

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

---

Prepared By: Education Committee

---

BILL: CS/SB 2120

SPONSOR: Education Committee and Senator Atwater

SUBJECT: Opportunity Scholarship Program

DATE: April 27, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	O'Farrell	ED	Fav/CS
2.	_____	_____	EA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

---

## I. Summary:

The bill changes the date that parents must file an intent to participate in the Opportunity Scholarship Program from July 1<sup>st</sup> to August 1<sup>st</sup>.

This bill amends s. 1002.38, F.S.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Opportunity Scholarship Program (OSP)

Current law (s. 1002.38, F.S.) sets forth the requirements for parental placement of a scholarship student in an eligible private school or another public school. The law also establishes requirements for student eligibility for scholarships and for participation by an eligible private school. As well, the law establishes responsibilities for school districts and the Department of Education (DOE). The State Board of Education (SBE) has statutory authority to adopt rules to administer the program.

For FY 2003-2004, DOE reports that (as of May 11, 2004) there were 35 schools and 640 scholarship recipients participating in the Opportunity Scholarship Program, with a total of \$2,546,850 in scholarship awards and an average scholarship award of \$3,980.<sup>1</sup> As March 16, 2005, 325 schools were registered for the Opportunity Scholarship Program and 43 schools had

---

<sup>1</sup> Florida Department of Education, *2003-2004 Scholarship Programs, Status Update*, 2004.

students enrolled in the OSP program. There were 741 students participating in the scholarship program.<sup>2</sup>

#### *Eligible and Ineligible Students*

To be eligible for an Opportunity Scholarship to attend a private school, a student must meet the following requirements:

- Have spent the prior school year in attendance at a Florida public school (by assigned school attendance area or by special assignment) that has been designated as performance grade category "F" (failing to make adequate progress)<sup>3</sup> for 2 school years in a 4-year period;
- Was in attendance during a school year in which the school designation was in effect;
- Has been in attendance elsewhere in the public school system and has been assigned to the school<sup>4</sup> for the next school year; or
- Is entering kindergarten or first grade and has been notified that the student has been assigned to the school<sup>5</sup> for the next school year.

Students who are enrolled in a school that provides educational services in Department of Juvenile Justice (DJJ) commitment programs are not eligible for a scholarship.

#### *Parent and Student Obligations*

A parent who applies for a scholarship is exercising his or her parental option to place his or her child in a private school. Parents are responsible for the following:

- Notifying the DOE and the school district of a request for a scholarship no later than July 1<sup>st</sup> of the first year in which the student intends to use the scholarship.
- Selecting the private school and applying for the admission of the student.
- Complying fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.<sup>6</sup>
- Ensuring that the student participating takes all statewide assessments required pursuant to s. 1008.22, F.S.<sup>6</sup>
- Transporting the student to a higher performing public school with available space.

Students participating in the scholarship program must:

- Remain in attendance throughout the school year, unless excused by the school for illness or other good cause.<sup>6</sup>
- Comply fully with the school's code of conduct.<sup>6</sup>

#### *Term of Scholarship*

For purposes of continuity of educational choice, the scholarship remains in force until the student:

- Returns to a public school; or

---

<sup>2</sup> See <http://www.firn.edu/doe/choice/opschoolsenrolled.html>

<sup>3</sup> Section 1008.34, F.S., establishes school performance grade categories.

<sup>4</sup> A school designated as performance grade category "F."

<sup>5</sup> Ibid.

<sup>6</sup> A participant who fails to comply with this requirement forfeits the scholarship.

- Matriculates to high school and the public high school to which the student is assigned is an accredited school with a designation of "C" or better, if the student chooses to attend a private school the highest grade of which is grade 8.

At any time, upon reasonable notice to the DOE and the school district, the student's parent may remove the student from the private school and place the student in a public school. The opportunity to continue attending the higher performing public school remains in force until the student graduates from high school. Students with disabilities who are eligible to receive services from the school district under federal or state law, and who participate in the OSP program, remain eligible to receive services from the school district as provided by federal or state law.

#### *School District Obligations*

Under current law, school districts must:

- Timely notify parents of all options available in s. 1002.38, F.S.
- Offer parents an opportunity to enroll the student in another public school within the district that has been designated as a school performing higher than that in which the student is currently enrolled or to which the student has been assigned, but not less than performance grade category "C."
- Accept a student from an adjacent school district whose parent selects a public school in the recipient district, and report the student for purposes of funding under the Florida Education Finance Program (FEFP).
- Provide locations and times to take all statewide assessments for a student who participates in the scholarship.
- Provide transportation to the public school selected by the parent, if the parent chooses a higher performing public school.
- Report all scholarship students who are attending a private school separately from other students reported for FEFP purposes.

#### *DOE Obligations*

The law tasks the DOE with the following requirements:

- Disbursing quarterly scholarship payments.
- Verifying student admission acceptance by a private school and continued enrollment and attendance.
- Reviewing and approving documentation prior to scholarship payments.
- Mailing the warrant to the private school of the parent's choice.

#### *Private School Eligibility and Obligations*

To be eligible to participate in the program, a Florida private school may be sectarian or nonsectarian and must meet the following requirements:

- Demonstrate fiscal soundness by:
  - operating for 1 school year; or
  - providing DOE with a statement by a C.P.A. confirming that the school is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year; or
  - filing with DOE a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter.

- Notify DOE and the district of intent to participate in the program, specifying the grade levels and services that the private school has available.<sup>7</sup>
- Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.
- Meet state and local health and safety laws and codes.
- Accept scholarship students on an entirely random and religious-neutral basis without regard to the student's past academic history; however, the private school may give preference to siblings of students who have already been accepted on a random and religious-neutral basis.
- Be subject to the instruction, curriculum, and attendance criteria adopted by an appropriate private school accrediting body.
- Furnish a school profile which includes student performance.
- Accept as full tuition and fees the amount provided by the state for each student.
- Agree not to compel any student attending the private school on an opportunity scholarship to profess a specific ideological belief, to pray, or to worship.
- Be academically accountable to the parent for meeting the educational needs of the student.
- Employ or contract with teachers who hold baccalaureate or higher degrees, or have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught.
- Comply with all state laws relating to general regulation of private schools.
- Adhere to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

#### *Scholarship Funding and Payment*

The scholarship amount is the calculated amount or the amount of the private school's tuition and fees, whichever is less. Eligible fees include textbook fees, lab fees, and other fees related to instruction, including transportation. Payments must be made by individual warrant payable to the student's parent for his or her endorsement.

#### *Chief Financial Officer (CFO)/Department of Financial Services' Obligations*

Florida's CFO must make quarterly scholarship payments on specific dates after verification by the DOE of student information on private school acceptance, enrollment, and attendance.

On November 12, 2004, the 1st District Court of Appeals issued en banc opinion finding that the Opportunity Scholarship Program violated Art. I, s. 3 of the State Constitution because the program authorizes state funds to be paid to sectarian schools.<sup>8</sup> The opinion has been appealed to the Florida Supreme Court. Oral argument before the court is scheduled for June 7, 2005.

### **State Law and Rules Related to Private Schools**

#### *Private School Notification and Annual Survey*

Current law (s. 1002.42, F.S.) provides for the general regulation of private schools and requires each new institution to notify the department about its existence. The DOE must organize, maintain, and annually update a database of educational institutions within the state. The annual

<sup>7</sup> The notification must occur by May 1 of the school year preceding the school year in which the school intends to participate.

<sup>8</sup> *Bush v. Holmes*, 886 So.2d 340 (Fla. 1st DCA 2004).

submission of the database survey by a school must not be used by that school to imply approval or accreditation by the Department of Education. DOE is charged with making data on private education in this state accessible to the public. For the purpose of organizing, maintaining, and updating this database, each private school must annually execute and file a database survey form on a date designated by the DOE, including a notarized statement indicating that the owner of the private school has complied with the provisions for criminal background checks and the prohibition against ownership or operation of a private school by a person who has been convicted of a crime involving moral turpitude.

The database must include the name, address, and telephone number of the institution; the type of institution; the names of administrative officers; the enrollment by grade or special group (e.g., career and technical education and exceptional child education); the number of graduates; the number of instructional and administrative personnel; the number of days the school is in session; and such data as may be needed to meet the provisions of this section and s. 1003.23(2), F.S., relating to attendance. Each existing private educational institution must notify the DOE of any change in the name of the institution, the address, or the chief administrative officer.

#### *Criminal Background Checks*

Section 1002.42(2)(c), F.S., sets forth fingerprinting requirements for state but not federal processing and checking for criminal backgrounds of the owners and operators of private schools. The law provides exceptions for certain persons and specifies the individuals who may take fingerprints. The law defines the term "owner" to mean any individual who is the chief administrative officer of a private school. The Florida Department of Law Enforcement (FDLE) must forward the results to the private school owner who must make the results available for public inspection in the private school office. The costs of fingerprinting, criminal records checking, and processing must be borne by the applicant or private school.

An owner of a private school may require school employees to file a complete set of fingerprints with the FDLE for processing and criminal records checking. Findings from the processing and checks must be reported to the owner for use in employment decisions.

#### *Criminal Sanctions*

It is a misdemeanor for an institution to fail to submit the annual database survey form and notarized statement of compliance to the DOE. The authorities of an institution that fail to do so are, upon conviction, subject to a fine not exceeding \$500. Persons who submit data for a nonexistent school or an institution providing no instruction or training in order to defraud the public commit a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. It is unlawful for a person who has been convicted of a crime involving moral turpitude to own or operate a private school. Persons found to be in violation of this requirement commit a first degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Also, s. 837.06, F.S., provides that making a false statement with the intent to mislead a public servant in the performance of his or her official duty is a second-degree misdemeanor.

#### *Other State Laws*

There are other laws and rules governing private schools, including, but not limited to: s. 381.006(6), F.S., relating to school sanitation practices, s. 381.0011(4), F.S., relating to

communicable disease, s. 381.0072, F.S., relating to food service protection, s. 404.056(1)(d), F.S., related to radon screening, and s. 1003.22 relating to school health entry examinations and scoliosis screening. As well, if a private school is a charitable organization, the school may be subject to the provisions of chapter 496, F.S., relating to the solicitation of funds by these organizations. Private school corporations are governed by chapter 623, F.S.

Section 1003.23, F.S., requires all officials, teachers, and other employees in public, parochial, religious, denominational, and private K-12 schools, including private tutors, to keep all attendance records and to prepare and submit promptly all reports that may be required by law and by SBE rules and district school boards. The records must include a register of enrollment and attendance and the reports must be made as required by the SBE. The enrollment register must show the absence or attendance of each student enrolled for each school day of the year, as prescribed by the SBE, and must be open for inspection by the designated school representative or the superintendent of the district in which the school is located. Violations of this section are a second-degree misdemeanor, punishable as provided by law.

### **Florida Comprehensive Assessment Test (FCAT)/School Grades**

Florida currently requires public school students in grades 3 through 10 to take the reading and math portions of the FCAT each year. Students in grades 4, 8, and 10 must also take the writing portion of the FCAT, and students in grades 5, 8, and 10 must take the science portion of the FCAT. A school's performance grade category designation is based on a combination of student achievement scores, student learning gains as measured by annual FCAT assessments in grades 3 through 10, and improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT, unless these students are performing above satisfactory performance.<sup>9</sup>

Generally, the FCAT scores are released in May and school grades are released during the first two weeks of June.<sup>10</sup> The time is compressed between notification to a parent of the student's school grade and the deadline for a request to participate in the Opportunity Scholarship Program (July 1<sup>st</sup>). The DOE advises the parents of students who may be eligible for the OSP scholarship immediately following the release of the school grades. The department recommends that parents indicate an intent to participate in the program within 2 days or less of the release of school grades to allow parents sufficient time to choose a private school, register, and enroll the student by the July 1 deadline.

### **III. Effect of Proposed Changes:**

The bill changes the date that parents must file an intent to participate in the scholarship program from July 1<sup>st</sup> to August 1<sup>st</sup>. Current law (s. 1002.38(6)(g), F.S.) requires scholarship payments to be made in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year in which the scholarship is in force. The date change will enable parents of eligible students to have more time to make the request to participate in the program. According to the DOE, the first scholarship payment could still be made on September 1<sup>st</sup>.

---

<sup>9</sup> Section 1008.34(3)(a), F.S.

<sup>10</sup> Florida Department of Education, *2003-2004 Scholarship Programs, Status Update*, 2004, page 1.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

For a scholarship student whose parent files an intent to participate in the scholarship program by August 1, the first payment could be made on September 1. This may have a positive impact on a participating private school's willingness to accept the student.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---