization or another organization and notify each school district of a parent's participation in the FES program for school district reporting purposes. Additionally, the DOE must notify an SFO that scholarships may not be awarded in a school district in which the award will exceed 99 percent of the school district's share of the state FEFP funds as calculated by the DOE.

The bill requires the DOE, upon notification from an SFO on July 1, September 1, December 1, and February 1 that an application for a FES Program scholarship has been approved, to verify that the student is not prohibited from participating in the program. The SFO is required to provide DOE with the documentation to verify the student's participation, and upon the verification, the DOE must transfer, from state funds only, the student's scholarship funds to the SFO to deposit into scholarship accounts.

Private School Eligibility and Obligations

The bill requires a private school participating in the FES Program to provide to the SFO all documentation required for a student's participation.

The bill authorizes a student with a disability who attends a private school utilizing a FES Program scholarship to be exempt from the requirements of statewide assessment testing or approved nationally norm-referenced tests, if the physician or psychologist who issued the student's diagnosis or the IEP team determines standardized testing is not appropriate.

Parent and Student Responsibilities

For a parent of a student seeking a FES Program scholarship for additional educational options, the bill requires the parent to request a scholarship by a date established by the SFO and deletes the requirement for the parent to annually renew participation.

For a parent of a student with a disability seeking a FES Program scholarship, the bill requires the parent to apply to an eligible nonprofit SFO to participate in the FES Program as currently required under the GSP, but removes the requirement for the annual sworn compliance statement to be notarized. A parent of a student with a disability must annually renew participation in the FES Program and a parent must procure services necessary to educate the student as an account which has been inactive for two consecutive fiscal years makes the student ineligible for additional scholarship payments until the SFO verifies expenditures from the account.

Scholarship-Funding Organizations Obligations

An eligible nonprofit SFO must award a FES Program scholarship to a student seeking additional educational options with priority given to a student whose household income level does not exceed 185 percent of the federal poverty level or who is in foster care or out-of-home care. The SFO must receive applications, determine student eligibility, and notify parents of program requirements. Once an application is approved, the SFO must provide the DOE with information on the student to determine the appropriate student scholarship funding amount. The bill requires the SFO to make initial scholarship payments after the SFO verifies the student's admission acceptance with subsequent scholarship payments made upon verification of continued enrollment and attendance.

An eligible nonprofit SFO must award a FES Program scholarship to a student with a disability by receiving an application, determining student eligibility, and notifying parents of their obligations under the program. When the application is approved, the SFO must provide the DOE with information on the student to determine the appropriate student scholarship funding amount. Upon verification, the DOE must release, from state funds only, the student's scholarship funds to the SFO. The SFO must establish a date by which a parent must confirm initial or continued participation in the FES program. The SFO must award scholarships with priority given in the 2021-2022 school year to a student who received a GSP in the 2020-2021 school year and meets the scholarship eligibility requirements, followed by renewing students from the previous school year, students retained on the previous school year's wait list, and an eligible student who meets the criteria for an initial award. Additional SFO obligations currently required under the GSP including maintain a wait list, verification of expenditures, and other specified requirements are now required under the FES Program.

The bill increases the administrative fee an eligible SFO awarding the FES Program scholarships may assess from 1 percent to 2.5 percent.

The Florida Tax Credit Scholarship Program and the Hope Scholarship Program

The bill aligns the FTC Program student eligibility's household income level requirements to the FES Program requirements and revises the frequency of Auditor General operational audits of SFOs participating in the FTC Program from every year to at least once every 3 years. The bill increases the scholarship amount for the FTC Program and the HSP to the full amount provided for the student, from the current 95 percent of the calculated amount.

Additional Changes

The bill revises the rules the State Board of Education must adopt to administer the FES Program.

The bill makes conforming changes to reflect the repeal of the GSP and program eligibility criteria that now is under the FES Program.

The bill repeals the provision excluding the teacher salary increase allocation from the calculation of scholarship amounts.

B. SECTION DIRECTORY:

Section 1. Amends s. 11.45, F.S.; revising the frequency with which the Auditor General must conduct certain operational audits.

Section 2. Repeals s. 1002.385, F.S.; relating to the Gardiner Scholarship.

Section 3. Amends s. 1002.39, F.S.; revising provisions relating to the calculation of the maximum amount of scholarship funds granted to an eligible student with a disability under the John M. McKay Scholarships for Students with Disabilities Program; providing for future repeal of the program.

Section 4. Amends s. 1002.394, F.S.; providing definitions; revising student eligibility requirements under the Family Empowerment Scholarship Program; providing requirements for the use of funds under the program; revising provisions relating to the term of scholarships awarded under the program; providing that certain students are not eligible for a scholarship under the program under certain circumstances; providing exceptions; revising the obligations of school districts, the Department of Education, private schools, and eligible scholarship-funding organizations under the program; revising the responsibilities of parents and students relating to program participation; revising provisions relating to the funding and payment of scholarships awarded under the program; requiring specified state agencies to work with an organization to provide access to lists of approved licensed service providers; providing that certain students with disabilities are eligible for enrollment in transition-to-work programs at certain participating private schools; providing requirements for such students, private schools, and businesses under transition-to-work programs; revising provisions relating to the State Board of Education's rulemaking authority; removing obsolete provisions.

Section 5. Amends s. 1002.395, F.S.; revising the amount of eligible contributions that may be used for administrative expenses by an eligible nonprofit scholarship-funding organization under the Florida Tax Credit Scholarship Program.

Section 6. Amends s. 1002.40, F.S.; conforming provisions to changes made by the act.

Section 7. Amends s. 1009.971, F.S.; conforming provisions to changes made by the act.

Section 8. Amends s. 1009.98, F.S.; conforming provisions to changes made by the act.

Section 9. Amends s. 1009.981, F.S.; conforming provisions to changes made by the act.

Section 10. Amends s. 1011.61, F.S.; conforming provisions to changes made by the act.

Section 11. Amends s. 1011.62, F.S.; conforming provisions to changes made by the act.

Section 12. Provides for an effective date of July 1, 2021, except as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill revises the methodology for calculating the amounts for both the McKay and Gardiner scholarships. Based on the eligible student's matrix of service or physician's or psychologist's diagnosis, the new calculation methodology may result in a higher scholarship amount for a student. This will result in a school district potentially funding a scholarship at a higher amount than in the current year.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Additional families may now be eligible to participate in and use scholarship funds for private school and educational services to meet the educational needs of their children.

D. FISCAL COMMENTS:

The bill requires all scholarships awarded through the Family Empowerment Scholarship (FES) program to be funded in the Florida Education Finance Program (FEFP) with state funds only. Based on the most recently available scholarships data, it is estimated that a maximum of 61,082 new FES scholarships may be funded in the FEFP. Based on the FEFP proposal included in HB 5001 (2021-2022 Fiscal Year House Proposed General Appropriations Act), a maximum fiscal impact may potentially be \$200 million; however, based on past participation rates, it is unlikely that 61,082 new scholarships would be awarded in the 2021-2022 Fiscal Year. The impact would be further affected by final FEFP policies agreed upon for the 2021-2022 Fiscal Year. The impact will also be affected by student enrollments that fluctuate throughout the fiscal year and are incorporated via student enrollment counts and estimates.

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

On April 8, 2021, the Appropriations Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Expands the FES Program eligibility to include students who are dependents of a member of the United States Armed Forces and a sibling of a student with a disability receiving a FES Program scholarship;

- Excludes from the maximum number of students who may participate in the FES Program students who meet the eligibility requirement of being on the direct certification list or meet certain household income requirements, students placed in foster care or out-of-home care and beginning in the 2022-2023 school year, students who are eligible to enroll in kindergarten;
- Allows FES Program scholarship funds to be used for costs to provide digital devices to a student to include Internet access;
- Requires a student with a disability who received a McKay scholarship in the 2020-2021 school year to receive a FES Program scholarship at an amount that is the greater of the amount calculated pursuant to law or the amount the student received in the 2020-2021 school year;
- Requires a participating private school to provide to the SFO all documentation required for a student's participation in the FES Program;
- Removes the requirement for a parent's annual sworn compliance statement to be notarized;
- Requires the SFO to establish a date by which a parent must request a FES Program scholarship; and
- Increases the administrative fee an eligible SFO awarding the FES Program scholarships may assess from 1 percent to 2.5 percent.

The analysis is draft to the committee substitute as amended by the Appropriations Committee.