

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: CS/SB 876

SPONSOR: Education Committee and Senator Baker

SUBJECT: K-12 GI Bill Program/Education Choice

DATE: April 28, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	O'Farrell	ED	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	JU	_____
4.	_____	_____	EA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill confers a scholarship benefit on active duty military personnel in the form of a "K-12 GI bill" for their children attending a public school in Florida to attend another public school or a private school. For students attending a private school of the parents' choice, the scholarship amount is \$3,600 or the amount of tuition and fees, whichever is less. Students who attend another public school in or adjacent to the school district in which they live may receive either \$500 or transportation expenses, whichever is less. The bill establishes eligibility criteria for students and private schools, as well as obligations for participating families, private schools, school districts, the Department of Education, and the state's Chief Financial Officer. In addition, the bill provides grounds for forfeiting the scholarship. The bill authorizes the State Board of Education to adopt rules for administering the K-12 GI Bill program. The bill also requires parents to receive information related to the scholarships available under this new program.

This bill creates s. 1002.395, Florida Statutes.

The bill takes effect upon becoming a law.

II. Present Situation:

Military Students/Education

Military service often presents a number of challenges for school age children of military personnel. The average military child relocates every 2.9 years, three times more often than do their civilian counterparts. From kindergarten to graduation, the average military child attends six to nine different schools, including two to three high school transitions. In addition to the

social and emotional challenges associated with new cities, schools, and classmates, transitioning military students often face a variety of academic and administrative hurdles.

There are approximately 1.9 million veterans in Florida.¹ Almost 80,000 active-duty military personnel are stationed in Florida and approximately 33,000 school age dependent children of active duty military families are in Florida.² Current law (s. 1.01(14), F.S.) defines the term "veteran" to mean a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the U.S. Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge has been authorized or a veteran must have served during one of the periods of wartime service specified in law.

For purpose of the Federal Impact Aid Program, the term "active duty" means full-time duty in the active service of a uniformed service and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned.³ The law further makes a distinction between "active duty for a period of more than 30 days" (e.g., active duty under a call or order that does not specify a period of 30 days or less) and "active service" (e.g. service on active duty).⁴

Educational Options

Current law (s. 1002.20, F.S.) outlines the various educational choices available in Florida. Parents have the following public school options:

- controlled open enrollment;
- developmental research (lab) schools;
- charter schools and charter technical career centers;
- magnet schools;
- alternative schools; and
- special programs.

Other options are advanced placement, dual enrollment, International Baccalaureate, early admissions, credit by examination or demonstration of competency, and the Florida Virtual School.

In addition to home education and private tutoring, private school choice options for parents of students include the following:

- the Opportunity Scholarship Program;
- the McKay Scholarships for Students with Disabilities Program; and the Corporate Income Tax Credit Scholarship Program (CTC).

¹ *Census Bureau Facts: Special Edition*, U.S. Census, April 10, 2003.

² *Program to Assist and Support Florida's Military Families*, Senate interim project report (2004-153), November 2003.

³ The Federal Impact Aid law (Title VIII of the Elementary and Secondary Education Act of 1965 (ESEA)) provides financial assistance to local school districts with concentrations of federally connected children, including those residing on military bases and children who have parents in the uniformed services.

⁴ 37 U.S.C. § 101(18)

There are different eligibility criteria for each of these programs. Eligibility for the Opportunity Scholarship Program is based on attendance at a public school designated as performance grade “F,” failing to make adequate progress.⁵ The McKay Scholarship Program serves eligible students with certain disabilities. The CTC Program provides scholarships to eligible students who qualify for free or reduced lunches under the National School Lunch Program.

State Law and Rules Related to Private Schools

Private School Notification and Annual Survey

Current law (s. 1002.42, F.S.) provides for the general regulation of private schools and requires each new institution to notify the department about its existence. The DOE must organize, maintain, and annually update a database of educational institutions within the state. The annual submission of the database survey by a school must not be used by that school to imply approval or accreditation by the Department of Education. DOE is charged with making data on private education in this state accessible to the public. For the purpose of organizing, maintaining, and updating this database, each private school must annually execute and file a database survey form on a date designated by the DOE, including a notarized statement indicating that the owner of the private school has complied with the provisions for criminal background checks and the prohibition against ownership or operation of a private school by a person who has been convicted of a crime involving moral turpitude.

The database must include the name, address, and telephone number of the institution; the type of institution; the names of administrative officers; the enrollment by grade or special group (e.g., career and technical education and exceptional child education); the number of graduates; the number of instructional and administrative personnel; the number of days the school is in session; and such data as may be needed to meet the provisions of this section and s. 1003 .23(2),F.S., relating to attendance. Each existing private educational institution must notify the DOE of any change in the name of the institution, the address, or the chief administrative officer.

Criminal Background Checks

Section 1002.42(2)(c), F.S., sets forth fingerprinting requirements for state but not federal processing and checking for criminal backgrounds of the owners and operators of private schools. The law provides exceptions for certain persons and specifies the individuals who may take fingerprints. The law defines the term "owner" to mean any individual who is the chief administrative officer of a private school. The Florida Department of Law Enforcement (FDLE) must forward the results to the private school owner who must make the results available for public inspection in the private school office. The costs of fingerprinting, criminal records checking, and processing must be borne by the applicant or private school.

An owner of a private school may require school employees to file a complete set of fingerprints with the FDLE for processing and criminal records checking. Findings from the processing and checks must be reported to the owner for use in employment decisions.

Criminal Sanctions

It is a misdemeanor for an institution to fail to submit the annual database survey form and notarized statement of compliance to the DOE. The authorities of an institution that fail to do so

⁵ The public school must have had this designation for 2 years in a four-year period.

are, upon conviction, subject to a fine not exceeding \$500. Persons who submit data for a nonexistent school or an institution providing no instruction or training in order to defraud the public commit a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. It is unlawful for a person who has been convicted of a crime involving moral turpitude to own or operate a private school. Persons found to be in violation of this requirement commit a first degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Also, s. 837.06, F.S., provides that making a false statement with the intent to mislead a public servant in the performance of his or her official duty is a second-degree misdemeanor.

Other State Laws

There are other laws and rules governing private schools, including, but not limited to: s. 381.006(6), F.S., relating to school sanitation practices, s. 381.0011(4), F.S., relating to communicable disease, s. 381.0072, F.S., relating to food service protection, s. 404.056(1)(d), F.S., related to radon screening, and s. 1003.22 relating to school health entry examinations and scoliosis screening. As well, if a private school is a charitable organization, the school may be subject to the provisions of chapter 496, F.S., relating to the solicitation of funds by these organizations. Private school corporations are governed by chapter 623, F.S.

Section 1003.23, F.S., requires all officials, teachers, and other employees in public, parochial, religious, denominational, and private K-12 schools, including private tutors, to keep all attendance records and to prepare and submit promptly all reports that may be required by law and by SBE rules and district school boards. The records must include a register of enrollment and attendance and the reports must be made as required by the SBE. The enrollment register must show the absence or attendance of each student enrolled for each school day of the year, as prescribed by the SBE, and must be open for inspection by the designated school representative or the superintendent of the district in which the school is located. Violations of this section are a second-degree misdemeanor, punishable as provided by law.

III. Effect of Proposed Changes:

Section 1. The bill provides the purposes of the program and establishes the program as a benefit to Florida's military families.

K-12 GI Bill Eligibility

A parent of a public school student who is a dependent of active military personnel⁶ may request and receive from the state a K-12 GI Bill for the child to enroll in and attend a private school, subject to the following requirements:

- the parent must notify the school district that the student:
 - is a dependent of active military personnel; and
 - is accepted for admission to an eligible private school.

The parent must also notify the school district of the request for a K-12 GI Bill at least 60 days prior to the date of the first payment. Parental notification must be through direct communication to the district or through the DOE to the district. Parents may also exercise the option of sending their child to another public school in the district or to a public school in an adjacent district.

⁶ Under the bill, this means an active-duty member of the Florida National Guard who is serving in Operation Enduring Freedom or Operation Iraqi Freedom.

The GI Bill Program does not apply to a student who is enrolled in a school that provides educational services to youth in Department of Juvenile Justice (DJJ) commitment programs.⁷ As well, the bill provides other explicit grounds for ineligibility for a scholarship.

Term of the GI Bill

A GI Bill remains in force until the student at a private school returns to a public school or graduates from high school. If the parent chooses the public school option, the student may continue attending the public school chosen by the parent until the student graduates from high school. At any time, the student's parent may remove the student from the private school and place the student in another eligible private school or in a public school.

School District Obligations to Parents of Military Students

School districts must timely notify parents of the public and private school options available under the GI Bill, if the districts know about the eligible students.⁸ Districts must also offer parents an opportunity to enroll the student in another public school, although the parent does not have to accept this offer. School district obligations also include the following:

- notifying the DOE within 10 days after it receives notification of a parent's intent to apply for a student to receive a scholarship.
- providing locations and times for K-12 GI scholarship students to take all statewide assessments, if parents request that students take these assessments.
- providing transportation to the public school selected by the parent, if the parent chooses a public school consistent with the district school board's choice plan under s. 1002.31, F.S.;
- accepting a student from an adjacent school district whose parent selects a public school in the recipient district and reporting the student for purposes of the district's funding under the FEFP; and
- reporting all students who attend a private school separately from other students reported for FEFP purposes.

Private School Eligibility and Obligations

To be eligible to provide educational opportunities for eligible students, a Florida private school may be sectarian or nonsectarian and must meet specific requirements, including the following:

- Demonstrating fiscal soundness by:
 - Operating for 2 school years; or
 - Filing with the DOE a surety bond or letter of credit for the amount equal to the K-12 GI Bill funds for each quarter;
- Notifying the DOE of intent to participate in the program, specifying the grade levels and services that the private school has available for GI Bill scholarship students;
- Complying with the antidiscrimination provisions of 42 U.S.C. s. 2000d;

⁷ Residential commitment programs include low, moderate, high, and maximum risk Florida DJJ programs. Students temporarily reside in these programs while committed to DJJ. Day treatment programs are non-residential programs operated by or under contract with the DJJ. See Educational Quality Assurance Standards, Juvenile Justice Educational Enhancement Program, 2004.

⁸ These options may be exercised only on a space-available basis. A student who is the dependent of a parent on active-duty must be given first priority, except that this option is not available if exercising the option would violate the constitutional class-size requirements.

- Meeting state and local health and safety laws and codes;
- Being academically accountable to the parent for meeting the student's educational needs;
- Employing or contracting with teachers who hold baccalaureate or higher degrees, have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught;
- Complying with all state laws relating to general regulation of private schools; and
- Adhering to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

The school must return the partial reservation payment to the DOE if a student decides not to attend the school. Only one partial reservation payment may be made per student per year.

Family Obligations

A parent who applies for a K-12 GI Bill to enable his or her child to attend a private school is exercising a parental option to place the child in a private school. The bill requires the parent to:

- select the private school and obtain acceptance for the child's admission.
- request the K-12 GI Bill at least 60 days prior to the date of the first payment.⁹
- notify the district that the student is a dependent of active military personnel.

Parental responsibilities also include:

- providing transportation to a public school if the choice is inconsistent with the district school board's choice plan under s. 1002.31, F.S.;
- notifying the school district at least 60 days prior to the date of the first payment and before the student enters the private school when the student is accepted by a private school pending available space; and
- transporting the student to a public school in an adjacent school district.

Students attending a private school must:

- remain in attendance throughout the school year, unless excused by the school for illness or other good cause;⁹ and
- comply fully with the school's code of conduct.⁹

Parents of these students must:

- comply fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.⁹
- transporting the student to the assessment site designated by the school district, if he or she requests that the student take all required statewide assessments.⁹
- restrictively endorse the warrant to the private school for deposit into the account of the private school, upon receipt of a K-12 GI Bill warrant.⁹

Funding and Payment

The bill restricts the amount of a K-12 GI Bill provided to any child for any single school year to the following limits:

- \$3,600 or the amount of tuition and fees, whichever is less, for a student enrolled in an eligible private school.
- \$500 or the amount of transportation expenses, whichever is less, for a student enrolled in an out of district Florida public school.

⁹ A participant who fails to comply with this requirement forfeits the GI Bill.

The bill specifies the method for funding the scholarships.

DOE Obligations and Prohibitions

The bill tasks the DOE with specific requirements, including the following:

- Transferring the amount of the K-12 GI Bills from the school district's total funding entitlement under the FEFP to a separate account for the K-12 GI Bills, after notification of the number of students attending private schools;
- Disbursing quarterly payments to the parents of K-12 GI Bill students;
- Receiving all required documentation for the student prior to the first quarterly payment;¹⁰ and
- Mailing the warrant to the private school of the parent's choice.

The bill allows the DOE to make a partial payment if a participating private school requires partial payment of tuition prior to the start of the academic year to reserve space for students admitted to the school. The payment may be paid prior to the first quarterly payment of the year in which the K-12 GI Bill is awarded, be in an amount up to a maximum of \$1,000, and may be deducted from subsequent K-12 GI Bill payments. The bill prohibits the DOE from making any retroactive payments.

Commissioner of Education

The Commissioner has responsibilities that include taking action against schools that fail to comply with the laws and rules applicable to the scholarship program.

Chief Financial Officer (CFO) Obligations

The bill tasks the CFO with the following:

- Making quarterly payments throughout the academic year in which the K-12 GI Bill is in force, pending approval by the DOE;
- Making the initial payment for attendance at a private school after DOE verifies admission acceptance;
- Making subsequent payments upon verification of continued enrollment and attendance at the private school; and
- Making warrants payable to the student's parent.

State Board of Education (SBE) Obligations

The SBE may adopt rules to administer the program. The inclusion of eligible private schools within the options available to Florida public school students does not expand the government's regulatory authority of private schools beyond what is reasonably necessary to enforce the requirements in the bill.

State Liability

The bill provides that no liability arises on the part of the state, based on the award or use of a K-12 GI Bill.

Section 2. The bill amends s. 1002.20(6), F.S., to require parents of public school children to receive information about K-12 GI Bill scholarships to private schools.

¹⁰ The documentation includes the private school and student fee schedules.

Section 3. The bill provides an effective date of upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This program is similar to other private school choice options, including the Opportunity Scholarship Program (OSP) in s. 1002.38, F.S. (formerly section 229.0537, F.S.). The OSP statute continues to be the subject of constitutional challenges. On November 12, 2004, the 1st District Court of Appeals issued en banc opinion finding that the Opportunity Scholarship Program violated Art. I, s. 3 of the State Constitution because the program authorizes state funds to be paid to sectarian schools.¹¹ The opinion has been appealed to the Florida Supreme Court. Oral argument before the court is scheduled for June 7, 2005. Until the OSP case is resolved, the GI Bill could be tested under this provision of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would enable an unknown number of dependent students to qualify for scholarships at a private school.

C. Government Sector Impact:

The bill provides for scholarships to an unknown number of qualifying individuals. The bill provides \$500 or the amount of transportation expenses, whichever is less, for a student to enroll in another Florida public school.

¹¹ *Bush v. Holmes*, 886 So.2d 340 (Fla. 1st DCA 2004).

The DOE reports that the agency's database does not currently contain evidence of the student's eligibility as a military dependent. According to DOE, the agency will incur an indeterminate cost to administer this provision of the bill. The cost includes website and database development (e.g., accessing student information to verify the dependent status of the student).

DOE notes that average amount per FTE from the Final Appropriations Conference Report for 2004-2005 is approximately \$5,764. The scholarship amount proposed in the bill is \$3,600; therefore a positive fiscal impact on state funds would be realized for each student electing to take the scholarship. Due to uncertainty in the number of eligible students who will eventually enroll in the program, the fiscal impact is indeterminate.

The bill's effective date is upon becoming a law. DOE indicates that funds for the 2005-2006 school year are not available until there is an approved budget (July 1, 2005). The unavailability of funds at the time needed to process payments may result in a delay of the September 1 payments.

VI. Technical Deficiencies:

The eligibility criteria do not require a student to have been in attendance at a public school for the prior school year. Although the bill provides a method for paying for the scholarships, it does not provide for holding school districts harmless from the weighted student enrollment ceiling for group 2 programs in s. 1011.62(1)(d)3.a., F.S., during the first school year in which the students are reported. Also, the bill should specify the evidence that is required for documentation of a student's dependent status.

VII. Related Issues:

Recent reviews of other scholarship programs have criticized specific aspects of various choice options, including the lack of administrative rules for these programs.¹² Since the release of the Chief Financial Officer's report, legislation is pending to increase accountability for the programs. To some extent, the bill establishes a statutory framework that is similar to the existing framework for the scholarship programs. Consequently, the bill may be subject to the same shortcomings identified in recent program reviews.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹² See *Audit of the McKay Scholarship, Opportunity Scholarship, and Corporate Tax Credit Scholarship Programs*, Department of Financial Services, Chief Financial Officer, December 10 2003, *John M. McKay Scholarships for Students with Disabilities Program Accountability* and *Corporate Tax Credit Scholarship Program Accountability*, Senate Education Committee interim project reports (2004-130 and 2004-132), November 2003, and *Florida Department of Education Operational Audit*, Audit Report 03-113, Office of the Auditor General, February 2003.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
