

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1331 School Choice  
**SPONSOR(S):** Bileca and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1822

| REFERENCE                              | ACTION           | ANALYST    | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|------------------|------------|--|
| 1) K-20 Innovation Subcommittee        | 13 Y, 0 N        | Valenstein | Sherry                                   |
| 2) PreK-12 Appropriations Subcommittee | 13 Y, 0 N, As CS | Seifert    | Heflin                                   |
| 3) Education Committee                 |                  | Valenstein | Klebacha                                 |

### SUMMARY ANALYSIS

The bill expands the definition of a failing school for purposes of student eligibility for the Opportunity Scholarship Program (OSP). The bill changes the classification of a failing school from a school receiving two "F's" in a four-year period to a school that receives a "D" or an "F" in the prior year and is in one of the two lowest categories of differentiated accountability.

The bill expands the authorization parents currently have to choose a higher-performing public school that has space available in an adjacent school district to allow a parent to choose a higher-performing public school in any other school district in the state. The bill maintains the transportation requirements for school districts, thus, if a parent chooses a public school outside of the assigned school district, the parent is responsible for providing transportation. However, if a parent chooses a higher-performing public school within the assigned district, the school district is required to provide transportation. The authorization for use of categorical funds remains an option for school districts to provide the transportation required for opportunity scholarship recipients.

The bill repeals all portions of the law relating to the OSP private school choice options. This complies with existing case law that found this portion of the OSP unconstitutional.

The bill also makes necessary conforming changes relating to the expanded definition of a failing school for the OSP.

See FISCAL COMMENTS and DRAFTING ISSUES OR OTHER COMMENTS.

This bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Overview

##### **Opportunity Scholarship Program**

The Opportunity Scholarship Program (OSP) was created in 1999 as part of a broad education reform package known as the A+ Plan.<sup>1</sup> The OSP was designed to provide parents of public school students in failing schools the opportunity to send their children to another public school performing satisfactorily or to an eligible private school. For purposes of the OSP, a failing school is a school that has received a performance grade of “F” for two years in a four-year period, this currently encompasses 24 schools.<sup>2</sup>

When created, both sectarian and nonsectarian private schools were eligible to receive an Opportunity Scholarship if the school met all the requirements established by law.<sup>3</sup> However, in 2006, the Florida Supreme Court ruled that the private school scholarship option of the OSP violates the State Constitution. The Court’s narrowly tailored opinion addressed only the issue of whether the State Constitution prohibits the state from expending public funds to allow students to use an Opportunity Scholarship to obtain a private school education. The Court held that “through the OSP the state is fostering plural, nonuniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools.”<sup>4</sup> Accordingly, an Opportunity Scholarship may now only be used to attend a public school of choice.

Due to the Court’s ruling, a student may use an Opportunity Scholarship to attend either, a public school within the school district designated by the state as 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,” or a public school, in an adjacent school district, with available space that has been designated by the state as a higher-performing public school. If a parent chooses a school in an adjacent school district, the parent is responsible for transporting the student to and from the school.<sup>5</sup>

Currently, a student that receives an Opportunity Scholarship may continue attending a higher performing public school within the district or in an adjacent district until he or she graduates from high school.<sup>6</sup>

##### **Differentiated Accountability**

Differentiated accountability is a system for categorizing schools based upon student achievement and determining appropriate interventions for those schools with low student achievement. Schools are categorized according to the causes and severity of substandard student achievement. School improvement interventions are then applied to the school based upon the school’s categorization. A school’s categorization determines the type and intensity of school improvement interventions and whether interventions are directed by the school, school district, or state. The lowest performing schools receive more comprehensive interventions, while schools that are closer to meeting student achievement goals receive less intensive interventions.<sup>7</sup>

The six categories that comprise the differentiated accountability system include: Schools Not Required to Participate in Differentiated Accountability Strategies; Prevent I, Correct I, Prevent II, Correct II, and

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<sup>1</sup> Section 2, ch. 99-398, L.O.F.

<sup>2</sup> Email, Department of Education Staff (March 16, 2011).

<sup>3</sup> Section 2, ch. 99-398, L.O.F.

<sup>4</sup> *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

<sup>5</sup> Section 1002.38(3)(a) and (b), F.S.

<sup>6</sup> Section 1002.38(3)(a) and (b), F.S.

<sup>7</sup> Section 1008.33, F.S.; rule 6A-1.099811, F.A.C.

Intervene.<sup>8</sup> In 2010 there were 22 schools in the Intervene category and 961 schools in the Correct II category.<sup>9</sup>

Each category is based upon the school's grade, and the level and rate of change in student performance in the areas of reading and mathematics, disaggregated into student subgroups as described in the federal No Child Left Behind Act.<sup>10</sup>

### **Effect of Proposed Changes**

The bill expands the definition of a failing school for purposes of student eligibility for the OSP. The bill changes the classification of a failing school from a school receiving two "F's" in a four-year period to a school that receives a "D" or an "F" in the prior year and has been classified in one of the two lowest-performing categories within the differentiated accountability program (*i.e.*, Correct II or Intervene). This expands the number of eligible schools to include 121 additional schools; however, of the 121 schools, 114 schools are Title I schools currently participating in the federal choice option.<sup>11,12</sup>

The bill continues to allow a student to maintain the Opportunity Scholarship until the student graduates high school, but specifies the student may choose to continue attending the higher-performing public school feeder pattern<sup>13</sup> until graduation. This appears to allow students to remain in the same schools as their classmates, regardless of the performance level of the feeder pattern school or their assigned school.

The bill expands the authorization parents currently have to choose a higher-performing public school that has space available in an adjacent school district to allow a parent to choose a high-performing public school in any other school district in the state. The bill maintains the transportation requirements for school districts, thus, if a parent chooses a public school outside of the assigned school district, the parent is responsible for providing transportation. However, if a parent chooses a higher-performing public school within the assigned district, the school district is required to provide transportation. The authorization for use of categorical funds remains an option for school districts to provide the transportation required for opportunity scholarship recipients.

The bill repeals all portions of the law relating to the OSP private school choice options. The bill removes these portions of the law to comply with existing case law regarding the constitutionality of using state funds to attend a private school.<sup>14</sup>

The bill also makes necessary conforming changes relating to the expanded definition of a failing school for the OSP.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1002.38, F.S., to revise legislative intent and eligibility requirements for participation in the Opportunity Scholarship Program; to delete provisions that authorize an Opportunity Scholarship for attendance at a private school; to require that an Opportunity Scholarship remain in force until the student graduates from high school; and to revise school district obligations and delete provisions relating to private schools to conform to changes made by the bill.

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<sup>8</sup> Rule 6A-1.0099811, F.A.C.

<sup>9</sup> Email, Florida Department of Education Staff (Sept. 7, 2010).

<sup>10</sup> Section 1008.33(3)(b), F.S.

<sup>11</sup> Email, Florida Department of Education (April 11, 2011).

<sup>12</sup> The federal No Child Left Behind Act requires school districts to provide students attending a Title I school that fails to meet adequate yearly progress for three consecutive years to transfer to a higher-performing public school. School districts are required to provide, or pay for, transportation to and from the school of choice, and are authorized to spend 20 percent of their Title I funds on a combination of choice related transportation and supplemental educational services, unless a lesser amount is required. 20 U.S.C. s. 1116(b); 34 C.F.R. s. 200.44

<sup>13</sup> See Drafting Issues or Other Comments section of this analysis for discussion of feeder pattern schools.

<sup>14</sup> See *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

**Section 2.** Amends s. 1001.42, F.S., to conform provisions to changes made by the bill.

**Section 3.** Amends s. 1002.20, F.S., to conform provisions to changes made by the bill.

**Section 4.** Provides an effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill expands the definition of a failing school for purposes of student eligibility for an Opportunity Scholarship. The bill maintains the requirement that school districts provide transportation for students using an Opportunity Scholarship to attend a higher-performing school within the district. By expanding the number of eligible students, the bill may cause an increase in transportation expenses for school districts. However, all but 7 of the schools included in the expanded definition are currently Title I schools and are therefore eligible for the public school choice option through the federal No Child Left Behind Act (NCLB).<sup>15</sup>

Twenty (20) percent of Title I funds must be used on a combination of choice related transportation and supplemental educational services.<sup>16</sup> Although a school district will not be able to use its Title I funds to provide transportation for students participating in the OSP, to the degree Title I funds would no longer be needed to otherwise provide transportation for students, such funds could then be used for other educational services, thereby offsetting current school district expenditures for those other educational services.<sup>17</sup>

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

None.

### **D. FISCAL COMMENTS:**

The bill allows students to attend a higher-performing public school in any district within the state. This may impact the Florida Education Finance Program, because different school districts are funded at different rates based on the cost of living adjustment for the district.

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<sup>15</sup> Emails, Florida Department of Education (March 24, 2011 and April 11, 2011).

<sup>16</sup> 20 U.S.C. s. 1116(b); 34 C.F.R. s. 200.44

<sup>17</sup> See 20 U.S.C. s. 1120A(b).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

Current law states, "The opportunity to continue attending the higher performing public school shall remain in force until the student graduates from high school." If the bill passes, the law will state, "The student shall have the opportunity to continue attendance in the higher-performing public school feeder pattern until the student graduates from high school." If 60 percent of an elementary school's students attend a particular middle school, that middle school is identified as the feeder pattern school.<sup>18</sup> The bill, for example, would allow an elementary school student participating in the OSP to continue to the feeder pattern middle school, regardless of that school's performance level.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2011, the PreK-12 Appropriations Subcommittee adopted two amendments and reported the bill favorably as a Committee Substitute (CS). The amendments changed the definition of a failing school from a school receiving two "D's" in a four-year period or an "F" in a two year period to a school that has received a "D" or an "F." After these amendments, in order for a student to be eligible for an Opportunity Scholarship, the school the student is enrolled in, or scheduled to attend, must have received a school grade of "D" or "F" in the prior year and be categorized in the lowest two categories of differentiated accountability.

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<sup>18</sup> Section 1008.34(3)(a)3., F.S.