A bill to be entitled
An act relating to the Education Savings Account Program; creating s. 1002.385, F.S.; establishing the program to provide a student account to pay for specified educational expenses at a private school, private virtual school, private tutoring program, or public or private postsecondary institution or to contribute to a college savings plan or make payment for a prepaid college plan; providing definitions and student eligibility requirements; providing parent and student responsibilities; providing educational institution eligibility and obligations; providing Department of Education, Chief Financial Officer, and educational Department of Education, Chief Financial Officer, and financial institution obligations; providing Commissioner of Education authority and obligations; authorizing the release of personally identifiable information; providing for the total amount of payments; authorizing the Legislative Budget Commission to transfer certain funds to the Florida Education Finance Program; providing for administration and rulemaking; providing requirements for enrollment in the program for the 2013-2014 school year; authorizing the State Board of Education and the Chief Financial Officer to adopt emergency rules; providing an effective date.

WHEREAS, the Legislature finds that the state has a duty to provide for a high-quality education for all children residing...
in the state, and

WHEREAS, the Legislature finds that the state has a duty to provide for the establishment, maintenance, and operation of institutions of higher learning, and

WHEREAS, a high-quality education for children is facilitated by parental involvement in educational choices for their children, competition among schools and other learning environments, and the measurement and evaluation of student learning gains, and

WHEREAS, the Legislature finds that competition between public schools and private schools will enhance the quality of education at public schools by encouraging innovation, flexibility, and efficiency, and

WHEREAS, providing a child with an opportunity to attend a public school or providing funds to pay for private schooling or tutoring enables the child to access the high-quality education best suited for his or her specific needs, and

WHEREAS, the Legislature finds that under the right to religious freedom in the State Constitution, the state may not prohibit a person from using private funds to pay the cost of private schooling or tutoring at an institution with a religious affiliation, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1002.385, Florida Statutes, is created to read:

1002.385 Education Savings Account Program.—The Education
Savings Account Program is established.

(1) DEFINITIONS.—As used in this section, the term:

(a) "Account" means an education savings account belonging to a student who is participating, or who previously participated, in the program. Funds in an account are private funds.

(b) "College savings plan" means a qualified tuition plan under s. 529 of the Internal Revenue Code which allows the establishment of an account for a beneficiary for the purpose of paying the beneficiary's eligible college expenses.

(c) "Department" means the Department of Education.

(d) "Eligible private postsecondary institution" means a private postsecondary institution that is a member of the Independent Colleges and Universities of Florida and is located in the state.

(e) "Eligible private school" means a private school that offers an education to students in any of grades kindergarten through grade 12, is located in this state, and meets the requirements in subsection (6).

(f) "Financial institution" means an institution defined in s. 655.005(1)(i).

(g) "Program" means the Education Savings Account Program.

(2) ELIGIBLE STUDENTS.—

(a) A student is eligible to receive funds under the program if the student resides in this state and:

1. Is eligible to enter kindergarten or first grade;

2. Is the sibling of a student who participates in the program and who resides in the same household; or
3. Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding.

(b) A student remains eligible for the program until he or she graduates from high school or enrolls in a public school, charter school, or virtual instruction program, excluding the Florida Virtual School, which receives state funding as a result of the student's participation.

(3) INELIGIBLE STUDENTS.—A student may not participate in the program if he or she is:

(a) Enrolled in a school operating for the purpose of providing educational services to youth in a Department of Juvenile Justice commitment program;

(b) Participating in a virtual school, correspondence school, or distance learning program that receives state funding for the student's participation;

(c) Enrolled in the Florida School for the Deaf and the Blind; or

(d) Receiving an educational scholarship pursuant to this chapter.

(4) PARENT AND STUDENT OPTIONS.—

(a) A parent may direct the trustee of the funds in the student's account to use such funds, in whole or in combination, to:

1. Pay the tuition and fees for the child to attend an eligible private school;

2. Pay the tuition and fees for the child to attend an eligible private virtual school;
3. Pay a private tutor or private tutoring program qualified under s. 1002.43 for supplemental educational services;

4. Pay the cost of tuition, books, or fees for the child to enroll in a dual enrollment program at a public postsecondary institution or at an eligible private postsecondary institution;

5. Contribute to the child's college savings plan; or

6. Make a payment toward the purchase of a contract under the Stanley G. Tate Florida Prepaid College Program.

(b) Within 3 months after the child graduates from high school or no longer participates in the program, a parent may direct the trustee to donate any unspent funds in the account to any institution identified in subparagraphs 1.-4. or to the school district in which the child last resided before the child's participation in the program terminated. If a parent fails to identify an institution to which the trustee must donate the funds, the trustee shall donate the funds to the school district pursuant to this paragraph.

(5) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—

(a) A parent must annually apply to the department on behalf of the child during the annual enrollment period. As part of the enrollment, the parent must identify the educational option chosen to meet the compulsory attendance requirements of law whether through attendance at a private school or private virtual school, enrollment in a home education program under s. 1002.41, or a private tutoring program under s. 1002.43.

(b)1. If a parent elects for the child to attend an
eligible private school or private virtual school, the parent or
the child must:
a. Select an eligible private school or private virtual
school and apply for admission.
b. Inform the child's school district when the parent
withdraws the child to attend the private school or private
virtual school.
c. Remain in attendance in the selected school throughout
the school year unless excused by the school for illness or
other good cause.
d. Comply with the school's published policies.
e. Ensure that the child participating in the program
takes the nationally norm-referenced assessment tests
administered by the school which are required by the department.
The parent may also choose to have the child participate in a
statewide assessment pursuant to s. 1008.22. If the parent
requests that the child take a statewide assessment, the parent
is responsible for transporting the child to the testing site
designated by the school district.
f. Pay the balance of the school's tuition and fees in
excess of the funds in the child's account.

2. A parent who chooses to comply with the compulsory
attendance requirements by enrolling his or her child in a
private school or private virtual school may also choose to
enroll the child in a dual enrollment program through a public
postsecondary institution or an eligible private postsecondary
institution and use funds from the child's account for such
purposes. The parent and child must register or apply for
admission during the institution's registration or application period and are responsible for paying the balance of tuition and fees that is not covered by the payments from the child's account.

(c) 1. If a parent elects for his or her child to participate in a home education program, the parent and child must comply with s. 1002.41.

2. A parent who chooses to comply with the compulsory attendance requirements by enrolling his or her child in a home education program may also choose to enroll the child in a dual enrollment program through a public postsecondary institution or an eligible private postsecondary institution and use funds from the child's account for such purpose. The parent and child must register or apply for admission during the institution's registration or application period and are responsible for paying the balance of tuition and fees that is not covered by payments from the child's account.

(d) 1. If a parent elects for the child to receive an education from an eligible private tutor or private tutoring program, the parent and the child must comply with this section.

2. A parent who chooses to comply with the compulsory attendance requirements through use of a private tutor or private tutoring program may also choose to enroll his or her child in a dual enrollment program through a public postsecondary institution or an eligible private postsecondary institution and use funds from the child's account for such purpose. The parent and child must register or apply for admission during the institution's registration or application period and are responsible for paying the balance of tuition and fees that is not covered by payments from the child's account.
period and are responsible for paying the balance of tuition and fees that is not covered by payments from the child's account.

(e) If a parent elects to use any portion of his or her child's account as payment for private tutoring through an eligible supplemental educational services provider, the parent is responsible for payments to the provider that are not covered by the child's account.

(f) If a parent elects for the child to participate in dual enrollment at a public postsecondary institution or an eligible private postsecondary institution, the parent or the child must:

1. Register or apply for admission during the institution's registration or application period.

2. Inform the child's school district when the parent withdraws the child to attend the postsecondary institution.

3. Remain in attendance in the postsecondary institution throughout the school year unless excused by the institution for illness or other good cause.

4. Comply with the institution's published policies.

5. Pay the balance of the postsecondary institution's tuition and fees in excess of the funds in the child's account.

(g) If a parent elects to use any of the funds in the child's account to make a contribution to a college savings plan, the parent must comply with all federal and state laws related to contributions to a college savings plan.

(h) If a parent elects to use any of the funds in the child's account toward the purchase of a contract under the Stanley G. Tate Florida Prepaid College Program, the parent must
comply with all rules and requirements of the program and is responsible for payments in excess of the funds in the account.

A child may return to the public school system at any time, at which time quarterly payments to the child's account shall cease. The parent of a child who returns to the public school system is responsible for the payment of any outstanding balance owed to the private school, private virtual school, private tutor, private tutoring program, state postsecondary institution, or private postsecondary institution which is in excess of the funds in the account when payments to the account cease.

(6) EDUCATIONAL INSTITUTION ELIGIBILITY AND OBLIGATIONS.—

(a) A sectarian or nonsectarian private school is eligible to participate in the program if the school:

1. Is accredited by the Southern Association of Colleges and Schools or is eligible to participate in the Florida Tax Credit Scholarship Program or the John M. McKay Scholarships for Students with Disabilities Program.

2. Complies with rules adopted by the State Board of Education for participation in the program.

(b) A sectarian or nonsectarian private virtual school is eligible to participate in the program if the school:

1. Is approved by the department to participate in the school district virtual instruction program under s. 1002.45.

2. Complies with rules adopted by the State Board of Education for participation in the program.

(c) A private tutor or private tutoring program is
eligible to participate in the program if the private tutor or private tutoring program:

1. Is qualified under s. 1002.43.
2. Complies with rules adopted by the State Board of Education for participation in the program.
3. Is a supplemental educational services provider under the federal Elementary and Secondary Education Act.

(d) Each public postsecondary institution is eligible to participate in the program and must comply with rules adopted by the State Board of Education for participation in the program.
(e) A sectarian or nonsectarian private postsecondary institution is eligible to participate in the program if the institution is a member of the Independent Colleges and Universities of Florida and complies with rules adopted by the State Board of Education for participation in the program.

(7) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of Education shall:

(a) Establish an annual enrollment period and a process in which a parent may apply to enroll his or her child in the program. The enrollment period shall begin by January 1 and end by March 1 before the school year in which funding for the child's account is sought. All applications must be processed by May 1 of each year.
(b) Annually verify the eligibility of private schools, private virtual schools, private tutors, private tutoring programs, and postsecondary institutions to participate in the program and publish a list of eligible schools, tutors, tutoring programs, and postsecondary institutions.
(c) Annually, by March 15, submit to a participating financial institution a list of eligible private schools, private virtual schools, private tutors, private tutoring programs, and private postsecondary institutions.

(d) Notify a participating financial institution of students who are approved to participate in the program. The notice must be made annually by May 1 after the department processes all applications to participate in the program.

(e) Establish a toll-free hotline that provides parents and private schools with information about the program.

(f) Establish a process by which a person may notify the department of any violation of laws or rules relating to participation in the program. The department shall conduct an inquiry of all signed, written, and legally sufficient complaints that allege a violation of this section or make a referral to the appropriate agency for an investigation. A complaint is legally sufficient if it states ultimate facts showing that this section or a rule adopted under this section has been violated.

(g) Require participating private schools and private virtual schools to annually certify compliance with the requirements of the program. The certification must be made in a sworn and notarized statement by the head of the private school.

(h) Compare the list of students participating in the program with the public school enrollment lists to avoid duplicate payments.

(i) Maintain a list of nationally norm-referenced tests identified by the department which must be administered by a
participating private school or private virtual school to
students participating in the program. The tests must meet
industry standards of quality under rules of the State Board of
Education.

(j) Select an independent research organization, which may
be a public or private entity or university, to which
participating private schools and private virtual schools must
report the scores of participating students on the nationally
norm-referenced tests administered by the schools in grades 3
through 10.

1. The independent research organization must annually
issue a report to the department which includes:
   a. The year-to-year learning gains of students in the
   program.
   b. To the extent possible, a comparison of the learning
gains of students in the program to the statewide learning gains
of public school students having backgrounds similar to those of
the students in the program. In order to minimize the costs and
time that the independent research organization requires for
analysis and evaluation, the department shall conduct analyses
of assessment data from matched students in public schools and
shall calculate learning gains of control groups using a
methodology outlined in the contract with the independent
research organization.
   c. The aggregate year-to-year learning gains of students
in the program in each participating private school in which
there are at least 30 participating students having scores for
tests for 2 consecutive years at that private school.
2. The sharing and reporting of the learning gains of students pursuant to this paragraph must be in accordance with s. 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act, and shall be for the sole purpose of creating the annual report required by subparagraph 1. The department and the independent research organization shall preserve the confidentiality of such information as required by law. The organization may not disaggregate data in its annual report to a level that will identify individual participating schools, except as required under sub-subparagraph 1.c., or disclose the academic level of individual students.

3. The department shall publish the annual report on its website.
   (l) Conduct random site visits to private schools, private tutors, private tutoring programs, and private postsecondary institutions participating in the program. During a site visit, the department may conduct only activities to verify the information reported by the schools concerning the enrollment and attendance of students, the credentials of teachers, and the results of criminal history record checks of teachers.
   (m) Annually, by December 15, issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives describing the implementation of accountability mechanisms for the program; identifying any violations of a law or rule governing the program concerning the enrollment and attendance of students, the credentials of teachers, or the background screening of teachers; and describing the corrective actions taken by the department.
relating to violations of a law or rule governing the program.

(8) CHIEF FINANCIAL OFFICER OBLIGATIONS.—The Chief Financial Officer shall:

(a) Process applications from financial institutions applying to participate in the program.

(b) Provide the identity and contact information for the selected financial institution to the department by March 1 of each year.

(c) Conduct or review a financial audit of the selected financial institution to ensure compliance with this section.

(d) Revoke the eligibility of the selected financial institution if the institution fails to comply with this section and select a replacement financial institution pursuant to paragraph (9)(a).

(e) Upon notice from the department, make payments to the accounts of participating students in four equal installments by September 1, November 1, February 1, and April 1.

(9) OBLIGATIONS OF FINANCIAL INSTITUTIONS.—

(a) The Chief Financial Officer shall create a request for proposal for the purpose of selecting a financial institution to aid in the administration of the program. The Chief Financial Officer shall select the financial institution from institutions that agree to:

1. Serve as a trustee of the funds in a student's account.

2. Limit fees imposed on each account to 3 percent or less of each payment made from an account.

3. Make timely quarterly payments directly to the eligible private school, private virtual school, private tutor, private
tutoring program, or eligible private postsecondary institution selected by the parent. The amount of the quarterly payment to the educational institution or program may not exceed:

a. The amount of the state quarterly payment to the financial institution, less the financial institution's fees.

b. The reported tuition and fee schedule provided to the department for the educational institution or program.

4. Make timely quarterly payments directly to a public postsecondary institution selected by the parent for the payment of books, tuition, and fees charged for a student's participation in a dual enrollment program. The amount of the quarterly payment to the educational institution may not exceed:

a. The amount of the state quarterly payment to the financial institution, less the financial institution's fees.

b. The full cost of books, tuition, and fees charged for the student's participation in the dual enrollment program.

5. Make timely quarterly payments directly to the selected college savings plan or the Stanley G. Tate Florida Prepaid College Program. The amount of such quarterly payment may not exceed the amount of the state quarterly payment to the financial institution, less the financial institution's fees.

6. Notify the department by February 1, July 1, September 1, and December 1 of the students who have accounts with the institution under this section.

(b) A participating financial institution must annually notify the Chief Financial Officer of its intent to continue participating in, or withdraw from, the program. The length of the contract with the financial institution shall not exceed 5
years, and the financial institution must provide at least 365
days' notice to the Chief Financial Officer and to the parents
of students having an account at the institution before it may
withdraw from the program. The institution must also transfer
each account to the successor financial institution selected by
the Chief Financial Officer pursuant to paragraph (a).

(10) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—
(a)1. The Commissioner of Education shall deny, suspend,
or revoke the participation of a private school, private virtual
school, private tutor, or private tutoring program in the
program if the commissioner determines that the school, tutor,
or tutoring program has failed to comply with this section or
rules of the State Board of Education adopted under this
section. However, if the noncompliance is correctable within a
reasonable amount of time and the health, safety, or welfare of
the students is not threatened, the commissioner may issue a
notice of noncompliance that shall provide the school, tutor, or
tutoring program with a timeframe within which to show evidence
of compliance before action may be taken to suspend or revoke
participation in the program.

2. The commissioner may deny, suspend, or revoke a private
school's participation in the program if the commissioner
determines that an owner or operator of the private school is
operating or has operated an educational institution in this
state or another state in a manner that is contrary to the
health, safety, or welfare of the public. In making this
determination, the commissioner may consider factors, including,
but not limited to, acts or omissions by the owner or operator
which led to a previous denial or revocation of participation in
an education scholarship program or an education savings account
program; an owner's or operator's failure to reimburse a
student's account for funds improperly received or retained by a
school; imposition of a previous criminal or civil
administrative sanction related to an owner's or operator's
management or operation of an educational institution; or the
existence of other types of criminal proceedings in which the
owner or operator was found guilty of, regardless of
adjudication, or entered a plea of nolo contendere or guilty to,
any offense involving fraud, deceit, dishonesty, or moral
turpitude.

(b) The commissioner's determination to deny, suspend, or
revoke a private school's participation in the program is
subject to the following:

1. The department must notify the private school of the
proposed action in writing by certified mail and regular mail to
the private school's address of record with the department. The
notice shall state the reasons for the proposed action and
notice of the timelines and procedures set forth in this
paragraph.

2. The private school that is adversely affected by the
proposed action has 15 days after receipt of the notice of
proposed action to file with the clerk of the department a
request for a proceeding pursuant to ss. 120.569 and 120.57. If
the private school is entitled to a hearing under s. 120.57(1),
the department shall forward the request to the Division of
Administrative Hearings.
3. Upon receipt of a request referred pursuant to this paragraph, the director of the Division of Administrative Hearings shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written request from the department and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript, whichever is later. Each party may submit written exceptions to the recommended order within 10 days after the recommended order is entered. The department shall enter a final order within 30 days after the entry of the recommended order. The provisions of this subparagraph may be waived upon stipulation by all parties.

(c) The commissioner may order a participating financial institution to suspend payment of funds from accounts to a private school if the commissioner finds that probable cause of any of the following exists:

1. An imminent threat to the health, safety, or welfare of a student.

2. Fraudulent activity on the part of the private school.

The commissioner's order suspending payment pursuant to this paragraph may be appealed pursuant to the same procedures and timelines as the notice of proposed action set forth in paragraph (b).

(11) AUTHORIZED RELEASE OF PERSONALLY IDENTIFIABLE INFORMATION.—Notwithstanding s. 1002.22, in incidents of alleged fraudulent activity relating to participation in the program, the Office of Inspector General of the department may release
personally identifiable records or reports of students to the following persons or organizations:

(a) A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

(b) A person or entity authorized by a court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

(c) A person, entity, or authority issuing a subpoena for law enforcement purposes if the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

(12) EDUCATION SAVINGS ACCOUNT AMOUNT.—The total amount of payments to a participating student's account for a single school year shall be equal to a percentage of the base student allocation under the Florida Education Finance Program multiplied by the appropriate cost factor for the educational program that would have been provided for the student in the district school to which he or she was assigned, multiplied by the district cost differential plus the per-student share of instructional materials funds and other categorical funds as provided in the General Appropriations Act.

(13) LEGISLATIVE BUDGET COMMISSION.—Each quarter, the
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Legislative Budget Commission may transfer to the Florida Education Finance Program any funds appropriated for the Education Savings Account Program in excess of amounts required to fully fund the accounts of all participating students.

(14) ADMINISTRATION; RULES.—

(a) The department and the Department of Financial Services shall develop a cooperative agreement to assist in the administration of this section.

(b) The State Board of Education shall adopt rules necessary for the department and the Commissioner of Education to administer this section, including rules relating to the establishment of the enrollment period, enrollment forms, and reporting requirements for financial institutions and schools.

(c) The Chief Financial Officer shall adopt rules necessary to administer this section, including rules relating to the eligibility and auditing of participating financial institutions.

Section 2. Enrollment for the 2013-2014 school year.—

(1) Notwithstanding s. 1002.385(7), Florida Statutes, the enrollment period to participate in the Education Savings Account Program for the 2013-2014 school year is July 1 through July 31, 2013. The number of students who may participate is limited to the number of participants specified in the General Appropriations Act.

(2) (a) The State Board of Education may adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to enable the Department of Education and the Commissioner of Education to implement this section.
(b) The Chief Financial Officer may adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to implement this section.

Section 3. This act shall take effect upon becoming a law.