

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1163 CS Scholarship Program Accountability  
**SPONSOR(S):** Pickens, Goodlette, Traviesa  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Choice & Innovation Committee	5 Y, 2 N	Hassell	Aldis
2) Education Appropriations Committee	16 Y, 0 N	Hamon	Hamon
3) Education Council	11 Y, 0 N, w/CS	Hassell	Cobb
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill substantially amends provisions relating to the John M. McKay Scholarships for Students with Disabilities Program and the Corporate Income Tax Credit (CITC) Program.

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

The bill adds new fiscal and academic accountability requirements including provisions related to private school eligibility requirements, responsibilities for the Department of Education, responsibilities of parents and students, and responsibilities of eligible nonprofit scholarship funding organizations.

Beginning in 2006-07: 1) the amount of total allowable tax credits under the CITC Program is increased or decreased by the percent change in total Florida Education Finance Program (FEFP) funds, not to exceed 5%; and 2) the amount of the scholarship is annually increased or decreased by the percent change in total FEFP funds per FTE, not to exceed 3%.

The bill will have a minimal fiscal impact on the Department of Education and private schools. Please see the FISCAL ANALYSIS and the DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR 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 shall be effective on becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government* – The bill increases the Department of Education’s regulatory responsibilities related to scholarship programs. The bill also grants the Commissioner of Education the authority to deny, suspend, or revoke a private school’s participation in state school choice programs.

*Empower families* – The bill provides parents of students with disabilities and parents of low-income students who qualify for free or reduced-price school lunches with the opportunity to exercise parental choice by sending their child to a private or public school of choice.

*Safeguard individual liberty* – The bill maintains parental choice by providing for private and public school options for parents of public school students.

#### B. EFFECT OF PROPOSED CHANGES:

The Chief Financial Officer (CFO) conducted audits on the McKay and CITC programs in 2003 and found problems with the administration of the programs. The CFO issued a report of his findings on December 10, 2003. The findings include: the lack of program oversight from the DOE; students receiving scholarships from more than one program; the transfer of funds between Scholarship Funding Organizations (SFOs); SFOs not basing the amount of contributions received on the amounts needed to fill identified scholarships; principals of SFOs with no apparent physical location in Florida; and internet schools, home schools, and correspondence schools participating in the program.

In response to the CFO report, in May 2004, the Department of Education announced an action plan that includes requiring all participating private schools to complete an annual scholarship compliance form documenting that private schools are fully compliant with private school and scholarship program law before enrolling students or receiving payments, regularly cross-checking student participation to avoid enrollment and funding duplication, providing information and access to information to parents for decision making, supporting private school and SFO efforts to self-regulate, and adopting rules for operational practices and policies. The DOE has since implemented this plan.

#### **The John M. McKay Scholarship for Children with Disabilities (1002.39, F.S.)**

The John M. McKay Scholarships for Students with Disabilities Program (McKay Program) was originally created by the 1999 Legislature as a pilot program for Sarasota County in the A+ Education Plan. The program has since been expanded to cover the entire state.

#### Student Eligibility

##### *Generally*

Currently, the McKay Program provides an option for students with disabilities, for whom an individual education plan has been written, to either attend a public school other than the one to which assigned, or to receive a scholarship to attend a private school of choice. Students with disabilities include K-12 students who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospitalized or homebound, or autistic. A public school student with disabilities is eligible to receive a McKay scholarship if the student’s parent is dissatisfied with the student’s progress, the student has spent the prior school year in attendance at a Florida public school, and the parent has obtained acceptance for the student at an eligible private school.

The bill changes the definition of students with disabilities to reflect more modern terminology, and it removes hospitalized and homebound students from the definition. This bill makes ineligible those students whose only qualifying disability was that they were hospitalized or homebound. It does not affect the eligibility of students who have an additional disability and are otherwise hospitalized or homebound. It is worth noting that there may be some students that meet the definition of students with disabilities but are not eligible for a McKay scholarship because the student does not meet the requirements for an individual education plan.

Additionally, the bill provides that students are considered to have been in attendance at a Florida public school for purposes of meeting the prior school year in attendance at a Florida public school requirement if they were: enrolled and reported by the Florida School for the Deaf and the Blind (FSDB) during the preceding October and February student membership surveys; eligible for services under s. 1003.21(1)(e), F.S.,<sup>1</sup> at least 4 years old, and enrolled and reported by a school district for funding during the preceding October and February FEFP surveys; or enrolled in a Department of Juvenile Justice (DJJ) commitment program if funded under the FEFP.

Current law provides that for the continuity of educational choice, the scholarship remains in effect until the student returns to a public school or graduates from high school. However, the bill provides that the term of the scholarship may be until the student returns to a public school, graduates from high school, or reaches the age of 22, whichever occurs first. The bill also allows a parent, upon reasonable notice to the DOE and school district, to remove the student from a private school and place the student in a public school and to transfer the student from one participating private school to another.

It is not prohibited in current law for students to receive funding from more than one scholarship program. The bill adopts a recommendation by the CFO, that a student is ineligible for a McKay scholarship while he or she is:

- Enrolled in a DJJ commitment program.
- Receiving a CITC scholarship or a scholarship under chapter 1002, F.S.
- Participating in a home education or a private tutoring program.
- Participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation.
- Enrolled in the Florida School for the Deaf and Blind.

#### *Parent and Student Responsibilities and Obligations*

Current law requires that any student participating in the McKay Program comply with the school's code of conduct, and the parents of scholarship students must fully comply with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.

The bill requires each parent and each student to comply with the private school's published policies.

The bill adopts a recommendation by the CFO which requires parents to restrictively endorse the scholarship warrant, upon receiving the scholarship warrant, to the private school. This provision provides that no power of attorney shall be valid for the purpose of endorsement, and that participants who fail to comply with this provision forfeit the scholarship.

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<sup>1</sup> Consistent with rules adopted by the State Board of Education, children with disabilities who have attained the age of 3 years shall be eligible for admission to public special education programs and for related services under rules adopted by the district school board. Exceptional children who are deaf or hard of hearing, visually impaired, dual sensory impaired, severely physically handicapped, trainable mentally handicapped, or profoundly handicapped, or who have established conditions, or exhibit developmental delays, below age 3 may be eligible for special programs; or, if enrolled in other school readiness programs, they may be eligible for supplemental instruction. Rules for the identification of established conditions for children birth through 2 years of age and developmental delays for children birth through 5 years of age must be adopted by the State Board of Education.

## Provider Eligibility

Private schools are not required to participate in the program; however, participation is open to all private schools. The bill changes current law to require 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>2</sup>
- annually provide the parent with a written explanation of the student's progress,
- cooperate with a student whose parent chooses to have the student participate in the statewide assessment, and
- submit all documentation for a student's participation at least 30 days prior to the first scholarship payment.

The bill specifically states that failure to meet these requirements constitutes a basis for the ineligibility of a private school to participate in the McKay Program.

## Amount of Award

The amount of the scholarship is unchanged in this bill and is equal to the amount the student would have received under the FEFP in the public school to which the student is assigned or the amount of the private school's tuition and fees, whichever is less. During the 2001-2002 school year, \$27.8 million was awarded to 5,019 McKay Scholarship recipients for an average award amount of \$5,547 per student. During 2002-2003, \$53 million was awarded to 9,130 scholarship recipients for an average award amount of \$5,840 per student. During the 2003-2004 school year, \$81.2 million was awarded to 13,739 scholarship recipients for an average reward amount of \$5,951 per student. During the 2004-2005 school year, \$101.0 million was awarded to 14,338 scholarship recipients for an average award amount of \$7,043.

## Funding and Payment

Currently, there are no provisions for the calculation of payment for former students of the FSDB. The bill provides that the calculated scholarship amount is based on the school district in which the parent resides at the time of the scholarship request and that such school districts report to the DOE all former students of the FSDB who are attending a private school under the McKay Program. Further, such school districts are held harmless for these students from the weighted enrollment ceiling for group 2 programs during the first school year in which the students are reported.<sup>3</sup> Further, the bill prohibits the transfer of funds from any funding provided to the FSDB for eligible McKay Program participants.

The bill also clarifies funding for students exiting a DJJ commitment program. It provides that the calculated scholarship amount for a student exiting a DJJ commitment program who chooses to participate in the McKay Program be transferred from the school district in which the student last attended a public school prior to commitment.

Finally, the bill changes the payment date for scholarship payments from the CFO from April 15 to April 1. This change makes the April payment consistent with the other three scholarship payments, which are made on the first day of September, November, and February, respectively. The bill also requires the Department of Financial Services (DFS), subsequent to each scholarship payment, to randomly review endorsed warrants to confirm compliance with endorsement requirements. DFS must immediately report inconsistencies or irregularities to the DOE.

## Program Oversight

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<sup>2</sup> See "Rights and Obligations" section of the analysis beginning on page 12.

<sup>3</sup> s. 1011.62(1)(d)3.a., F.S., provides for the maximum amount of special program weighted FTE students which may be funded for operations.

Currently, the DOE is responsible for verifying the student's initial admission acceptance and continued enrollment and attendance at the private school. The CFO can only make the scholarship payments after proper verification from the DOE. 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 proposes to make the following changes in program oversight:

#### *School District Obligations*

- Requires notification to parents by April 1 of each year and within 10 days of the student's individual education plan meeting of all education choice options, and of the availability of the department's telephone hotline and website for additional information on the McKay Program. This will give parents the time to explore the educational options, including public and private school options, available for their child.
- Provides that a student's matrix of services may only be changed to correct a technical, typographical, or calculation error. This provides parents with a degree of certainty in the level of services and the level of funding their child will receive while participating in the scholarship program.
- Requires notification to parents of students receiving a scholarship of the availability of a reevaluation at least every 3 years. This provision does not require a student to be reevaluated; rather, it provides for reevaluation if the parent chooses to have the student reevaluated.

#### *Department of Education Obligations*

- Requires the DOE to establish a toll-free hotline to provide information to parents and private schools on the McKay Program. Currently the DOE maintains both an on-line information center and a toll-free hotline, thus, this provision would codify current practice.
- Requires the DOE to annually verify that private schools meet the eligibility requirements outlined in statute.
- 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.
- As recommended by the CFO, this bill 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. The DOE must ensure that participating private schools submit their sworn compliance forms each year. This is a codification of the sworn compliance form process instituted by Commissioner Horne during the summer of 2003.
- Requires the DOE, prior to the first scholarship payment, to cross-check the list of participating private scholarship students to the public school enrollment lists. This provision addresses the CFO's finding that students receiving scholarships were also counted as public school students.

#### *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 if there is fraudulent activity on the part of the private school. This bill also provides for procedures and timelines for appeal of such action.

#### *State Board of Education*

- Provides that for good cause, the State Board of Education (SBE) has the authority to waive any deadlines to effectuate the purposes of the McKay Program

#### **Corporate Income Tax Credit Scholarship Program** (s. 220.187, F.S.)

The Corporate Income Tax Credit Scholarship Program (CITC Program) provides an income tax credit for corporations that make eligible contributions to nonprofit scholarship-funding organizations (SFOs). SFOs award scholarships to students from families with limited financial resources as demonstrated by the student qualifying for free or reduced-price school lunches.

#### Tax Credits

Current law provides a number of requirements and limitations related to tax credits. For instance, a taxpayer may not designate a specific child as the beneficiary of the contribution and may not contribute more than \$5 million to any single eligible SFO. The total statewide amount of the tax credit and the carryforward of tax credits that may be granted each state fiscal year under this program is limited to \$88 million. At least 5% of the total statewide amount authorized for the tax credit must be reserved for small businesses.<sup>4</sup>

The bill modifies the above provisions as follows:

- Allows a taxpayer's eligible contribution to a single SFO to exceed \$5 million.
- Limits the total amount of allowable tax credits to \$88 million for the 2005-2006 fiscal year.
  - Beginning in 2006-07, the total amount of allowable tax credits shall be adjusted annually by the percent increase or decrease in total FEFP funds as provided in the General Appropriations Act workpapers, not to exceed 5% in any year. The maximum increase in 2006-07 would be \$4.4 million (\$88 million x 5.0%).
  - Requires the Commissioner of Education to certify to the Department of Revenue (DOR) and the SFO of the resulting value of tax credits within 30 days after the General Appropriations Act becomes law.
- Reduces the amount of the total tax credit allocation reserved for small business from 5% to 1%.

Based on a recommendation by the CFO to create a mechanism to restore unused tax credit allocations, this bill allows a taxpayer to rescind all or part of his or her tax credit allocation under certain circumstances. This provision also provides that any amount rescinded shall become available to an eligible taxpayer on a first-come, first-served basis based on tax credit applications received after the date the rescindment is accepted by the DOR.

#### Student Eligibility

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<sup>4</sup> According to current law, small businesses are defined as taxpayers who independently own and operate businesses that employ 200 or fewer full-time permanent employees and have a net worth of not more than \$5 million at the time of application.

## *Generally*

A student is eligible for a scholarship from an eligible SFO through this program if the student qualifies for free or reduced-price school lunch under the National School Lunch Act, and:

- Was counted as a full-time student during the previous state fiscal year for purposes of state per-student funding; or
- Received a scholarship from an eligible SFO during the previous school year; or
- Is eligible to enter kindergarten or first grade.

The bill provides that a student receiving a CITC scholarship shall not lose his or her scholarship due to a change in the economic status of the student's parents unless the parent's economic status exceeds 200% of the Federal poverty guidelines.

It is not prohibited in current law for students to receive funding from more than one scholarship program. The bill adopts a recommendation by the CFO, that a student is ineligible for a CITC scholarship while he or she is:

- Enrolled in a DJJ commitment program.
- Receiving a CITC scholarship or a scholarship under chapter 1002, F.S.
- Participating in a home education or a private tutoring program.
- Participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation.
- Enrolled in the Florida School for the Deaf and Blind.

## *Parent and Student Responsibilities*

As a condition for scholarship payment, current law requires that a parent inform the school district within 15 days after deciding to send his or her child to a nonpublic school; however, current law places few other responsibilities upon parents. The bill provides the following parent and student responsibilities for participation in the CITC Program:

- A parent is required to select an eligible private school, apply for admission, and notify the student's school district when the parent withdraws and sends his/her child to a private school.
- 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.
- Based on a recommendation 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 participants who fail to comply with this provision forfeit the scholarship.

## Amount of Award

Current law provides that the amount of the scholarship provided to any child for any single school year by all eligible SFOs shall not exceed the following limits:

- \$3,500 for a scholarship awarded to a student for enrollment in an eligible nonpublic school.
- \$500 for a scholarship awarded to a student for enrollment in a Florida public school that is located outside the district in which the student resides.

Beginning in 2006-07, the bill allows for the annual adjustment of the scholarship amount based upon increases or decreases in the amount of total FEFP funding per unweighted FTE<sup>5</sup>; however, it prohibits the scholarship amount from increasing by more than 3% in any year. The bill requires the Commissioner of Education to certify to the DOR and notify eligible SFOs of the percentage adjustment of the scholarship within 30 days after the General Appropriations Act becomes law.

The bill maintains current law which requires that the SFO make payment by warrant or check payable to the student's parent. If the parent chooses for his or her child to attend a private school, the warrant or check must be delivered by the SFO to the private school of the parent's choice, and the parent is required to restrictively endorse the warrant or check to the private school. SFOs are required to ensure that the parent to whom the warrant or check is made payable endorses the check to the private school for deposit into the school's account.

The bill places the new requirements on SFOs to obtain verification from the private school of continued attendance prior to each scholarship payment and to make such payments no less than quarterly.

### Scholarship Funding Organizations

Currently, there is no requirement that SFOs be Florida corporations and out-of-state corporations are permitted. Upon recommendation by the CFO, the bill requires a SFO to be a Florida entity formed under chapter 607, chapter 608, or chapter 617, whose principal office is located in the state.

### *Owners and Operators*

Current law does not define or address the role of owners and operators of SFOs. The bill defines the term "owner or operator" of a SFO to include an owner, president, directors, officers, or other person with the equivalent decision making authority over a SFO. It then goes on to establish a number of requirements for owners and operators.

Owners and operators must:

- Submit to a level 1 background screening as provided under chapter 435.<sup>6</sup> Any SFO owner or operator that fails the level 1 background screening is ineligible to provide scholarships.
- Comply with antidiscrimination provisions of 42 U.S.C. s. 2000d, which prohibit discrimination based on race, color, or national origin.
- Not have filed for personal bankruptcy or corporate bankruptcy within the last 7 years. In the case of corporate bankruptcy, however, the individual must have owned more than 20% of the corporation.
- Not own or operate a private school that is participating in the CITC program. However, this provision may not be enough to prevent related party transactions as recommended in the CFO's recommendations because persons related to a SFO owner, like a spouse or child, can own or operate a private school receiving scholarship funds.

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<sup>5</sup> Only the \$3,500 scholarship is subject to annual adjustment.

<sup>6</sup> s. 435.03, F.S. provides for level 1 screening standards: (1) All employees required by law to be screened shall be required to undergo background screening as a condition of employment and continued employment. For the purposes of this subsection, level 1 screenings shall include, but not be limited to, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement, and may include local criminal records checks through local law enforcement agencies. (2) Any person for whom employment screening is required by statute must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the provisions outlined in s. 435.03(2)a, F.S. or under any similar statute of another jurisdiction.



### *Determination of Scholarship Recipients*

Current law provides that SFOs give priority to eligible students who received a CITC scholarship during the previous school year; however, there are no statutory provisions pertaining to SFOs directing the scholarship to a particular school, student, or owner.

The bill maintains current law in that SFOs shall give priority to eligible students who received a CITC scholarship during the previous school year but also provides that SFOs provide scholarships on a first-come, first-served basis. Also, SFOs are prohibited from restricting or reserving a scholarship for use at a particular private school or from providing a scholarship to a child of an owner or operator. The bill allows students to attend any eligible private school and transfer to any other eligible private school at any time.

### *SFO Fiscal Accountability*

The bill contains a number of provisions that appear to address fiscal procedures and accountability by SFOs.

Currently SFOs must “spend 100% of the eligible contribution to provide scholarships in the same state fiscal year in which the contribution was received.”<sup>7</sup> The bill provides that SFOs must obligate rather than spend the funds during the fiscal year. This provision allows for SFOs to commit funds to the next state fiscal year for a specific expense rather than requiring SFOs to spend all of the eligible contributions within the same state fiscal year in which it was received.

Current law does not prohibit the use of a credit line or other financing vehicles. The bill permits SFOs to obtain a secured line of credit to fund scholarship payments based on estimated contributions to be received within a 6 month period. All costs of such lines of credit are to be paid by the SFOs operating funds and not contributions. This indicates a line of credit should only be used to manage short term cash flow and should not be secured by future contributions.

The bill requires SFOs to maintain separate accounts for scholarship funds and operating funds, which will prohibit the commingling of scholarship and operating money.

The bill provides for the transfer of funds to another eligible SFO when additional funds are required to meet scholarship demands. This provision allows for flexibility in the transfer of funds between eligible SFOs and may result in an increased ability to match eligible contributions with eligible students.

The law requires that all SFOs submit annual audits conducted by an independent certified public accountant to the Auditor General (AG) each year. This bill increases fiscal accountability requirements by imposing a specific time frame, 180 days, for audit submission, requiring submission of the audit to the DOE as well as the AG, and by specifying certain audit procedures.

The bill requires all SFOs to submit quarterly reports to the DOE regarding the number of students participating, the names of the private schools in which they are enrolled, and any other information the DOE may require. No quarterly report requirement exists in current law. This provision will allow the DOE to track scholarship program activity. Also, it clarifies that SFOs are required to comply with all requests for information by the DOE.

The bill provides that confidential information provided to the DOE and the AG pursuant to this section shall remain confidential.

### Provider Eligibility

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<sup>7</sup> s. 220.187(4)(e), F.S.

Current law provides that a nonpublic school is eligible to receive a scholarship student if the school:

- Is located in Florida.
- Offers an education to students in any grades K-12.
- Demonstrates fiscal soundness by being in operation for one school year, providing the DOE with a statement by a certified public accountant confirming that the school is insured and has sufficient capital or credit to operate for the upcoming year, or securing a surety bond or letter of credit equal to the scholarship funds for any quarter to be filed with the DOR.
- Complies with antidiscrimination provisions of 42 U.S.C. s. 2000d.
- Adheres to state and local health and safety laws and codes.
- Complies with all state laws relating to the general regulation of nonpublic schools.

The bill defines the term “owner or operator” of a participating private school to include an owner, operator, superintendent, principal, or person with the equivalent decision making authority, who owns or operates an eligible private school.

Private schools are not required to participate in the program; however, participation is open to all private schools. The bill changes current law to require all 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>8</sup> to 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.

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

### Program Oversight

Current law provides that the DOR and the DOE will cooperatively administer the CITC Program. The DOE is responsible for adopting rules necessary to determine the eligibility of SFOs and identifying students eligible to participate in the program. While the DOR is responsible for adopting rules to administer the CITC Program such as establishing application forms and procedures and governing the allocation of tax credits and carry-forward credits for this program on a first-come, first-served basis. The DOE is also responsible for submitting annually, by March 15, a list of eligible SFOs to the DOR and monitoring the eligibility of SFOs, nonpublic schools, and expenditures.

### *Department of Education Obligations*

The DOE’s obligations can be broken down into those dealing with primarily with fiscal oversight and those related to academic oversight; 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.
- As recommended by the CFO, this bill 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

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<sup>8</sup> See “Rights and Obligations” section of the analysis beginning on page 12.

private schools submit their sworn compliance forms each year. This is a codification of the sworn compliance form process instituted by Commissioner Horne during the summer of 2003.

- Requires the DOE to cross-check the list of participating private scholarship students to the public school enrollment lists. This provision addressed the CFO's finding that students receiving scholarships were also counted as public schools students.
- As recommended by the CFO, the DOE is required to notify any SFO if one of its recipients is also receiving scholarship monies from an educational scholarship pursuant to chapter 1002, or from another SFO. This provision compliments the provisions elsewhere in the bill that require SFOs and participating private schools to provide notification of any instances of student enrollment in more than one program.
- Requires that the DOE receive from each SFO a quarterly report regarding the number of participating students and the participating private schools as well as any other information the DOE deems necessary. This provision requires quarterly reports from all SFOs showing their activity. This provision will codify current operational practice.

#### Academic Oversight

- Requires the DOE to annually verify, rather than monitor, that SFOs and private schools meet eligibility requirements and verify the eligibility of expenditures.
- Requires the DOE to establish a toll-free hotline providing information on participation in the CITC Program.
- 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 Family Educational Rights and Privacy Act (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.

#### *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.

#### *State Board of Education*

Requires the State Board of Education (SBE) to adopt rules to implement the provisions of statute relating to the CITC Program. This provision clarifies the SBE's rulemaking authority.

#### **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 CITC 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.

#### *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>9</sup> Provides an exemption for persons 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*

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<sup>9</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 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.

- 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.** Amends s. 1002.39, F.S., relating to the John M. McKay Scholarship for Students with Disabilities Program.
- Section 2.** Amends s. 220.187, F.S., relating to the Corporate Income Tax Credit Scholarship Program.
- Section 3.** Creates s. 1002.421, F.S., relating to the rights and obligations of private schools participating in state school choice scholarship programs.
- Section 4.** Provides an effective date.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Beginning in 2006-07, the amount of total allowable tax credits under the CITC Program is annually increased or decreased by the percent change in total FEFP funds, not to exceed 5%. The maximum amount of the increase in 2006-07 is \$4.4 million. Staff estimates that the recurring revenue impact will be between \$16-20 million in future years. The Revenue Estimating Conference will develop an official revenue impact analysis later in session. However, this revenue reduction may be offset by fewer students being served in the FEFP and therefore a reduction in FEFP expenditures.

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 CITC Program scholarship recipients. The cost of contracting with the independent research organization is indeterminate at this time.

School districts reporting transfer students from the FSDB are held harmless from the weighted enrollment ceiling pursuant to s. 1011.62(1)(d)3.a. Therefore, state expenditures to a district for providing instruction to students in special programs could exceed the established ceiling. The amount is indeterminate but presumed small because of the relatively small number of students involved.

Beginning in 2006-07, the scholarship amount under the CITC Program of \$3,500 is annually increased or decreased by the percent change in total FEFP funds per FTE, not to exceed 3%. The maximum amount of the increase in 2006-07 is \$105. However, the scholarship expenditures are significantly lower than the per student expenditures under the FEFP. For 2004-05, the average

funding per student under the FEFP is \$5,758. Therefore, the state may realize a net reduction in expenditures if students participate in the CITC Program.

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

1. Revenues:

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

2. Expenditures:

See "Fiscal Comments" section below.

**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. However, private schools that choose to participate in the McKay Program, CITC 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.

The potential increases in the tax credit limit and the scholarship amount, authorized to begin in 2006-07, may provide increased revenue to private schools.

**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>10</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.

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<sup>10</sup> Case Nos. 1D02-3160, 1D02-3163 and 1D02-3199 (Fla. 1st DCA Nov. 12, 2004).

Also at issue in *Holmes* was whether the “no-aid” provision of the State Constitution violates the Free Exercise Clause<sup>11</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 CITC Program, the McKay 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**

On March 15, 2005, the Education Council adopted a series of amendments and reported the bill favorably with a committee substitute. The amendments did the following:

**Amendment 1:** Requires districts to inform the parents of students eligible for the McKay Program about the DOE website and hotline for additional program information

**Amendment 2:** Provides that time spent by a 4 year old child with disabilities in an FEFP funded program counts as meeting the prior school year in attendance eligibility requirement for the McKay Program.

**Amendment 3:** Clarifies the amount of the CITC scholarship for students enrolled in an out of district school is not adjusted annually.

**Amendments 4 & 8:** Clarifies that a student is ineligible for a McKay scholarship or a CITC scholarship while participating in certain state funded programs

**Amendments 5 & 7:** Specifies that a student may not receive a McKay scholarship or a CITC scholarship while he or she is enrolled in the Florida School for the Deaf and Blind.

**Amendment 6:** Revises the State Board of Education’s authority to waive deadlines from “in the event of an act of God” to “for good cause.”

This analysis is drafted to the committee substitute.

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<sup>11</sup> “Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof.*” (Emphasis added.)  
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