

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Education Appropriations  
 2 Subcommittee

3 Representative Castor Dentel offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 1002.411, Florida Statutes, is created  
 8 to read:

9 1002.411 Categorical fund program.—

10 (1) CATEGORICAL FUND PROGRAM.—The categorical fund program  
 11 shall be established and funded through the General  
 12 Appropriations Act to provide up to \$5,051 per year for each  
 13 student in kindergarten through grade 5 who is a home education  
 14 program student and who qualifies as a student with a disability  
 15 pursuant to s. 393.063 or is a high-risk child pursuant to s.  
 16 393.063(20) (a). The categorical funds may be used to purchase

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17 supplemental services as set forth in s. 1002.66(2). The  
18 Department of Health shall provide oversight of the use of the  
19 categorical funds to purchase supplemental services. Department  
20 of Health oversight shall include periodic visits to the home of  
21 each student receiving categorical funds to purchase  
22 supplemental services. The use of categorical funds to purchase  
23 supplemental services shall be governed by the same criteria as  
24 used in the Voluntary Prekindergarten Education Program pursuant  
25 to s. 1002.66(3), except that categorical fund oversight shall  
26 be provided by the Department of Health.

27 (2) DEFINITIONS.—

28 (a) "Approved provider" means a provider of specialized  
29 instructional services approved by the department, individuals  
30 providing services through the Agency for Persons with  
31 Disabilities, and providers approved pursuant to s. 1002.66.

32 (b) "Certified teacher" means a teacher who holds a valid  
33 Florida professional certificate issued pursuant to s. 1012.56  
34 to teach academic subjects at the elementary or secondary level.

35 (c) "Curriculum" means a complete course of study for a  
36 particular content area or grade level, including any required  
37 supplemental materials.

38 (d) "Eligible student" or "participating student" means a  
39 student with a disability who is eligible for, or is  
40 participating in, the categorical fund, as applicable.

41 (e) "Student with a disability" means a student in

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42 kindergarten through grade 5 who has autism, cerebral palsy,  
43 Down syndrome, an intellectual disability, Prader-Willi  
44 syndrome, or spina bifida, as defined in s. 393.063. For a  
45 student in kindergarten, the term also means a high-risk child  
46 as defined in s. 393.063(20)(a).

47 (3) CATEGORICAL FUND ELIGIBILITY.—The parent of a student  
48 who resides in this state may request and receive categorical  
49 funds if:

50 (a) The student is eligible to enter kindergarten or grade  
51 1 through grade 5 or received categorical funds established  
52 pursuant to this section in the previous school year;

53 (b) The student has been identified as a student with a  
54 disability by the school district in which he or she resides and  
55 the district has completed an individual educational plan  
56 written in accordance with rules of the State Board of  
57 Education; and

58 (c) The student is assigned to matrix Support Level IV or  
59 Support Level V pursuant to s. 1011.62(1).

60  
61 For a student who is a first-time applicant, an administrative  
62 or a judicial proceeding may not be pending regarding the  
63 contents of the student's individual educational plan. For a  
64 student who is applying to renew categorical funds, the  
65 existence of a pending administrative or judicial proceeding  
66 about a subsequent individual educational plan does not affect

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67 continued eligibility for funds.

68 (4) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM  
69 PARTICIPATION.—

70 (a) To receive categorical funds, the parent of an  
71 eligible student must:

72 1. No later than 60 days before one of the payment  
73 transfer dates specified in paragraph (8)(d), submit an  
74 application to an eligible nonprofit scholarship-funding  
75 organization in order to receive that payment and, if the  
76 student does not already have an active individual educational  
77 plan, request an evaluation from the school district in which  
78 the student resides; and

79 2. Obtain an individual educational plan in accordance  
80 with subsection (7) no later than 30 days before one of the  
81 payment transfer dates specified in paragraph (8)(d) in order to  
82 receive that payment.

83 (b) To maintain eligibility for categorical funds, the  
84 parent of an eligible student must:

85 1. Register the student's participation in the program  
86 with the school district in which the student resides and  
87 release the school district from all obligations to educate the  
88 student.

89 2. Participate in the initial development of the  
90 individual educational plan and the annual review of the plan  
91 under subsection (7).

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92       3. Submit eligible expenses to the nonprofit scholarship-  
93 funding organization designated by the parent for reimbursement  
94 of qualifying expenditures. Reimbursement requests must be  
95 supported by documentation of services rendered, such as  
96 receipts or invoices, and accompanied by an affidavit signed by  
97 the parent certifying his or her compliance with the  
98 requirements of this section. Eligible expenses include:

99       a. Specialized instructional services by approved  
100 providers that are consistent with the student's individual  
101 educational plan.

102       b. Tuition and fees for instructional services from an  
103 eligible private school under s. 1002.39(8) or s. 1002.395(8) to  
104 implement the student's individual educational plan.

105       c. Private tutoring pursuant to s. 1002.43.

106       d. Tuition and fees for enrollment in a virtual education  
107 program provided by an approved virtual education provider  
108 pursuant to s. 1002.37 or s. 1002.45 or in an approved online  
109 course offered pursuant to s. 1003.499 or s. 1004.0961.

110       e. Curriculum.

111       f. Costs incurred to comply with the annual educational  
112 evaluation required in this paragraph.

113       g. The fee authorized by paragraph (5) (a).

114       h. Services such as applied behavior analysis as defined  
115 in s. 627.6686, speech-language pathology as defined in s.  
116 468.1125, occupational therapy as defined in s. 468.203, and

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117 physical therapy as defined in s. 486.021.

118 i. Medical services prescribed by a physician licensed  
119 under chapter 458 or chapter 459 if categorical funds remain  
120 after the purchase of educational services necessary to meet the  
121 student's educational needs and if such medical services are  
122 related to the student's disability.

123 4. Maintain a portfolio of records and materials that  
124 consists of:

125 a. A log of educational instruction and services that is  
126 made contemporaneously with delivery of the instruction and  
127 services and that designates by title any reading materials  
128 used.

129 b. Samples of writings, worksheets, workbooks, or creative  
130 materials used or developed by the student.

131  
132 The portfolio must be preserved by the parent for 2 years and  
133 made available for inspection by the district school  
134 superintendent, or his or her designee, upon 15 days' written  
135 notice. This subparagraph does not require the district school  
136 superintendent to inspect the portfolio.

137 5. Provide for an annual educational evaluation which  
138 documents the student's demonstration of educational progress at  
139 a level commensurate with his or her ability, which may include:

140 a. Evaluation of the student's work portfolio by a  
141 certified teacher selected by the parent;

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142 b. Any nationally normed student achievement test  
143 administered by a certified teacher;

144 c. A statewide, standardized assessment administered by a  
145 certified teacher, at a location and under testing conditions  
146 approved by the school district;

147 d. Evaluation by an individual holding a valid, active  
148 license pursuant to the provisions of s. 490.003(7) or (8); or

149 e. Any other valid measurement tool mutually agreed upon  
150 by the district school superintendent of the district in which  
151 the student resides and the student's parent.

152 (c) The district school superintendent must review and  
153 accept the results of the annual educational evaluation of a  
154 participating student. If the student does not demonstrate  
155 educational progress at a level commensurate with his or her  
156 ability, the district school superintendent must notify the  
157 parent, in writing, that such progress has not been achieved. If  
158 the student remains eligible for categorical funds, the parent  
159 has 1 year after the date of receipt of the written notification  
160 to provide remedial instruction to the student. At the end of  
161 the 1-year probationary period, the student must be reevaluated  
162 pursuant to subparagraph (b)5. Continued participation in the  
163 categorical funds program is contingent upon the student  
164 demonstrating educational progress commensurate with her or his  
165 ability at the end of the probationary period.

166 (d) The parent is responsible for procuring the services

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167 necessary to educate the student. Once the student receives  
168 categorical funds, the district school board is not obligated to  
169 provide the student with a free appropriate public education.  
170 For purposes of s. 1003.57 and the Individuals with Disabilities  
171 Education Act, a participating student has only those rights  
172 that apply to all other unilaterally parentally placed students,  
173 except that, when requested by the parent, school district  
174 personnel must develop an individual educational plan in  
175 accordance with subsection (7).

176 (e) The parent is responsible for the payment of all  
177 eligible expenses in excess of the amount of categorical funds  
178 in accordance with the terms agreed to between the parent and  
179 the providers and may not receive any refund or rebate of any  
180 expenditures made in accordance with subparagraph (b)3.

181 (f) A student who is eligible for categorical funds may  
182 not receive a scholarship under part III of this chapter.

183 (5) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING  
184 ORGANIZATIONS.—A nonprofit scholarship-funding organization  
185 participating in the Florida Tax Credit Scholarship Program  
186 under s. 1002.395 may provide categorical funds for eligible  
187 students. An eligible nonprofit scholarship-funding organization  
188 must:

189 (a) Receive applications and determine student eligibility  
190 in accordance with the requirements of this section. Once an  
191 application is approved, the nonprofit scholarship-funding

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192 organization must provide the department with information on the  
193 student to enable the school district to report the student for  
194 funding in accordance with subsection (8). A nonprofit  
195 scholarship-funding organization may charge the parent of an  
196 eligible student up to a \$25 fee to provide categorical funds  
197 but may not receive any other fees.

198 (b) Establish and maintain separate funds for each  
199 eligible student.

200 (c) Verify qualifying expenditures before receipt of the  
201 quarterly distribution by the department.

202 (d) Return any unused funds to the department when a  
203 student is no longer eligible for categorical funds.

204 (e) Provide to the Auditor General and the department an  
205 annual financial and compliance audit of its accounts and  
206 records conducted by an independent certified public accountant  
207 in accordance with rules adopted by the Auditor General. The  
208 audit must be conducted in compliance with generally accepted  
209 auditing standards and must include a report on financial  
210 statements presented in accordance with generally accepted  
211 accounting principles set forth by the American Institute of  
212 Certified Public Accountants for not-for-profit organizations  
213 and a determination of compliance with requirements in this  
214 section. Audits must be provided to the Auditor General and the  
215 Department of Education within 180 days after completion of the  
216 nonprofit scholarship-funding organization's fiscal year. If a

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217 nonprofit scholarship-funding organization does not submit an  
218 annual audit, the Auditor General shall conduct the audit  
219 required by this paragraph.

220 (f) Prepare and submit quarterly reports to the department  
221 pursuant to paragraph (6) (f). In addition, a nonprofit  
222 scholarship-funding organization must submit in a timely manner  
223 any information requested by the department relating to the  
224 categorical funds program.

225 (6) DEPARTMENT OF EDUCATION OBLIGATIONS.—The department  
226 must:

227 (a) Maintain a list of approved providers.

228 (b) Require each eligible nonprofit scholarship-funding  
229 organization to verify eligible expenditures as provided in  
230 subparagraph (4) (b) 3. before reimbursement.

231 (c) Investigate any written complaint of a violation of  
232 this section in accordance with the process established by s.  
233 1002.395(9) (f).

234 (d) Notify an eligible nonprofit scholarship-funding  
235 organization of any of the organization's identified students  
236 who are receiving educational scholarships pursuant to part III  
237 of this chapter.

238 (e) Notify an eligible nonprofit scholarship-funding  
239 organization of any of the organization's identified students  
240 who receive categorical funds from another eligible nonprofit  
241 scholarship-funding organization or have been reported for

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242 funding by a school district or the Florida Virtual School.

243 (f) Require quarterly reports by an eligible nonprofit  
244 scholarship-funding organization regarding the number of  
245 students participating in the program, the providers of services  
246 to students, and other information deemed necessary by the  
247 department.

248 (7) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

249 (a) Upon the request of a parent submitted at least 60  
250 days before a payment transfer date specified in paragraph  
251 (8) (d), the school district in which the student resides shall  
252 conduct an initial evaluation of a student in accordance with s.  
253 1003.57. If a determination is made that the student has a  
254 disability and needs special education and related services, an  
255 individual educational plan must be developed.

256 (b) Evaluations and individual educational plans must be  
257 completed within the timeframes set forth in rules of the State  
258 Board of Education. If a student has been identified as a  
259 student with a disability under the Individuals with  
260 Disabilities Education Act pursuant to a current evaluation team  
261 report but the student does not have an individual educational  
262 plan because the student is not currently enrolled in a public  
263 school, the school district shall prepare an individual  
264 educational plan for the student.

265 (c) Upon completion of a student's individual educational  
266 plan, the school district shall provide the parent with an

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267 estimate of the approximate amount of funds that the student may  
268 receive in categorical funds.

269 (d) The school district in which an eligible student  
270 resides must:

271 1. Review the annual educational evaluation in accordance  
272 with paragraph (4) (c).

273 2. Annually review the individual educational plan of each  
274 student receiving categorical funds in consultation with the  
275 personnel of providers of the services selected by the parent  
276 for the student under subparagraph (4) (b) 3.

277 (e) The school district developing the individual  
278 educational plan is not obligated to provide a participating  
279 student with a free appropriate public education. However, if,  
280 at any time, a parent of a participating student decides to  
281 enroll the student in the school district, the school district  
282 must provide the student with a free appropriate public  
283 education.

284 (8) CATEGORICAL FUNDING AND PAYMENT.-

285 (a) The maximum amount granted for an eligible student  
286 with disabilities shall be calculated in accordance with s.  
287 1002.39(10) (a).

288 (b) The school district shall report to the department for  
289 funding all students who are receiving categorical funds. These  
290 students must be reported separately from other students  
291 reported for purposes of the Florida Education Finance Program.

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292 (c) Following notification on July 1, September 1,  
293 December 1, or February 1 of the number of program participants,  
294 the department shall transfer, from general revenue funds only,  
295 the amount calculated under paragraph (a) from the school  
296 district's total funding entitlement under the Florida Education  
297 Finance Program and from authorized categorical funds to a  
298 separate account for the categorical fund program for quarterly  
299 disbursement to the nonprofit scholarship-funding organization  
300 for participating students.

301 (d) After the department verifies the establishment of a  
302 categorical funds for a participating student by the nonprofit  
303 scholarship-funding organization, the department shall make  
304 payments to the nonprofit scholarship-funding organization  
305 selected by the parent in four equal amounts no later than  
306 September 1, November 1, February 1, and April 1 of each  
307 academic year in which the funds are in force.

308 (e) Any categorical funds remaining for an eligible  
309 student are carried forward to the next fiscal year until  
310 termination of the account. Categorical funds shall be  
311 terminated if the student enrolls in and is reported for funding  
312 in any public educational program under s. 1000.04(1), (3), or  
313 (4); is determined ineligible for categorical funds under this  
314 section; graduates from high school; or reaches 22 years of age,  
315 whichever occurs first. Once categorical funds are terminated,  
316 all remaining funds revert to the state.

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317 (9) LIABILITY.—No liability shall arise on the part of the  
318 state based on the award or use of a categorical funds.

319 (10) RULES.—The State Board of Education shall adopt rules  
320 to implement this section, including rules necessary to  
321 coordinate the respective responsibilities of the department,  
322 school districts, and nonprofit scholarship-funding  
323 organizations regarding the funding and administration of  
324 categorical funds; criteria, timelines, and a reporting format  
325 for quarterly reports by nonprofit scholarship-funding  
326 organizations; and a standard application form to be used by  
327 parents and nonprofit scholarship-funding organizations.

328 Section 2. Subsection (13) of section 1003.01, Florida  
329 Statutes, is amended to read:

330 1003.01 Definitions.—As used in this chapter, the term:

331 (13) "Regular school attendance" means the actual  
332 attendance of a student during the school day as defined by law  
333 and rules of the State Board of Education. Regular attendance  
334 within the intent of s. 1003.21 may be achieved by ~~attendance~~  
335 ~~in~~:

336 (a) Attendance in a public school supported by public  
337 funds;

338 (b) Attendance in a parochial, religious, or  
339 denominational school;

340 (c) Attendance in a private school supported in whole or  
341 in part by tuition charges or by endowments or gifts;

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342 (d) Participation in a home education program under s.  
343 1002.41; that meets the requirements of chapter 1002; or

344 (e) Attendance in a private tutoring program under s.  
345 1002.43; or

346 (f) Participation in the categorical fund program under s.  
347 1002.411 that meets the requirements of chapter 1002.

348 Section 3. Paragraph (y) is added to subsection (3) of  
349 section 11.45, Florida Statutes, to read:

350 11.45 Definitions; duties; authorities; reports; rules.—

351 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The  
352 Auditor General may, pursuant to his or her own authority, or at  
353 the direction of the Legislative Auditing Committee, conduct  
354 audits or other engagements as determined appropriate by the  
355 Auditor General of:

356 (y) The accounts and records of a nonprofit scholarship-  
357 funding organization participating in the categorical fund  
358 program established by s. 1002.411.

359 Section 4. This act shall take effect July 1, 2014.

360

361

362

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**T I T L E A M E N D M E N T**

363 Remove everything before the enacting clause and insert:

364 A bill to be entitled

365 An act relating to the categorical fund program;

366

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367 creating s. 1002.411, F.S.; establishing the  
368 categorical fund program; providing for oversight by  
369 the Department of Health; defining terms; providing  
370 student eligibility criteria for receipt of  
371 categorical funds; providing parent and student  
372 responsibilities for program participation; specifying  
373 allowable expenditures of funds; requiring an annual  
374 evaluation of each participating student's educational  
375 progress and school district review of the evaluation;  
376 specifying that parents are responsible for procuring  
377 educational services for a participating student;  
378 specifying that school districts are not obligated to  
379 provide a free appropriate public education for  
380 participating students; prohibiting participating  
381 students from participating in school choice  
382 scholarship programs; authorizing a nonprofit  
383 scholarship-funding organization to provide funds for  
384 eligible students; specifying duties of nonprofit  
385 scholarship-funding organizations for administration  
386 and funding of funds, annual audits, and quarterly  
387 reporting; specifying Department of Education duties  
388 regarding approved service providers, oversight of  
389 nonprofit scholarship-funding organizations,  
390 investigation and adjudication of complaints, and  
391 reporting by nonprofit scholarship-funding

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392 organizations; specifying school district duties  
393 regarding initial evaluations and individual  
394 educational plan development and review; providing a  
395 calculation for funding; requiring school districts to  
396 report participating students to the department for  
397 funding; requiring quarterly transfer of funds by the  
398 department to nonprofit scholarship-funding  
399 organizations; providing for the carryforward of  
400 remaining funds at the end of a fiscal year;  
401 specifying the conditions under which funds are  
402 terminated and providing for the reversion of funds;  
403 exempting the state from liability regarding the award  
404 or use of funds; requiring rulemaking; amending s.  
405 1003.01, F.S.; revising the definition of the term  
406 "regular school attendance" to add participation in  
407 the categorical fund program; amending s. 11.45, F.S.;  
408 authorizing the Auditor General to conduct audits of  
409 the funds and records of nonprofit scholarship-funding  
410 organizations participating in the categorical fund  
411 program; providing an effective date.