

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1021 Educational Choice

**SPONSOR(S):** Traviesa and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Choice & Innovation Committee		Hassell	Aldis
2) Education Appropriations Committee			
3) Education Council			
4) _____			
5) _____			

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### SUMMARY ANALYSIS

HB 1021 creates the Reading Compact Scholarship Program, an educational choice program for public school students with reading deficiencies. The program is established to offer an educational choice to parents of students who have scored Level 1 on the reading portion of the FCAT for 2 consecutive years. Parents of such students may request and receive a Reading Compact scholarship to attend a public or private school of choice.

The bill creates a new section of law that provides for the common rights and obligations of all private schools participating in all state school choice scholarship programs.

The bill allows for the State Board of Education to adopt rules to administer the Reading Compact Scholarship Program.

The bill amends the K-12 student and parent rights provision in section 1002.20, Florida Statutes, to include the Reading Compact Scholarship Program as an option under public and private school choices.

The bill will have an indeterminate fiscal impact. Please see the FISCAL ANALYSIS section of this analysis.

The bill may involve some constitutional issues which are discussed in detail in the CONSTITUTIONAL ISSUES section of this analysis.

The bill provides for an effective date of July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government*- The bill creates the Reading Compact Scholarship Program and allows for the State Board of Education to adopt rules and to administer the program. The bill increases the Department of Education's regulatory responsibilities related to scholarship programs and also grants the Commissioner of Education the authority to deny, suspend, or revoke a private school's participation in state school choice programs. Students using a Reading Compact Scholarship to attend a private school will reduce the number of public school students.

*Empower families* – The bill provides parents of public school students with reading deficiencies with the opportunity to exercise parental choice by sending their child to a private or public school of choice.

*Safeguard individual liberty* – The bill creates an educational choice option including private and public school options for parents of public school students who have not attained reading proficiency beyond level 1.

#### B. EFFECT OF PROPOSED CHANGES:

HB 1021 creates the Reading Compact Scholarship Program (RCS), an educational choice program for public school students with reading deficiencies. The program is established to offer an educational choice to parents of students who have scored Level 1 on the reading portion of the Florida Comprehensive Assessment Test (FCAT) for 2 consecutive years.

The bill amends the K-12 student and parent rights provision to include the RCS Program as an option under the public and private school choices found in s. 1002.20, F.S. Public school choice options provided in chapter 1002, Florida Statutes, include, but are not limited to, developmental research schools, charter schools, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. The private school choice options provided in Part III of chapter 1002, Florida Statutes, include the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program. Additionally, alternative educational options include the corporate income tax credit scholarship program, home education, and private tutoring. Finally, public school parental choice is also available through each district school board, which is required to develop a plan that provides controlled open enrollment in the public schools as an addition to existing choice programs such as magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.

#### RCS Student Eligibility

##### *Generally*

Parents of public school students who have scored Level 1 on the reading portion of the FCAT for 2 consecutive years are eligible to receive a RCS. It is not known how many students might utilize the RCS; however, there would have been approximately 257,000 students eligible for a RCS based upon this year's test scores. The table on the next page illustrates the participation rate in other educational scholarship programs.

<b>McKay</b>			<b>CITC</b>			<b>RCS</b>
<b>Eligible</b>	<b>Participants</b>	<b>%</b>	<b>Eligible</b>	<b>Participants</b>	<b>%</b>	<b>Eligible</b>
<b>516,569</b>	<b>14,937</b>	<b>2.89</b>	<b>1,047,647</b>	<b>11,231</b>	<b>1.07</b>	<b>257,753</b>

The participation rate of the Corporate Income Tax Credit does not provide much information as the funding for the program limits the number of participants. The McKay Scholarship for Students with Disabilities is more similar to the RCS because any qualified student may accept a scholarship. For this reason the participation rate in McKay is likely better for estimating the participation rate for the RCS. Another factor that must be considered is that 40% of the students eligible for a RCS are already eligible for a McKay Scholarship. If the number of students eligible for a RCS is reduced by 40% (since those students could already be participating in a scholarship program but choose not to) there would be 154,652 eligible students. If the participation rate for the RCS is the same as McKay (2.89%) and there are 154,652 eligible students then the expected number of participants would be approximately 4,469 students. This is a very rough estimate and could be influenced by a large number of factors.

A parent of an eligible student may request and receive from the state a RCS to attend a public school or a private school of choice if the parent has obtained acceptance for the student at an eligible private school and has requested the scholarship 60 days prior to the first payment. The scholarship may be used until the student returns to a public school or graduates from high school. Parents may, upon reasonable notice to the Department of Education (DOE) and school district, remove the student from a private school and place the student in a public school or transfer the student from one participating private school to another.

The bill provides that a student is ineligible for a RCS if he or she is enrolled in a Department of Juvenile Justice (DJJ) commitment program, receiving a Corporate Income Tax Credit scholarship or an educational scholarship under chapter 1002, F.S., participating in a home education or a private tutoring program, or participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation. This provision prevents students from receiving funding from multiple sources.

#### *Parent and Student Responsibilities*

The bill provides the following parent and student responsibilities for participation in the RCS Program:

- Students are required to attend school throughout the school year unless excused by the school for illness or other good cause.
- Each parent and each student is required to comply with the private school's published policies.
- Parents are required to ensure scholarship student participation in the norm-referenced assessment offered by the private school. Also, parents are given the option to choose for their child to participate in the statewide assessments.
- Parents are required, upon receiving a scholarship warrant, to restrictively endorse the warrant to the private school. This provision provides that no power of attorney shall be valid for the purpose of endorsement, and participants who fail to comply with this provision forfeit the scholarship.

#### Funding and Payment

The bill provides that the amount of the RCS is the calculated amount or the amount of the private school's tuition and fees, whichever is less.<sup>1</sup> Private school fees shall include textbook fees, lab fees, and other fees related to curriculum, including transportation. The bill provides that a public or a private school that provides services to a student with disabilities shall receive the weighted funding for such services at the appropriate funding level.<sup>2</sup>

RCS participants are reported for purposes of the Florida Education Finance Program (FEFP) and students that attend a public school in an adjacent district shall be reported by that school district for purposes of the school district's funding under the FEFP. Districts are required to separately report RCS participants who are attending private schools from those attending a public school.

The bill provides that following notification of the number of RCS participants (July 1, September 1, December 1, or February 1), the DOE shall transfer, from the General Revenue funds only, the calculated amount from the FEFP and authorized categorical accounts to a separate account for quarterly disbursement to parents of RCS participants. The bill provides for the Chief Financial Officer (CFO) to make scholarship payments in four equal installments (September 1, November 1, February 1, and April 1) of each academic year. The initial payment is made after the DOE verifies admission acceptance and subsequent payments are made upon the DOE's verification of continued enrollment and attendance at a private school. The payment must be made by individual warrant payable to the student's parent and mailed by the DOE to the chosen private school. The parent must restrictively endorse the warrant to the private school.

The bill requires the Department of Financial Services (DFS) to randomly review endorsed warrants to confirm compliance with endorsement requirements and to immediately report inconsistencies or irregularities to the DOE.

### Provider Eligibility

Private schools are not required to participate in the program; however, participation is open to all private schools. The bill requires participating private schools to:

- comply with the newly created section detailing the rights and obligations of private schools participating in state school choice scholarship programs,<sup>3</sup>
- annually provide the parent with a written explanation of the student's progress,
- annually administer or make provisions for students to participate in one of the nationally norm-referenced tests identified by the DOE and report the student's scores to the parent and to an independent private research organization selected by the DOE, and
- submit all documentation for a student's participation at least 30 days prior to the first scholarship payment.

The bill specifically provides that failure to meet these requirements constitutes a basis for the ineligibility to participate in the RCS Program.

### Program Oversight

#### *School District Obligations; Parental Options*

The bill requires school districts to timely inform parents of all educational options, including public and private school options, available to their child. The public school options include attending a public

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<sup>1</sup> The calculated amount is the amount equivalent to the base student allocation in the FEFP multiplied by the appropriate cost factor multiplied by the district cost differential and shall include the per-student share of instructional material funds, technology funds, and other categorical funds as provided for this purpose in the General Appropriations Act.

<sup>2</sup> The appropriate funding level shall be consistent with s. 1011.62(1)(e), F.S., which provides for the funding model for exceptional student education programs.

<sup>3</sup> See "Rights and Obligations" section of the analysis beginning on page 6.

school, either consistent or inconsistent with the district school board's choice plan, or attending a public school in an adjacent school district that has available space.<sup>4</sup> The school district is required to provide transportation to a student if the student attends a public school consistent with the school board's choice plan. Also, if the student's parent chooses the public school option, then the student may continue to attend a public school chosen by the parent until the student graduates from high school. The bill provides that parents are not required to choose a public school option in lieu of requesting a RCS to attend a private school.

### *Department of Education Obligations*

The bill requires the DOE to provide for fiscal and academic oversight of the RCS Program; however, some of the oversight requirements do affect both fiscal and academic issues.

#### Fiscal Oversight

- Requires the DOE to establish a process that allows for individuals to notify the department of violations of state laws relating to program participation. This provision also requires the DOE to conduct investigations of written complaints, or to refer them to the appropriate agency, if the complaint is signed by the complainant and is legally sufficient.
- Requires the DOE to annually receive from every participating private school a notarized, sworn compliance statement certifying compliance with state laws and to retain such forms. This provision requires the DOE to ensure that participating private schools submit their sworn compliance forms each year.
- Requires the DOE to cross-check the list of participating private scholarship students to the public school enrollment lists prior to the first payment to avoid duplication.

#### Academic Oversight

- Requires the DOE to identify all nationally norm-referenced tests that are comparable to the norm-referenced test portions of the FCAT. This provision implements part of the nationally norm-referenced testing program for scholarship recipients found elsewhere in the bill in that it requires DOE to proactively identify which standardized tests will fulfill the requirement for testing.
- Requires the DOE to select an independent private research organization to analyze and report annually on the year-to-year improvement of participating students. The provision requires that the scores from the nationally norm-referenced tests be forwarded to the independent research organization and that in the course of its analysis the research organization must not disaggregate the data in such a way as to identify the academic level of individuals or individual schools. Independent private research organizations are required to accumulate historical performance data and conduct longitudinal studies. This provision provides a mechanism for annually and longitudinally monitoring academic performance of the scholarship program. However, since the data will not be provided to the DOE in its entirety, the DOE will not be able to identify individual schools or students with poor academic performance from the study results.
- Requires the DOE to conduct analysis of matched students from public school assessment data and calculate control group learning gains using an agreed upon methodology between the third party independent research organization and the DOE. The sharing of data must be in accordance with FERPA requirements and shall be used solely for the purpose of comparing the progression of scholarship students to their public school counterparts. This provision substantially reduces the cost of the independent research organization's services to the DOE.

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<sup>4</sup> s. 1002.31, F.S., provides for a district school board's choice plan.

- Requires the DOE to establish a toll-free hotline providing information on participation in the RCS program.

#### *Commissioner of Education Authority*

- Grants the Commissioner of Education the authority to deny, suspend, or revoke a private school's participation in the scholarship program and to take other action as necessary to ensure compliance with the provisions of statutes. It also provides for procedures and timelines for the Commissioner and the private school to follow in administrative proceedings.
- Provides for authority to immediately suspend payment of scholarship funds if there is probable cause to believe that there is an imminent threat to the health, safety, and welfare of the students or that there is fraudulent activity on the part of the private school. This bill also provides for procedures and timelines for appeal of such action.

#### *Waiver and Liability*

- Provides that the inclusion of private schools within options available to Florida public school students does not expand the regulatory authority of the state, its officers, or school districts to impose additional requirements beyond those reasonably necessary to enforce the requirements expressed in this section and that the state is not liable based on the RCS award or use thereof.

#### *State Board of Education (SBE)*

- Provides that in the event of an act of God, the SBE has the authority to waive any deadlines to effectuate the purposes of the RCS Program.<sup>5</sup>
- Provides that the SBE adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer this section.

### **Rights and Obligations of Private Schools in State School Choice Scholarship Programs**

The bill creates this new section of law that sets out general guidelines for participation by private schools in the Corporate Income Tax Program, pursuant to s. 220.187, F.S., and in all educational choice scholarship programs provided in chapter 1002. The new section has compiled some of the current statutory requirements for private schools in the various scholarship programs and has added a number of new requirements. The requirements can be grouped as follows:

#### *General Requirements*

The private school must:

- Be a Florida private school, as defined in s. 1002.01(2), F.S.
- Be registered as a Florida private school pursuant to s. 1002.42, F.S.
- Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.
- Comply with applicable state and local health, safety, and welfare laws, codes, and rules, including fire and building safety, and
- Meet all requirements outlined in this proposed section.

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<sup>5</sup> Black's Law Dictionary defines an "act of God" as an act occasioned exclusively by forces of nature without interference of any human agency.

### *Notifications to the DOE*

- Requires notification of its intent to participate in a scholarship program.
- Requires notification within 15 days of any change in the school's name, school director, mailing address, or physical location.
- Requires the annual completion and submission to the DOE of a notarized scholarship compliance statement certifying compliance with state laws relating to private school participation in scholarship programs.
- Requires the completion of student enrollment and attendance verification requirements, including using an on-line attendance verification form, prior to scholarship payment.

### *Fiscal Accountability*

- Demonstration of fiscal soundness and accountability by being in operation for at least 3 school years or obtaining a surety bond or letter of credit for the amount equal to the scholarship funds for any one quarter and filing the bond or letter of credit with the DOE.
  - This increases the number of years a school must have been in operation to prove fiscal soundness and specifies the means by which scholarship monies are to be secured against unlawful uses when a school has been in operation less than 3 years. However, this provision does not provide the DOE a method of determining fiscal soundness of schools that have been in operation in excess of 3 years.
  - The surety bond or letter of credit secures the scholarship monies paid to the school should it be found that the funds were used for unlawful purposes
- As recommended by the CFO, parents are required, upon receiving a scholarship warrant, to restrictively endorse the warrant to the private school. This provision provides that no power of attorney shall be valid for the purpose of endorsement, and that participants that fail to comply with this provision forfeit the scholarship.

### *Educator Eligibility*

- Maintains current law requiring private schools to employ or contract with teachers that meet any one of the following criteria: 1) hold a baccalaureate or higher degree, 2) have at least 3 years of teaching experience in public or private schools, or 3) have special skills, knowledge, or expertise in subjects taught. This provision allows for nontraditional teachers to bring their special skills, knowledge, or expertise in certain subjects to the classroom.

### *Background Screening*

- Requires each individual with direct student contact, defined as any individual who has unsupervised access to a scholarship student for whom the private school is responsible, to be of good moral character, to submit to a level 1 background screening, to be denied employment if required under s. 435.06, F.S., and not to be ineligible to teach in a public school because of the suspension or revocation of their educator's certificate.<sup>6</sup> Provides an exemption for persons

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<sup>6</sup> s. 435.06, F.S.,(1) When an employer or licensing agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record which indicates noncompliance with the standards in this section. It shall be the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification shall be proof of mistaken identity. (2) The employer must either terminate the employment of any of its personnel found to be in

holding a valid Florida teaching certificate that have been fingerprinted pursuant to s. 1012.32, F.S.

- Provides that the cost of fingerprinting and the background check are not borne by the state.
- Provides for the ineligibility of a private school for continued employment of an individual after notification that the individual has failed the level 1 background screening.

*Failure to meet requirements*

- Provides that failure to meet these requirements outlined in this section constitutes a basis for the ineligibility to participate in the scholarship programs as determined by the DOE.

*Regulatory authority*

- Provides that the inclusion of private schools within options available to Florida public school students does not expand the regulatory authority of the state, its officers, or school districts to impose additional requirements beyond those reasonably necessary to enforce the requirements expressed in this section.

*State Board of Education*

- Provides that the SBE adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer this section.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 1002.385, F.S., establishing the Reading Compact Scholarship Program.

**Section 2.** Creates s. 1002.421, F.S., relating to the rights and obligations of private schools participating in state school choice scholarship programs.

**Section 3.** Amends section 1002.20, F.S., adding the Reading Compact Scholarship Program to the list of public and private school choice options.

**Section 4.** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

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noncompliance with the minimum standards for good moral character contained in this section or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. [435.07](#). (3) Any person who is required to undergo employment screening and who refuses to cooperate in such screening or refuses to submit the information necessary to complete the screening, including fingerprints when required, shall be disqualified for employment in such position or, if employed, shall be dismissed.



2. Expenditures:

This bill requires the DOE to identify nationally norm-referenced tests that are comparable to the norm-referenced test portions of the Florida Comprehensive Assessment Test (FCAT) and to contract with an independent private research organization to receive and analyze the results of the nationally norm-referenced tests taken by the RCS Program participants. The cost of contracting with the independent research organization is indeterminate at this time.

The bill does not require an appropriation; however, it does require transfer of Florida Education Finance Program and categorical program funds by the DOE from public school districts to a separate account for quarterly disbursement to the parents of students taking the scholarship to a private school.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill places no requirements upon private schools that choose not to participate in the state school choice scholarship programs. Participation by private schools is voluntary. However, private schools that choose to participate in RCS Program or any other state school choice scholarship program are eligible to receive state-funded scholarship students and are responsible for complying with the private school requirements contained in this bill. The requirements will result in some compliance costs. Private schools may also incur further expenses related to hiring faculty, adding programs, etc. to accommodate the new students. Private schools may receive additional resources from students able to participate in this program.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 3, Art. I of the State Constitution specifies that “[n]o revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” The bill allows

for sectarian, nonsectarian, parochial, religious, and denominational private schools to be eligible to participate in the state school choice scholarship programs.

In *Bush v. Holmes*,<sup>7</sup> an *en banc* panel of the First District Court of Appeal held that the Florida Opportunity Scholarship Program violated the no-aid provision of the State Constitution because the program uses state revenues to support sectarian schools. In its November 12, 2004, opinion, the district court certified this question to the Florida Supreme Court as a question of great public importance.

Also at issue in *Holmes* was whether the “no-aid” provision of the State Constitution violates the Free Exercise Clause<sup>8</sup> of the First Amendment to the federal constitution. The district court of appeal concluded that the no-aid provision does not offend the Free Exercise Clause. The matter is pending before the Florida Supreme Court and could ultimately be reviewed by the United States Supreme Court to interpret the Free Exercise Clause’s impact on Florida’s no-aid provision.

**B. RULE-MAKING AUTHORITY:**

The bill gives the SBE rulemaking authority pursuant to ss. 120.536(1) and 120.54, F.S., to adopt rules for implementing provisions of the law relating to the RCS Program and to administer the proposed section relating to the rights and obligations of private schools participating in state school choice scholarship programs.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>7</sup> Case Nos. 1D02-3160, 1D02-3163 and 1D02-3199 (Fla. 1st DCA Nov. 12, 2004).

<sup>8</sup> “Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof*.” (Emphasis added.)