

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: SB 256

INTRODUCER: Senator King

SUBJECT: Scholarship Programs

DATE: January 21, 2006

REVISED: 1/24/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/7amendments
2.			JU	
3.			GE	
4.			EA	
5.			WM	
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill makes several changes to improve the fiscal and academic accountability in the John M. McKay Scholarships for Students with Disabilities Program and the Corporate Tax Credit Scholarship Program.

□ Changes to the McKay Scholarship Program include the following:

- Redefining the criteria for students who are eligible to participate in the program including providing for the eligibility of students from the Florida School for the Deaf and the Blind.
- Revising the eligibility requirements for participating private schools to include annual registration of schools, a notarized sworn compliance statement, and evidence of criminal background checks of certain employees and officers.
- Revising the criteria for forfeiture of a student's scholarship.
- Clarifying the obligations of school districts, private schools, and program participants.
- Providing the Department of Education (DOE) with additional authority and responsibilities for administering the program, including sanctions for private schools that fail to comply with the requirements in law.
- Requiring audits of the program by the Auditor General.

- Revising the fiscal soundness requirements to require private schools to be 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 quarter and filing the surety bond or letter of credit with the Department of Education.
 - Requiring each scholarship student to participate at least annually in a student assessment.
 - Requiring private schools to accept scholarship students on a religious-neutral basis.
- **Changes to the Corporate Tax Credit Scholarship Program (CSP) include the following:**
- Reducing the amount of credit set aside for small businesses from 5 percent to one percent.
 - Deleting the provision that forbids a taxpayer from contributing more than \$5 million to any single eligible SFO in a given year.
 - Requiring an SFO to obligate, rather than spend in the same fiscal year in which the contribution was received, 100 percent of the contributions to provide scholarships provided that up to 5 percent of the total contributions may be carried forward for scholarships to be granted in the following fiscal year.
 - Requiring a nonprofit scholarship-funding organization (SFO) to file its audit with the Auditor General and the DOE within 180 days after completion of the SFO's fiscal year.
 - Requiring an SFO to obtain verification of student attendance at a private school.
 - Providing for the transfer of funds, with prior approval by the Department of Education, to another eligible SFO if additional funds are needed to meet scholarship demand.
 - Prohibiting an SFO from commingling funds and drawing upon a line of credit to fund scholarships.
 - Requiring an SFO to conduct income eligibility verification of students.
 - Requiring criminal background checks of certain employees and officers of SFOs and private schools.
 - Eliminating certain private schools such as correspondence schools and distance learning from the list of eligible private schools under the CSP program.
 - Allowing private schools to demonstrate fiscal soundness 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 quarter and filing the surety bond or letter of credit with the Department of Education.
 - Requiring a private school to employ or contract with certain qualified teachers.
 - Prohibiting a home school from participating in the program.
 - Requiring a private school to annually administer or make provisions for scholarship students to take a nationally norm-referenced test that compares to the Florida Comprehensive Assessment Test (FCAT).
 - Requiring a private school to report to DOE and to scholarship applicants whether certain state or regional accrediting associations accredit the school and, if so, the name of the accrediting association.
 - Allowing current scholarship students to continue participating in the CSP program if parental income exceeds the current eligibility requirements, as long as the income does not exceed 200 percent of the federal poverty level.
 - Prohibiting a student from simultaneously receiving a scholarship under the McKay Program or the Opportunity Scholarship Program while receiving a CSP scholarship.

- Requiring a participating private school to accept students on a religious-neutral basis.
- Requiring the DOE to revoke the eligibility of SFOs, private schools, and students who fail to meet the requirements of the CSP program.
- Requiring a public university to report year-to-year improvements in student performance without disclosing a student's identity.

This bill substantially amends sections 220.187 and 1002.39, Florida Statutes.

II. Present Situation:

John M. McKay Scholarships for Students with Disabilities Program (McKay program)

Current law (s. 1002.39, F.S.) sets forth the requirements for parental placement of a scholarship student in an eligible private school or another public school. The law also establishes requirements for student eligibility for scholarships and for participation by an eligible private school. As well, the law establishes responsibilities for school districts and the DOE. The State Board of Education (SBE) has statutory authority to adopt rules to administer the program. For FY 2003-2004, DOE reports that there were 673 participating schools and 13,739 scholarship recipients. For FY 2004-2005, 15,910 students received scholarships to attend 703 participating schools. For FY 2005-2006 (as of November 1, 2005), 16,144 students received scholarships to attend 727 schools, with a total of \$97,276,718 in scholarship awards and an average scholarship award of \$6,117.

Eligible and Ineligible Students

Eligible 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. Students who are enrolled in a school that provides educational services in Department of Juvenile Justice (DJJ) commitment programs are not eligible for a scholarship.¹

To be eligible for a McKay scholarship to attend a private school, a student with a disability must meet the following requirements:

- Have an individual education plan (IEP) written in accordance with SBE rules, and²
- Have spent the prior school year in attendance at a Florida public school, by assigned school attendance area or by special assignment.³

In addition, the student's parent must have obtained acceptance for the student's admission to an eligible private school and have notified the school district of the scholarship request prior to the date of the first scholarship payment. The parental notification must be through a communication

¹ Residential commitment programs include low, moderate, high, and maximum risk Florida DJJ programs. Students temporarily reside in these programs while committed to DJJ.

² Rule 6A-6.03028, F.A.C., addresses the development of IEPs and requires school districts to provide a copy of an IEP to parents, upon request. Students whose parents choose the option of attending another public school must also have an IEP.

³ Prior school year in attendance means that the student was enrolled and reported by a school district for funding during the preceding October and February FEFP surveys in kindergarten through grade 12. Chapter 2004-230, L.O.F., waived the requirement that the student must have spent the prior year in attendance at a Florida public school for otherwise qualifying military students who relocate to Florida pursuant to a parent's military orders. Under this provision, transferring military students are still required to submit an IEP and evaluation data necessary to establish program eligibility.

directly to the district or through the DOE to the district in a manner that creates a written or electronic record of the notification and the notification's date of receipt.

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.

Parent and Student Obligations

A parent who applies for a McKay scholarship is exercising his or her parental option to place his or her child in a private school. Parents are responsible for the following:

- Requesting the scholarship at least 60 days prior to the first scholarship payment;⁴
- Notifying the school district 60 days prior to the first scholarship payment and before the child enters the private school in order to be eligible for the scholarship when a space becomes available for the student in the private school;
- Selecting the private school and applying for the admission of the student;
- Complying fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause;⁴
- Restrictively endorsing the warrant to the private school for deposit into the account of the private school, upon receipt of a scholarship warrant;⁴
- Transporting the student to:
 - A public school that is inconsistent with the district school board's choice plan under s. 1002.31, F.S.;
 - A public school in an adjacent school district with available space and a program with the services agreed to in the student's IEP already in place; and
 - A designated assessment site, if he or she requests that the student take all statewide assessments.⁴

Students participating in the scholarship program must:

- Remain in attendance throughout the school year, unless excused by the school for illness or other good cause, and⁴
- Comply fully with the school's code of conduct.⁴

Term of Scholarship

For purposes of continuity of educational choice, the scholarship remains in force until the student returns to a public school or graduates from high school. If the parent chooses the public school option, the student may continue attending a public school chosen by the parent until the student graduates from high school.

School District Obligations

Under current law, school districts must:

- Timely notify parents of all options available in s. 1002.39, F.S.;
- Offer students' parents an opportunity to enroll the student in another public school within the district;
- Notify the DOE within 10 days after it receives parental notification of intent to participate in the program;

⁴ A participant who fails to comply with this requirement forfeits the scholarship.

- Complete a matrix of services for any student who is participating in the scholarship program;⁵
- Notify the DOE of the student's matrix level within 30 days after receiving parental notification of intent to participate in the scholarship program;
- Provide the student's parent with the student's matrix level within 10 school days after its completion;
- Notify the student's parent if the matrix has not been completed within 10 school days after receiving parental notification of intent to apply for a McKay Scholarship;
- Provide the parent with the date for completion of the matrix;
- Accept a student from an adjacent school district whose parent selects a public school in the recipient district, and report the student for purposes of funding under the Florida Education Finance Program (FEFP);
- Provide locations and times to take all statewide assessments for a student in the district who participates in the scholarship program and whose parent requests that the student take the statewide assessments under s. 1008.22, F.S.;
- Provide 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.; and
- Report all scholarship students who are attending a private school separately from other students reported for FEFP purposes.

DOE Obligations

The law tasks the DOE with the following requirements:

- Notifying the private school of the amount of the scholarship within 10 days after receiving the school district's notification of the student's matrix level;
- Disbursing quarterly scholarship payments to parents of scholarship students;⁶
- Receiving all required documentation for a student's participation in the program, including the private school and student fee schedules, at least 30 days prior to the first scholarship payment and prior to the student entering the program;
- Verifying student admission acceptance by a private school and continued enrollment and attendance;
- Reviewing and approving documentation prior to scholarship payments; and
- Mailing the warrant to the private school of the parent's choice.

The law prohibits the DOE from making any retroactive scholarship payments.

Private School Eligibility and Obligations

To be eligible to participate in the program, a Florida private school must meet the following requirements:

- Demonstrate fiscal soundness by:

⁵ For a student with disabilities who does not have a matrix of services under s. 1011.62(1)(e), F.S., a matrix must be completed that assigns the student to one of the levels of service as they existed prior to the 2000-2001 school year.

⁶ Funds are derived from the school district's total funding entitlement under the FEFP and from authorized categorical amounts.

- Operating for 1 school year;
 - Providing DOE with a statement by a certified public accountant (C.P.A.) confirming that the school is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year; or
 - Filing with DOE a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter.
- Notify DOE of intent to participate in the program, specifying the grade levels and services that the private school has available for students with disabilities who participate in the scholarship program;
 - Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d;
 - Meet state and local health and safety laws and codes;
 - Be academically accountable to the parent for meeting the educational needs of the student;
 - Employ or contract with teachers who hold baccalaureate or higher degrees, or 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;
 - Comply with all state laws relating to general regulation of private schools; and
 - Adhere to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

Scholarship Funding and Payment

The scholarship amount is either a calculated amount or the amount of the private school's tuition and fees, whichever is less. Until the school district completes a matrix, the scholarship calculation is based on the lowest level of service. Payments must be made by individual warrant payable to the student's parent for his or her endorsement and for deposit into the private school's account.

Chief Financial Officer (CFO)/Department of Financial Services' Obligations

Florida's CFO must make quarterly scholarship payments on specific dates after verification by the DOE of student information on private school acceptance, enrollment, and attendance.

Matrix of Services

When a parent indicates that he or she intends to place the child in a private school, the child may or may not have a matrix of services. Under current law, only students with exceptional education cost factors for Support Levels IV and V must have a matrix of services that documents the services that each student will receive. Consequently, students who are at support levels I, II, and III will need a matrix of services. There are no specific administrative rules that address matrixes. Rather, various DOE publications address the implementation of matrixes.

Current law, (s. 1011.62, F.S.) relating to determining the annual allocation to each district for operations, requires the General Appropriations Act (GAA) to establish cost factors based on desired relative cost differences between specific programs. The Commissioner of Education must specify a matrix of services and intensity levels to be used by districts in the determination of the two weighted cost factors for exceptional students with the highest levels of need (i.e., levels IV and V). The funding model for exceptional student education programs uses specified

FEFP cost factors, including support levels IV and V for exceptional students and a guaranteed allocation for exceptional student education programs. The law also provides for the following:

- Exceptional education cost factors are determined by using a matrix of services to document the services that each exceptional student will receive, and
- The nature and intensity of the services indicated on the matrix must be consistent with the services described in each exceptional student's individual educational plan.

In order to generate funds using one of the two weighted cost factors, a matrix of services must be completed at the time of the student's initial placement into an exceptional student education program and at least once every 3 years by personnel who have received approved training. Nothing listed in the matrix may be construed as limiting the services a school district must provide in order to ensure that exceptional students are provided a free, appropriate public education.

2003-2004 Senate Task Force on McKay Scholarship Program Accountability

The Senate President appointed a task force of thirteen members, including two Senators, representatives from public and private schools, and parents and grandparents of school age children, to review the McKay Scholarship Program and make recommendations to improve accountability.

The task force used the following guiding principles:

- Recommendations will assure parents and the public that the program operates in a responsible manner;
- Recommendations will assure parents and the public that participating schools exercise good stewardship of public funds;
- Recommendations will not discourage reputable private schools from participating in the program;
- Recommendations will strengthen and enhance the program and not diminish its scope or strength; and
- Recommendations will focus on accountability.

The members met over a ten-month period, reviewed evidence of existing problems, took public testimony, and deliberated options for improving the program. Ultimately, the task force determined that improvements were needed in three major areas:

- Imposing additional requirements on participating private schools for fiscal and academic accountability;
- Providing more explicit statutory direction to the Department of Education for administering the program; and
- Establishing controls on scholarship warrants signed by parents.

Senate Interim Projects 2004-130, 2005-127, and 2006-117

Senate Education Committee interim project reports noted that the McKay program has grown dramatically and rapidly since its inception in 1999 with two participating students, to its enrollment of over 9,000 students during the 2002-2003 school year. There was public criticism of the program regarding questionable business practices of certain private schools accepting scholarship students, as well as reports of students receiving long-term scholarships under the

program for disabilities that were in fact temporary and short lived. Findings from the committee interim studies suggested numerous potential solutions to the program’s problems, including legislative remedies and the implementation of rules, administrative changes, or changes in approach by the Department of Education and the State Board of Education.

Corporate Tax Credit Scholarship Program (CTC)

Since its inception in 2001, the CTC has provided scholarships to students in need by offering parents an option of enrolling their children in a private school. Anecdotally, the program is extremely popular with the parents whose children are participating in the program. However, the CTC program had serious fiscal and academic accountability deficiencies that, if not corrected, threatened the continued viability of the program. As a result, the Senate President directed the Senate Education Committee to conduct an interim study of the CTC program in 2003. The interim project report specifically found that the CTC program lacked any real meaningful state oversight and that the system of self-policing by participating SFOs and private schools had essentially failed.⁷ Accordingly, the 2003 Senate Education Committee voted unanimously to draft legislation to implement accountability in the CTC program.⁸

Section 220.187, F.S., the Statutory Framework

The 2001 Legislature enacted the CTC program for implementation in the 2002 tax year. Under the program, corporate taxpayers may take a dollar for dollar tax credit for contributions to SFOs that provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act, and who:

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is eligible to enter kindergarten or the first grade⁹; or
- Received a scholarship under the CTC program the previous school year.

The Legislature initially capped the CTC program at \$50 million in tax credits per state fiscal year, but subsequently expanded the cap to \$88 million in 2003.¹⁰ Although s. 220.187(3)(b), F.S., sets the annual cap per state fiscal year, the provision has been interpreted to accommodate taxpayers’ tax years, which do not correspond to the state’s fiscal year. This interpretation results in a counterintuitive application of the tax credit to the annual cap. The following chart illustrates the application of the requirement for two separate taxpayers with different tax years.

Taxpayer	Taxpayer’s Tax year	Tax Credit Application	Annual Cap	Contribution
Taxpayer A	Jan. 03 – Dec. 03	Approved in June 03	Counts Toward State FY 2003-2004	Made before end of Dec. 03
Taxpayer B	Mar. 03 – Feb. 04	Approved in Jan. 04	Counts Toward State FY 2003-2004	Made before end of Feb. 04

⁷ The Florida Senate, *Corporate Tax Credit Scholarship Program Accountability*, Interim Project Report 2004-132.

⁸ Agenda, Senate Education Committee, October 21, 2003.

⁹ The 2002 Legislature expanded student qualification to include students eligible to enter kindergarten or the first grade. See s. 42, Chapter 2002-218, L.O.F.

¹⁰ Section 9, Chapter 2003-391, L.O.F.

The tax credit application and the annual cap operate independently from the actual contribution made by the taxpayer to the scholarship-funding organization for distribution towards scholarships. The contribution must be made by the end of the taxpayer's tax year or the tax credit may not be used.

Taxpayers

A taxpayer may not contribute more than \$5 million to any scholarship-funding organization and may not designate a specific child or group of children as the beneficiaries of the scholarship. A taxpayer may carry forward any unused amount of the tax credit for up to three years; however, the carry-forward is counted towards the annual cap in each year the carry-forward is used. Five percent of the tax credit is reserved for small businesses as defined under s. 288.703(1), F.S.¹¹

Scholarship-Funding Organizations (SFOs)

An SFO must be a charitable organization exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code. The SFO must spend all of the contributions for scholarships in the state fiscal year¹² in which they are received. An SFO may not use any portion of the contribution for administrative expenses. An annual financial and compliance audit is required of the SFO, which must be filed with the Auditor General.

An SFO may offer two separate scholarships: a \$3500 maximum scholarship for tuition, textbook expenses, or transportation to attend an eligible private school, 75 percent of which must be used for tuition; and a \$500 maximum scholarship for transportation expenses to a public school located in another school district.

Private Schools

A participating private school must meet fiscal soundness requirements by:

- Having been in operation for at least one year;
- Providing DOE with a statement from a certified public accountant confirming that the private school is insured and has sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with expected revenues that are reasonably expected; or
- Providing a surety bond or letter of credit for an amount equal to the scholarship funds for any quarter.

In addition, eligible private schools must comply with state and local health and safety laws and codes, the federal antidiscrimination provisions of 42 U.S.C. s. 2000d, and all state laws relating to the regulation of private schools.

The Department of Education

DOE is required to annually submit to the Department of Revenue (DOR) by March 15 a list of eligible SFOs that meet the statutory requirements. In addition, DOE is required to monitor the

¹¹ Section 288.703(1), F.S., defines a small business as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state that has a Small Business Administration 8(a) certification.

¹² July to June.

eligibility of the SFOs, the private schools, and the expenditures under the program. DOE must adopt rules, as necessary, to determine the eligibility requirements of the SFOs and to identify qualified students.

The Department of Revenue

DOR must adopt rules establishing the procedures and forms for applying for the tax credit and the allocation of the tax credit to a taxpayer on a first come, first-served basis.

Operation of the CTC Program

The following summarizes information related to the tax credits approved by the Department of Revenue:¹³

Tax Year	Number of Approved Tax Credit Applications	Number of Taxpayers	Total Amount of Tax Credits Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credits	Total Amount of Tax Credits Approved for Small Businesses
2002-03	77	48	\$47,686,000	4	\$186,000
2003-04	114	56	\$47,579,000	3	\$ 79,000
2004-05	102	58	\$47,560,000	2	\$ 60,000
2005-06	113	69	\$74,020,071	1	\$ 1,000

The following reflects the credit allocations per SFO for 2005-2006:¹⁴

Academy Prep Foundation, Inc.	\$ 641,500
Children First Central Florida	\$ 18,003,750
Credit Carry Forward	\$ 6,188,478
Faith Based Scholarship Foundation of Florida	\$ 0
Florida School Choice Fund (Florida Pride)	\$ 32,466,411
FloridaChild	\$ 0
H.E.R.O.E.S.	\$ 13,916,182
YES OPPORTUNITIES, INC.	\$ 2,803,750
Total Allocations	\$ 74,020,071

DOE approved the following scholarship-funding organizations with contributions received per indicated state fiscal year, according to information provided by the scholarship-funding organizations:

SFO	FY 2001-2002	FY 2002-2003	FY 2003-2004 (As of 9/2003)
Academy Prep Foundation	\$0	\$237,000	\$0
Children First Central Florida	\$829,375	\$14,187,000	\$1,320,297
Faith Based Scholarship Foundation of Florida	\$0	\$0	\$0
FloridaChild	\$475,000	\$18,845,425	\$2,745,333
Florida PRIDE	\$468,000	\$8,913,500	\$2,604,125
H.E.R.O.E.S.	\$0	\$5,193,500	\$1,050,000
Silver Archer Foundation	Unknown	Unknown ¹⁵	Unknown
Yes Opportunities	\$0	\$1,050,000	\$250,000

¹³ Department of Revenue, December 1, 2005.

¹⁴ Department of Revenue, December 1, 2005.

¹⁵ The Silver Archer Foundation LTD received \$412,500 in tax year 2003. Silver Archer did not respond to the committee's 2003 survey. The Chairman and Director of the Silver Archer Foundation was arrested and charged with Grand Theft in the first degree. DOE removed Silver Archer Foundation from the list of approved SFOs.

According to unverified data provided by the SFOs, 970 students received scholarships in FY 2001-2002 to attend a private school and no students received scholarships to attend a public school. Scholarship values ranged from \$284 to \$1,775. In FY 2002-2003, 19,206 students received scholarships to attend a private school and 107 students received scholarships to attend a public school, with a scholarship value ranging between \$100 and \$3500.¹⁶ In FY 2003-2004, 11,550 students received scholarships to attend 924 participating schools. In FY 2004-2005, 10,473 students received scholarships to attend 973 schools. For 2005-2006, (as of November 1, 2005), 13,497 students received scholarships to attend 852 schools. For FY 2005-2006, the DOE approved the following SFOs: Florida PRIDE, YES Opportunities, H.E.R.O.E.S., Children First Central Florida (CFCF) and Academy Prep. Florida PRIDE and YES Opportunities merged to become Florida PRIDE, while H.E.R.O.E.S. and CFCF merged to become Children First Florida (CFF). The Faith Based Scholarship Foundation of Florida and FloridaChild no longer participate in the program.

For the current school year, Academy Prep reports no applicants on a waiting list. According to the Florida Association of SFOs, there are approximately 14,200 students with CTC scholarships through the association's member SFOs, Florida PRIDE and CFF. These SFOs report a total of 3,400 families on a waiting list, meaning that the families have been awarded scholarships, but have not yet selected a school, or have applications under review.¹⁷

Four of the five SFOs submitted audits to the Auditor General.¹⁸ The Faith Based Scholarship Foundation of Florida reportedly provided CTC scholarships, but never submitted any audit to either the Auditor General or the DOE. The audits noted the following:

- H.E.R.O.E.S., Inc. paid scholarship benefits to students totaling approximately \$1.5 million on behalf of another SFO which had experienced a funding shortfall.¹⁹
- FloridaChild discontinued participation in the CTC program in February 2004 and the SFO's scholarship recipients were transferred to Florida School Choice Fund (FSCF) and three other SFOs. FSCF worked with the Florida Association of SFOs and the Department of Financial Services to establish specific criteria to use to determine the transferring students' eligibility and attendance at private schools approved by the DOE.²⁰
- Academy Prep's had adverse findings related to scholarships granted to ineligible students.²¹

Senate Interim Project 2004-132

After surveying DOE and the SFOs, reviewing s. 220.187, F.S., and conducting numerous interviews, the 2004 Education Committee adopted the following findings from the CTC interim project study:

- There is little or no state oversight of the CTC program.
- SBE has not provided any guidance in improving accountability in the CTC program.

¹⁶ The DOE reports that 15,585 students received scholarships for FY 2002-2003.

¹⁷ Florida Association of SFOs, January 20, 2006.

¹⁸ CFCF has not submitted a report for the FYE June 30, 2005.

¹⁹ Audit of H.E.R.O.E.S., Inc., September 13, 2004.

²⁰ Audit of Florida School Choice Fund, Inc. (which includes Florida PRIDE), August 12, 2004.

²¹ Auditor General, FYE May 31, 2005.

- Initial approval criteria of SFOs are easily met and the documentation establishing the eligibility is not kept.
- There has been little or no monitoring of the eligibility of SFOs, private schools, or students.
- DOE's enforcement powers are not explicit.
- There is no statutory requirement to document attendance for purposes of receiving a scholarship.
- There is no statutory provision to prohibit the following:
 - An SFO designating a particular child for a scholarship, or
 - A student receiving a scholarship from other state scholarship programs for students in private schools.
- There are insufficient criminal background checks being conducted on private school personnel having direct contact with students and SFO personnel having access to scholarship funds.
- There is insufficient academic accountability.

Lack of State Oversight over the CTC program

The Senate interim project report found that there was very little or no state oversight of the CTC program. Instead, the SFOs appear to have been largely delegated the authority to operate the program. Unfortunately, when an SFO failed to implement its delegated authority, DOE was unable to effectively account for the expenditure of funds, regulate the participation of private schools, and identify participating students.

Role of the State Board of Education (SBE)

Historically, the SBE has not provided DOE with sufficient guidance to improve accountability in the program or used its rulemaking authority to resolve issues such as the eligibility criteria for SFOs, the identification of qualified students, the monitoring of SFOs and private schools, and expenditures under the program. Only recently has the SBE adopted a rule related to obtaining information from participating private schools.²² The DOE uses this self-reported information to update on-line profiles of participating private schools.

Initial Approval of Scholarship-Funding Organizations (SFOs)

The criteria for initial approval of SFOs are easily met. DOE did not routinely retain documentation supporting participation in the program. To initially qualify, an SFO is only required to be a nonprofit charitable organization exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code. By requiring an SFO to be an active corporation qualified to do business in the state or a corporation formed in the state, the state can more effectively control the information that an SFO must provide.

Monitoring the Eligibility of Scholarship-funding Organizations (SFOs)

Once approved, SFOs were not routinely monitored to ensure compliance with the law. DOE narrowly interpreted its oversight authority as being limited to reviewing audits and responding to complaints.²³ Since the earliest that any audits were filed was August 2003, DOE did not exercise any oversight authority prior to that date, relying exclusively on the SFOs to police the

²² Rule 6A-6.03315, F.A.C., presented to the SBE August 17, 2004, and subsequently amended in 2005.

²³ Response from DOE to committee survey dated October 14, 2003.

program. In response to the Senate Education committee's request for a report on any SFO that did not comply with the requirement to spend all of its contributed funds for scholarships in the state fiscal year in which received, DOE failed to acknowledge that an SFO had undisbursed scholarship funds at the close of the state fiscal year.²⁴ According to DOE, current law is still vague as to the enforcement authority of the department and the SBE over an SFO that is suspected of failing to comply with the program's requirements.²⁵

Monitoring the Eligibility of Private Schools

Without the assistance of the SFOs and before implementation of the sworn compliance form, DOE could not identify which private schools were participating in the program. Current fiscal soundness requirements do not provide sufficient indication that a private school would be able to continue operations for the upcoming school year. This inability to effectively demonstrate financial stability would be a detriment to student education continuity if a private school ceases operations. While it may appear intuitive, there is no evidence that being in operation for more than one year indicates that a private school is more likely to be in operation the following year.

Monitoring the Eligibility of Students

DOE has largely delegated determinations of eligibility for students to participate in the program to the SFOs. Prior to the implementation of the database, DOE did not know which children were participating in the program unless the SFOs supplied this information.

The law requires DOE to adopt rules establishing the eligibility of students. However, SBE has not adopted rules mandating income verifications for purposes of determining a student's eligibility. Certain SFOs have voluntarily contracted with a company that performs income determinations for the National School Lunch Act to determine student eligibility. However, certain SFOs only conducted income determinations on a sampling basis.²⁶

Attendance

There is no statutory requirement that an SFO require proof of a student's attendance at a participating private school prior to each scholarship payment. Accordingly, DOE and certain SFOs did not know whether a student was actually attending the private school.²⁷ Coupled with the ability to execute a power of attorney on behalf of the private school, funds could be disbursed for students that are not enrolled in the private school.

Designating a Specific Child as the Beneficiary of the Scholarship

There are currently no statutory restrictions on an SFO designating a particular child or private school for receipt of a scholarship. An SFO that administers a private school could circumvent the statutory prohibition and allow a taxpayer to contribute to a specific SFO knowing which children would benefit from the contribution.

²⁴ On June 30, 2002, Children First – Central Florida, Inc., had \$92,970 of scholarship funds that were not disbursed in contravention of s. 220.187(4)(d), F.S. These funds were distributed during the next school year.

²⁵ DOE analysis of SB 256, November 21, 2005.

²⁶ FloridaChild

²⁷ FloridaChild

Simultaneous Receipt of Funds under Scholarship Programs

There is no current statutory prohibition on simultaneously receiving scholarship funds under the McKay scholarship program, the OSP program, or the CTC program.

Criminal Background Checks

The criminal background checks currently performed fail to ensure that private school personnel who have been convicted of a crime involving moral turpitude do not have direct contact with students. The personnel of an SFO are not required to undergo a criminal background check. Accordingly, there is no state mechanism in place to ensure that individuals with a criminal history including fraud or theft are not handling scholarship dollars.

Academic Accountability

There are no state-mandated academic accountability requirements. Consequently, the state does not know if the program is adequately serving participating students. If a student fails to make adequate progress and returns to the public school system, the state and the student would be at a disadvantage.

Unlike the OSP established under s. 1002.38, F.S., students receiving a scholarship under the CTC program are not required to take the Florida Comprehensive Assessment Test (FCAT). The FCAT is designed to promote accountability in the state's education system by measuring annual learning gains. The FCAT tests whether a student has achieved the Sunshine State Standards as adopted by the state. For the most part, private schools do not teach the Sunshine State Standards. Rather, most private schools have indicated that they administer some form of a standardized examination to measure student performance against a comparable peer group. The results on these nationally standardized examinations are not reported to the state. Moreover, these results are not correlated with the FCAT to compare student performance in the private and public schools or with the Sunshine State Standards.

Recommendations

The Senate Education Committee adopted the following recommendations for preparing a bill to improve accountability:

- Require SBE to use its rulemaking authority to implement the program. As the head of DOE, SBE should be a much more visible and active force in providing leadership to improve the program;
- Require SBE to establish by rule the SFO approval process;
- Clarify existing statutory enforcement powers of DOE to include, but not be limited to, the power to revoke participation of an SFO, a private school, or a student who fails to follow the law;
- Require DOE to act on an SFO's application to participate in the program within a statutorily prescribed timeframe and to keep adequate records to document its activities with respect to approving SFOs;
- Authorize DOE to request any necessary information related to the program from SFOs and private schools. DOE's use of the sworn compliance form for private schools and SFOs should be expanded and authorized by law. DOE in turn should be required to annually report to the Legislature on its oversight activities;

- Tighten initial eligibility requirements for an SFO to require the entity to be an active corporation in the state appropriately registered with the Department of State and the Department of Agriculture and Consumer Services;
- Require an SFO to obtain proof of a student's attendance at a private school prior to distribution of scholarship funds;
- Require an SFO to verify student income eligibility for every student prior to each academic year through an independent income verification entity;
- Prohibit an SFO from being an actual provider of education services, funding an affiliated entity, or targeting scholarships to particular private schools or students;
- Require an SFO to comply with the Florida Single Audit Act with the caveat that the threshold requirements of the act do not apply to the SFOs;
- Restrict the methods of demonstrating fiscal soundness to participate in the program. Private schools should be required to document insurance type and coverage to include a general liability or premises liability policy. In addition, private schools must provide an opinion letter from an independent certified public accountant that documents sufficient assets or capital to ensure continued operations through the upcoming academic year. This requirement should be an annual obligation. The number of years in operation by a private school and the purchase of a surety bond for one quarter's scholarship funds should be eliminated as a ground for indicating fiscal soundness;
- Require SBE to adopt rules identifying the amount of coverage and the amount of assets or capital that constitutes sufficient indicia of fiscal soundness to participate in the program;
- Require DOE to continue to run student lists to verify that a student was previously counted as an FTE the prior academic year in a school district, that a student is not simultaneously receiving funds from other separate scholarship programs, and that a student is not currently enrolled in both a public school and a private school;
- Prohibit a student under the CTC program from simultaneously receiving funds from multiple state scholarship sources. In addition, the law should be clarified to prohibit a student from receiving scholarship funds from multiple SFOs and to provide a mechanism for returning funds;
- Prohibit a scholarship recipient from authorizing a private school to act as an attorney in fact for purposes of endorsing scholarship checks;
- Require criminal background checks on personnel having direct contact with scholarship funds at an SFO. In addition, private school personnel having direct contact with students should be fingerprinted and the results forwarded to DOE. An individual found to have been convicted of a crime involving moral turpitude should be precluded from being employed in a private school if he or she has direct student contact. Finally, the results of criminal background checks of private school owners or operators should be forwarded to DOE;
- Require the use of certain standardized examinations and the reporting of results to the appropriate parties for use in measuring the effectiveness of the program; and
- Clarify that a student in home education programs is ineligible to participate in the CTC program.

Chief Financial Officer/Department of Financial Services Audit

Subsequent to the 2003 interim project studies, the Department of Financial Services (DFS) released audit reports on the McKay Program and the CTC program that noted the lack of administrative rules and several instances where students received scholarships in both the McKay and CTC programs. The report included recommendations to enhance the fiscal integrity and strengthen the management of the programs. The DFS review of the CTC program made the following recommendations:

Chief Financial Officer recommendations for action by the Legislature

- Each SFO should pass a fiscal sufficiency test to demonstrate that there is sufficient current and future expectation of revenue sources to properly administer scholarships.
- New SFOs should demonstrate that they have processes in place to properly account for scholarship funds.
- The SFO principals and private school officials need to pass a criminal background check. Other due diligence procedures for SFOs should include bankruptcy history, credit checks and lawsuit history.
- The SFOs and private schools should have a state charter and be physically located within the State.
- For program purposes, the types of eligible private schools should be defined by statute.
- The Legislature should consider the imposition of suspension or permanent removal of SFO eligibility when an SFO cannot demonstrate accountability of funds or there is material noncompliance with law.
- The Legislature should consider adding a statutory provision so that scholarships granted under the CTC program cannot be combined with the McKay or OPS scholarships.
- The Legislature should consider amending s. 220.187(4)(e), F.S., and include a provision that each SFO shall demonstrate the matching of current funding received to pay scholarship obligations for the current or upcoming school year.
- The Legislature should address the timeframe of funding availability. Currently, there is no provision in the statute to prevent an SFO from developing financing schemes with current corporate contributions or from granting scholarships for past or future periods.
- In addition, some SFOs have managed irregular short-term cash flow patterns with the use of a line of credit. An SFO should not use a line of credit to finance an increase in the scholarship base with the anticipation that future corporate contributions will be greater to debt service the obligation.
- The Legislature should consider limiting scholarship funding transfers between SFOs. Funding transfers conflict with the current statute and increase the level of risk that funding may not be appropriately used.
- The Legislature should consider establishing a mechanism to restore unused tax credit allocation when corporations contribute less than the DOR preapproved amounts.
- The Legislature should consider a scaled phase-out of a student's scholarship if the student becomes ineligible due to a slight increase in the parent's salary.
- The Legislature should address the Auditor General's use of audit reports, unless it is determined that the single audit provision should be included in s. 220.187, F.S.

Chief Financial Officer recommendations for the SBE and DOE

- The SBE should adopt administrative rules for the effective administration of the CTC program.
- The CTC program meets the requirements of “State Financial Assistance” and is therefore subject to the Florida Single Audit Act.
- To provide reasonable assurance that program funding is being used for the purpose prescribed by law, DOE should establish a program management function, including, but not limited to, the following functions:
 - Procedures and actions to ensure legal compliance and accountability of funding;
 - Procedures and actions to ensure eligibility determinations of students, private schools and SFOs;
 - The DOE’s use of financial audit reports (single audit) as a component of program management;
 - The DOE’s requirement for SFOs to submit monthly reports on funding and students.
 - Verification of school attendance for scholarship recipients;
 - On an exception basis, perform site visits of SFOs and private schools;
 - Perform reconciliations of tax credits, SFOs, schools and students; and
 - Perform database crosschecks for public school enrollments and other scholarship programs to prevent multiple payments per student.
- The DOE must establish a database with relevant program, SFO, school, student and funding data. Contrary to information provided by DOE, prior to October 2003, no system existed for tracking funding by student.
- Within the context of rules, DOE should establish and implement written operating procedures to meet legal compliance and accountability requirements.
- DOE should establish a formal process to ensure that all participating private schools have met the statutory eligibility requirements. Prior to October 2003, DOE could not demonstrate how these requirements were being met. Currently, DOE has chosen to use a sworn compliance form as a means of updating the private school database and determining school eligibility. DOE should spot check and confirm reported compliance through requests for supporting documentation.
- In order to facilitate the program management function and to implement provisions of the Florida Single Audit Act, DOE should enter into written agreements with each SFO. The agreements should include, but not be limited to the following:
 - A description of the allowable uses of program funds;
 - SFO and scholarship recipient responsibilities;
 - Attendance and testing mechanisms to ensure that a student received a quality education;
 - State single audit requirements;
 - Required information to be sent to DOE to assist in the program management function; and
 - The suspension or permanent removal of SFO eligibility.
- DOE should reconcile tax credit funding to students. To provide subsequent accountability and to develop an expectation for the current funding levels, DOE should reconcile pre-approved tax credits to funding for each SFO, school, and student.

- Each SFO should establish a process to corroborate and document school attendance. Currently, most SFOs rely on the honor system for each private school to notify the SFO when students are not in attendance.
- DOE should require each SFO to formalize their processes by including written procedures, corroborating evidence and signed approvals.
- Each SFO should establish accounting processes and bank accounts to maintain funding identity. DFS noted one SFO where the receipt, transfer and subsequent disbursement of funds were conducted in such a way as to not maintain funding identity.
- Each SFO should establish written procedures and prohibitions on certain related party transactions. DFS noted where one SFO was affiliated with two schools to which all of the SFO's scholarship funds are directed. This appears to violate s. 220.187(2)(b), F.S., prohibiting a taxpayer from directing funding to a specific child as beneficiary. In addition, DFS noted some instances where parents of students were also employees of the schools where the students attended.
- Each SFO should establish a system to ensure that checks are endorsed in accordance with law. Each SFO should establish a system of review and follow-up of cleared scholarship checks to ensure that parents and schools are in compliance with law. DFS noted various check endorsements that did not comply with statute. In addition, the Legislature may consider providing additional statutory language to prohibit a restrictive power of attorney where a school can endorse checks on behalf of parents.
- Each SFO should provide periodic information transfers to DOE to track students and funding and to prevent possible double dipping between SFOs and other scholarship programs.

DFS reviewed the six SFOs initially authorized by DOE. DFS concluded that five SFOs maintained a process to accomplish program objectives and that program funding was used to pay scholarships. However, DFS noted that FloridaChild had the following irregularities:

- DFS was unable to attest to the validity of the information maintained in the financial system. In addition, DFS noted that the information is not always complete and does not always agree with the banking records.
- DFS was unable to attest to the validity of the eligibility process. In the second year of the program, eligibility of the applicants was only verified on a sample basis. Coupled with the online application process, this increases the risk of phantom students.
- FloridaChild did not maintain a system of budgeting and cash management. FloridaChild borrowed \$5.2 million on a line of credit with SunTrust Bank to maintain and expand a scholarship base that could not be maintained on current cash projections. The most significant problem is that future corporate contributions are obligated to pay the liability. This affects the period of funding availability where current corporate contributions should match current obligations. This also violates the securing of corporate contributions to meet current needs. The scholarship base should not be leveraged.
- FloridaChild received \$1.85 million in funds from other SFOs in order to fund the scholarship base. This violates the law where each SFO secures funds for the current need.
- Other SFOs wrote \$1.7 million in checks to fund the FloridaChild scholarship base. These other SFOs relied on whether FloridaChild conducted proper eligibility

- requirements and there was a satisfactory system of internal control to account for the disbursement of these funds.
- FloridaChild employed the honor system of attendance reporting from private schools prior to disbursing funds.
 - FloridaChild did not perform bank reconciliations in the second year of the program.
 - FloridaChild charged a \$15 dollar application fee to the parent to cover administrative costs.
 - FloridaChild sent a letter to each school requesting two percent of the scholarship funding award as a donation to fund administrative expenses.

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.

Accreditation

Many associations accredit private elementary or secondary schools or both, using different academic and professional standards. Some entities do not accredit individual schools, but they recognize associations that do so. The federal government and the State of Florida do not recognize, approve, or regulate associations that accredit private elementary or secondary schools. Current law does not require private schools to be accredited to participate in either the Corporate Tax Credit Scholarship program (CTC) or the McKay program, nor does the law require participating schools to report their accreditation status to the DOE or scholarship applicants.²⁸

²⁸ In April 2004, the DOE requested affiliation information from schools participating in the scholarship programs. Almost 70 percent of the schools participating in the Opportunity Scholarship Program, the McKay program, and the CTC program reported an accreditation affiliation with one of 45 accrediting associations.

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.

The law does not require the private schools or the FDLE to provide state screening results to the DOE. However, a school must annually attest to the DOE that it complies with background screening requirements for the owner. The DOE requires this statement as a condition for a school to remain eligible for scholarship program participation. Failure to submit the statement is a misdemeanor.

The law does not currently specify the use of Level 2 standards pursuant to chapter 435, F.S. Level 2 background checks consist of security background investigations with state and federal checks of criminal and juvenile records. A person would fail to meet the background screening requirements if he or she was guilty, had adjudication withheld, or entered a plea of nolo contendere or guilty to any of the specified offenses listed in s 435.04, F.S., or under any similar law of another jurisdiction. Level 2 offenses include the following: sexual misconduct with certain developmentally disabled clients and mental health patients and reporting misconduct; child abuse, aggravated child abuse, or neglect of a child; negligent treatment of children; murder; manslaughter, aggravated manslaughter of a disabled adult, or aggravated manslaughter of a child; assault and battery, if the victim of the offense was a minor; aggravated battery, aggravated assault, and sexual battery; sexual performance by a child; and theft, robbery, and related crimes, if the offense is a felony. Under penalty of perjury, all employees must attest to meeting the requirements for qualifying for employment and agreeing to inform the employer immediately if convicted of any of the disqualifying offenses while employed by the employer.

A recent Senate Education Committee interim project reviewed current requirements for private schools participating in the McKay and CTC scholarship programs.²⁹ Findings in the report include the following:

- Current law is insufficient to adequately assure the protection of scholarship students at all participating private schools. There is no evidence to suggest that the required fingerprinting process, including the related background checks, has been completed for all participating private school owners.

²⁹ The Florida Senate, *Private Schools Participating in Educational Scholarship Programs and Criminal Background Checks of Personnel with Direct Student Contact*, Interim Project Report 2006-117.

- While it is unlawful for an owner who is convicted of a crime involving moral turpitude to own a school, there are no other required screening standards that must be met as a condition of initial or continued employment.
- There is no affirmative burden to report a conviction to any state entity for enforcement.
- Private school owners are not subject to recurring state criminal records checks. Consequently, there is no mechanism to determine if an owner has had any arrests or convictions since an initial background screening or has been found guilty of crimes involving children in another state.
- No state agency is tasked with determining if private schools are complying with existing statutory background screening requirements.
- Employees or other persons with direct student contact are not subject to any screening requirements whatsoever, unless dictated by school policy.
- While many participating schools require criminal background checks, the scope and frequency vary.

The report recommended that personnel having direct contact with students at private schools participating in the scholarship programs should be held to the same standard as public school personnel with direct student contact.

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 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, F.S., relating to school health entry examinations and scoliosis screening. In addition, 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.

Recent Department of Education Actions

Since the release of the Senate interim project reports and the Department of Financial Services' review, the DOE instituted some reforms, including recommendations for legislative action to improve the scholarship programs and implementing a sworn compliance form in October 2003. As a result, 41 schools participating in the CTC and McKay programs did not receive funding for failing to comply with the sworn compliance form.³⁰

The SBE administrative rule adopts by reference a private school scholarship compliance form to obtain documentation of specific information (e.g., school ownership, affiliation, financial solvency, student health, safety, and welfare, and school administration).³¹ Schools must submit a completed form to the DOE to demonstrate compliance with s.1002.42, F.S., and other statutory provisions, subject to withholding scholarship funds.

DOE instituted its database for CTC students sometime between October and December 2003 and discovered eight students in 2002 received more than the \$3,500 allowed under the CTC program.³² The database also verified that some students were receiving scholarships in both the McKay and CTC programs. DOE also suspended CTC funds to a private school when it was informed by an SFO that someone other than the parents signed the scholarship checks.³³

Current law does not specifically provide for complaints about the scholarship programs. During the 2003-2004 school year, the DOE received a formal written complaint and supporting documentation involving 39 schools. The DOE investigated 29 schools. Of these, 14 schools met compliance requirements, two were ineligible, five closed, and eight were referred to the DOE's Inspector General.³⁴

III. Effect of Proposed Changes:

McKay Scholarship Program

Section 1. The bill amends s. 1002.39, F.S., to make the following changes:

- **Definition of an eligible student**
 - Revises the definition of a student with a disability to include K-12 students who are documented as having mental retardation; a speech or language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; a physical impairment; a serious emotional disturbance, including an emotional handicap; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; or autism.

³⁰ Palm Beach Post, November 13, 2003, *State drops schools from voucher list*.

³¹ Rule 6A-6.03315, F.A.C.

³² Monday Report, Volume XXXVIII, Number 25, October 20, 2003.

³³ Palm Beach Post, February 21, 2004, *Check flap may fuel close of voucher-supported school*.

³⁴ DOE, January 28, 2005.

- Provides for the eligibility of students from the Florida School for the Deaf and the Blind, the method of calculating the scholarship amount, and the reporting requirements for school districts.
- **Parent Obligations and Prohibitions**
 - Revises the parental intent notification provisions to require the parent to notify the DOE rather than the school district. The DOE must notify the district of the parent's intent upon receipt of the parent's notification.
 - Prohibits the parent of a student participating in the scholarship program from designating any participating private school as the parent's attorney in fact to sign a scholarship warrant.
- **Term of the scholarship**
 - Allows the scholarship to remain in force until the scholarship recipient graduates from high school or reaches the age of 22, whichever occurs first. This change permits the student to remain in private school to the same extent as students with disabilities in Florida public schools.
 - For school year 2005-2006, 5,980 students with disabilities are age 19 through 21 and 258 students are age 22+.³⁵
- **Eligibility for the scholarship**
 - Provides that a student is not eligible to receive a McKay scholarship if he or she:
 - Receives a scholarship from a scholarship funding organization under s. 220.187, F.S., or an Opportunity scholarship under s. 1002.38, F.S.
 - Participates in a home education program, as defined in s. 1002.01(1), F.S.
 - Receives instruction from a correspondence school or private tutoring program or participates in distance learning courses.
 - Does not have regular and direct contact with his or her private school teachers at the school's physical location.
 - Allows McKay scholarship students to participate in a distance learning course, a private tutoring program, or a course offered by a correspondence school if the tuition and other costs are not paid by McKay scholarship funds. The bill prohibits a student from using time in a Department of Juvenile Justice commitment program to meet the prior year attendance requirement necessary to qualify for a McKay scholarship.
- **School District Obligations**
 - Revises the matrix provisions to require the district to notify the DOE of the student's matrix level within 30 days after receiving notification by DOE of the parent's intent to participate in the program.
 - Requires the nature and intensity of the services prescribed by the matrix to be consistent with the student's IEP.
 - Allows changes to a matrix only to correct technical, typographical, or calculation errors or to align the matrix with the student's IEP completed by the school district prior to the student enrolling in or attending a private school.
 - Clarifies the reporting requirement to DOE for FEFPP purposes for students who attend another public school in the district and for all students attending a private school under the program.

³⁵ Florida DOE, School Year 2005-2006, Exceptional Student Membership (excluding gifted), Survey 9.

- Requires notification to parents of the availability of a reassessment of each scholarship student at least every 3 years.
- **DOE Obligations**
 - Requires the DOE to timely notify the parent of each public school student of all options under the program and offer the student's parent an opportunity to enroll the student in another public school within the district.
 - Defines timely notification as no later than April 1 of each school year.
 - Requires notification to the school district upon receipt of the parent's intent to participate in the program.
 - Requires the DOE to:
 - Review for compliance all documentation required for each scholarship student's participation, including without limitation, the private school's schedule and the student's fee schedule;
 - Verify the admission acceptance of each scholarship student to an eligible private school prior to the initial scholarship payment;
 - Verify, prior to each scholarship payment, the enrollment and attendance of each scholarship student at the private school and that the scholarship student is not:
 - Receiving a scholarship under ss. 220.187 or 1002.38, F.S.
 - Participating in a home education program as defined in s. 1002.01(1), F.S.
 - Participating in instruction delivered by a correspondence school, a private tutoring program, or distance learning courses, except as specifically permitted in subsection (2)(b).
 - Receiving education services in a Department of Juvenile Justice commitment program.
 - Attending a public school in the state, if the student has a scholarship to attend a private school.
 - Administer and prescribe an annual sworn and notarized compliance statement for each participating private school and independently verify the information provided by each participating private school; and
 - Review and verify the results of the required background checks that are provided by private schools for those individuals who fail to meet Level 2 background checks or who are convicted of a crime involving moral turpitude.
 - Determine the eligibility of a private school to accept McKay scholarship students, based upon independent verification that the private school meets all the requirements in s. 1002.39, F.S., and all applicable rules adopted by the SBE.
 - Publish a current, on-line list of eligible private schools.
 - Include each eligible private school on the on-line list of eligible private schools, within 10 days after the private school is determined as eligible to participate in the McKay scholarship program.
 - Remove immediately from the on-line list of eligible private schools any school that is determined by the DOE to be an ineligible private school for failure to meet or comply with the statutory requirements.

DOE may not change a matrix of services completed by a school district, except as specified in the bill.

Noncompliance and Sanctions

- The DOE must deny or refuse to allow the participation of any private school if it determines that the private school or any of its owners or administrators has failed to meet the requirements for initial application or renewal as provided in s. 1002.39, F.S.
- The DOE must issue a notice of noncompliance pursuant to s. 120.695, F.S., to any participating private school for minor violations of any of the provisions of s. 1002.39, F.S., or the SBE rules. DOE must issue an emergency order revoking the school's registration for the following:
 - Failure to satisfy the requirements specified in the notice within 30 days after its receipt by the school; and
 - Major violations, as defined in s. 120.695, F.S.
- The DOE must revoke the scholarship for a participant who fails to comply with the requirements in subsection (5) or who:
 - Receives a scholarship under ss. 220.187 or 1002.38 F.S.
 - Participates in:
 - A home education program as defined in s. 1002.01(1), F.S.; or
 - Instruction delivered by a correspondence school, a private tutoring program, as defined in s.1002.43, F.S., or distance learning courses, except as specifically exempted in subsection (2)(b).
 - Does not have regular and direct contact with the student's private school teachers at the school's physical location.
 - Enrolls in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs.

Complaints and Investigations

The DOE must conduct an investigation of any written complaint of violations of s. 1002.39, F.S., if the complaint is signed by the complainant and is legally sufficient. To determine legal sufficiency, the DOE may require supporting information or documentation.

DOE may investigate any complaint, including but not limited to, anonymous complaints.

- **Private School Obligations**
 - Requires the school to be a private school as defined in s. 1002.01(2), F.S.;
 - Requires evidence of fiscal solvency by being in operation for at least 3 school years or filing a surety bond or letter of credit for the amount equal to the scholarship amount for each quarter of the school year and specifies the purpose of the bond.
 - Requires annual registration with the DOE; and
 - Requires the private school owner or administrator to provide specific information, including the following:
 - Legal business and trade name, mailing address, and business location of the private school.
 - Full name, address, and telephone number of each owner or administrator.
- Participating private schools must:

- Comply with all state laws relating to the general regulation of private schools, including, but not limited to, s. 1002.42, F.S.;
- Publish and adhere to the tenets of their adopted disciplinary procedures;
- Provide DOE with all documentation for each scholarship student's participation in the program, including, but not limited to the following:
 - Private school's fee schedule, including, but not limited to, fees for services, tuition, and instructional materials, each scholarship student's schedule of fees and charges at least 30 days prior to the first quarterly scholarship payment; and
 - Enrollment and attendance information, including an on-line attendance verification form, for each scholarship student, prior to payment;
- Maintain at the private school quarterly documentation for the on-line attendance form, consisting of a notarized statement that is signed by the private school and the parents of each McKay scholarship student;
- Make the documentation available to the DOE, upon request;
- Maintain a physical location in Florida where a scholarship student regularly attends classes;
- Advertise or notify potential McKay scholarship students and parents of the specific types of disabilities served by the private school;
- Review with the parent the student's IEP;
- Require each scholarship student to participate at least annually in a student assessment, determined by the private school in consultation with the student's parent or guardian, to demonstrate the student's skill level to the parent;
- Notify the parent about the student's skill level on the student assessment, at least on an annual basis;
- Notify the DOE of any change in the school's registered name or location prior to any change;
- Notify the DOE within 15 days after any other change in the registration information provided to the DOE;
- Notify each local health department within 15 days after establishing operations at a physical location or address and within 3 days after discovering any ongoing health code violation that has not been remedied in full; and
- Accept scholarship students on a religious-neutral basis.

The bill requires certain individuals at a private school, upon employment and every five years thereafter, to undergo background checks pursuant to s. 943.0542, F.S.,³⁶ and meet level two criminal background-screening standards as provided in s. 435.02, F.S. The bill defines those individuals subject to the criminal background check as private school owners and all personnel who are hired or contracted with to fill positions requiring direct contact with students. These individuals must electronically file a complete set of fingerprints, taken by an authorized law enforcement agency or an employee of the private school, public school, or a private company who is trained to take fingerprints, with FDLE. A private school owner's fingerprints may not be taken by the owner.

³⁶ The Volunteer and Employee Criminal History System (VECHS) is authorized by this section and federal law. Through VECHS, the FDLE and the FBI provide state and national criminal history record information on applicants, employees, and volunteers for Florida qualified entities. According to the FDLE, VECHS could be statutorily required for private schools participating in the scholarship programs.

The fingerprints are filed with the FDLE for state processing, which shall in turn file the fingerprints with the Federal Bureau of Investigation for federal processing. The bill requires FDLE to send state and federal screening results directly to the private school and the DOE. Private schools must screen the results using level 2 standards and send the DOE the results of persons who fail to meet the standards or who are convicted of a crime involving moral turpitude. The bill does not define the term “moral turpitude.” It is anticipated that there would be differences in how private schools would define “moral turpitude.”

Individuals found to have committed a crime involving moral turpitude or failing to meet level two screening requirements may not be employed or engaged to provide services. The private school or the private school personnel being checked must absorb the cost of the background check. The bill provides grounds for suspending an eligible private school from participating in the program, based on the background checks of private school personnel.

The bill requires FDLE to retain fingerprint records and to match the retained fingerprints with any arrest fingerprint records. FDLE shall report any match of an arrest record with a retained fingerprint record to the private school. The private school must report any change in status of specified personnel to FDLE. FDLE shall adopt a rule establishing a fee for performing fingerprint searches, which shall be borne by the private school, the employee, or the owner. The bill requires private schools to notify the DOE if an arrest record results in failure to meet level 2 background requirements. Failure to make the report results in immediate suspension from the program. This provision is necessary to ensure that an individual with a prior criminal record does not have direct contact with students.

The bill defines the term “closed-enrollment” to mean that the private school is no longer accepting new scholarship students. A private school may request that the school be listed by the DOE with a closed-enrollment status in the program if the school is no longer accepting new students with McKay scholarships. The school must make a written request to the DOE and is subject to all the requirements in s. 1002.39, F.S., and all applicable State Board of Education rules if the school is serving a McKay scholarship student. The DOE may only grant this status for one school year on an annual basis.

- **Private School Prohibitions**

Private schools may not:

- Act as attorney in fact for parents of a scholarship student under the authority of a power of attorney executed by the parents, or under any other authority, to endorse scholarship warrants on behalf of parents;
- Send or direct McKay scholarship funds to parents of a scholarship student who receives instruction at home;
- Be a correspondence school or distance learning school;
- Operate as a private tutoring program; nor
- Accept a McKay scholarship student until the sworn and notarized compliance statement has been completed, submitted to, and independently verified by the DOE.

If participating private schools become subject to an action taken by the DOE for a violation of s. 1002.39, F.S., they must file a surety bond after the date on which the action was taken, but prior to the next quarterly payment. The schools are prohibited from accepting new McKay

scholarship students until they comply with all requirements of s. 1002.39, F.S., and all applicable SBE rules, as determined by the DOE.

- **Auditor General (AG) Obligations**
 - Requires the AG to include in the operational audit of the Department of Education the McKay scholarship program, including a review of a sample of the warrants used to pay for the scholarships, as well as random site visits to participating private schools. The sole purpose of the audits is to verify student enrollment and attendance, teacher credentials, and teacher background checks reported by the private schools.
- **State Board of Education Rules**
 - Requires administrative rules to be adopted to:
 - Establish procedures for schools to request closed-enrollment and active status and forms for changes to a matrix by a school district and the DOE;
 - Implement the requirement that private schools timely notify the DOE of material changes to registration information;
 - Establish attendance verification procedures and forms and procedures for determining student eligibility and approving scholarships;
 - Administer the annual sworn and notarized compliance statement to all participating private schools; and
 - Establish deadlines for the receipt of sworn and notarized compliance statements and enumerate the items for initial and subsequent statements.

Section 2. The bill requires the SBE to initiate the adoption of rules required by the act 10 days after its effective date and to report to the presiding officers of the Legislature by December 1, 2006, on the status of the rulemaking process.

Corporate Scholarship Program

Section 3. The bill intends to provide both fiscal and academic accountability with respect to the Corporate Scholarship Program (CSP) by requiring the following:

- **Taxpayers**

The bill removes the provision that a taxpayer may not contribute more than \$5 million to any single eligible SFO in a given year. It reduces the small business cap reserve from five percent to one percent, effective for tax years beginning January 1, 2006. This reduction would allow larger corporations to contribute more funds for scholarships based on their contribution history. Based on a \$55 million cap, DOR reserves \$2.5 million for small businesses and \$4.4 million for small businesses based on an \$88 million cap.³⁷ However, for tax credit years 2002 and 2003, DOR only approved \$186,000 and \$79,000 in tax credit applications for small businesses, respectively.³⁸ Accordingly, \$2,314,000 was not allocated in tax credit year 2002 and \$2,421,000 was not allocated for tax credit year 2003.

³⁷ For Fiscal Year 2003-2004 only, the statewide tax credit allocation cap was reduced to \$50 million pursuant to s. 1, ch. 2003-424, L.O.F.

³⁸ DOR approvals of small businesses tax credit are as of February 25, 2004. However, the tax credit year 2003 does not end until the earlier of the exhaustion of the cap or December 2004.

The bill authorizes a taxpayer (effective for tax years beginning January 1, 2006) to rescind its application for a CSP tax credit if DOR has accepted the rescindment application, the taxpayer has not made a rescindment more than once within the previous three tax years, and the taxpayer rescinded prior to the end of the taxpayer's tax year for which the credit was approved. Any rescindment tax credit shall be reallocated to the annual cap for approval by DOR on a first-come, first-served basis following the date the rescindment is accepted by DOR. This provision would free up tax credit approvals for other eligible taxpayers if a taxpayer determines that it does not have any tax liability for that tax year. According to DOR, two taxpayers have indicated their desire to rescind their tax credit approval based on their estimated tax liability at the conclusion of their tax year.

- **Scholarship-Funding Organizations (SFOs)**

The bill amends the definition of an eligible SFO. It allows an SFO to obligate, rather than spend, 100 percent of the eligible contributions to provide scholarships in the same fiscal year in which the contributions were received. The contributions may be used to pay for scholarships in the year they were received or in the year immediately following. The bill requires an SFO to file an annual financial and compliance audit with the Auditor General and DOE within 180 days after completion of the SFO's fiscal year. This provision shortens the time in the current Auditor General rule for providing an audit from nine months to six. A reduction in the timeframe for conducting the audit ensures that DOE can detect any programmatic shortcomings of an SFO more quickly. Any timeframe for compliance shorter than six months is potentially unsustainable. This deadline for submission of the audit is more stringent than the nine months provided in the Florida Single Audit Act.

The bill requires the Auditor General to review all SFO audit reports and request any significant items that were omitted. The SFO has 45 days to submit the requested information. If the SFO does not comply with the additional item request, the Auditor General must report the SFO to the Legislative Auditing Committee, which may schedule a hearing and determine if the SFO should be subject to further state action. If the Legislative Auditing Committee determines that further state action is needed, it shall notify DOE. DOE must revoke the eligibility of the SFO to participate in the CSP program. This provision ensures that SFO audits are conducted properly and provide any additional information necessary for DOE to determine if an SFO complies with the programmatic requirements of the CSP program. This provision tracks the powers of the Auditor General under s. 11.45(7)(b), F.S.

The bill clarifies that the annual limits on scholarships apply to funds provided by one or more SFOs to any child. The bill requires an SFO to make at least quarterly payments of a scholarship to an eligible private school on behalf of a qualified student. The law is silent concerning the timing of scholarship payments to qualified students. This provision codifies the existing practice of certain SFOs that make scholarship installments on a quarterly basis. In addition, the provision provides uniformity to the scholarship warrants such that parents and eligible private schools can have a greater certainty in the delivery of scholarship funds.

The bill requires an SFO to maintain scholarship funds in a separate account. This provision provides greater assurances that the statutory prohibitions on using scholarship funds for administrative expenses and the statutory requirement that all interest on scholarship funds is used for scholarships are properly implemented.

The bill requires an SFO to obtain verification from a private school of each student's attendance at the private school prior to each scholarship payment. The law is silent on requiring proof of a student's attendance and invites the potential for a fraud by a private school by collecting scholarship funds for a student that is not in attendance at the private school. This provision codifies the existing practice of certain SFOs that require proof of attendance prior to submitting scholarship warrants.

The bill requires an SFO to verify the income eligibility of each scholarship applicant participating in the program at least once each school year pursuant to rules of SBE. The law defines a qualified student, in pertinent part, as a student who qualifies for free or reduced-price lunches under the income eligibility requirements of the National School Lunch Act. This provision is necessary to ensure that only students who are eligible for free or reduced-price lunches may receive a CSP scholarship. The bill accomplishes this objective by requiring an annual income verification to ensure that a student who initially qualified under the National School Lunch Act for a scholarship has not had a significant increase in family household income such that the student is now ineligible. Under the provisions of the bill, a student from a family of four could continue to participate in the CSP program if parental income does not exceed 200 percent of the federal poverty level.

The bill requires an SFO to prepare and submit quarterly reports to DOE. In addition, an SFO must timely respond to any DOE request for additional information relating to the CSP program. This provision is necessary to ensure that DOE can monitor and verify the continued eligibility of an SFO.

The bill requires certain individuals at an SFO, upon employment and every five years thereafter, to undergo background checks pursuant to s. 943.0542, F.S., and meet level two criminal background-screening standards as provided in s. 435.02, F.S. The bill defines those individuals subject to the criminal background check as the SFO owner, president, chairperson of the board of directors, superintendent, principal, or person with equivalent decision-making authority who owns, operates or administers an SFO. In addition, any individual at an SFO who has access to scholarship funds is also subject to a criminal background check. These individuals must electronically file a complete set of fingerprints, taken by an authorized law enforcement agency or an employee of the SFO or a private company who is trained to take fingerprints, with FDLE. An owner of an SFO may not take his or her own fingerprints. The fingerprints are filed with the FDLE for state processing, which shall in turn file the fingerprints with the Federal Bureau of Investigation for federal processing.

The bill requires FDLE to send state and federal screening results directly to the SFO and the DOE. SFOs must screen the results using Level 2 standards and send the DOE the results of persons who fail to meet the standards or who are convicted of a crime involving moral turpitude.

Individuals found to have committed a crime involving moral turpitude or failing to meet Level 2 screening requirements may not be employed by an SFO or engaged to provide services. The

SFO or the SFO personnel being checked must pay for the costs of the background check. The bill provides grounds for barring and suspending an SFO's participation in the program, based on the results of the background checks.

The bill requires FDLE to retain fingerprint records of SFO personnel and to match the retained fingerprints with any arrest fingerprint records. FDLE shall report any match of an arrest record with a retained fingerprint record to the SFO. The SFO must report any change in status of an owner to FDLE. The bill requires SFOs to notify the DOE if an arrest record results in failure to meet level 2 background requirements. Failure to make the report results in immediate suspension from the program. This provision is necessary to ensure that scholarship funds are not entrusted to an individual with a prior criminal record. FDLE is directed to adopt a rule establishing a fee for performing fingerprint searches, which shall be borne by the SFO or the owner.

The bill requires an SFO to comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d. Under current law, only private schools were statutorily required to comply.

The bill prohibits an SFO from owning or operating a private school participating in the CSP program. This provision is designed to prohibit an SFO from targeting scholarships to a particular school or child. Under current law, only the taxpayer is prohibited from targeting scholarships. In practice, this provision may require the SFO, Academy Prep Foundation, to reorganize or discontinue providing students attending Academy Prep private schools with CSP scholarships.

The bill requires an SFO to report to the DOE any private school not in compliance with the CSP program. Pending resolution by the SBE, the private school may not receive CSP scholarships from an SFO. This provision is designed to prohibit the acceptance of scholarship students by a private school that fails to comply with the law.

The bill requires an SFO to allow a qualified student to transfer his or her scholarship to another eligible private school. This provision codifies the existing practice of SFOs and provides parents an option to transfer their child if the current private school fails to meet their needs.

The bill requires an SFO to distribute scholarships to qualified students on a first-come, first-served basis unless the student qualifies for priority by virtue of being a prior year scholarship recipient. This provision is designed to promote fairness in the selection of students for a scholarship.

The bill provides that up to 5 percent of the total contributions to the SFO may be carried forward for scholarships granted in the following state fiscal year. Also, the bill provides for the transfer of funds, with prior approval by the Department of Education, to another eligible SFO if additional funds are needed to meet scholarship demand. The transfer is limited to the greater of \$500,000 or 20 percent of the total contributions received by the SFO making the transfer. The bill also provides specific deposit and disclosure requirements for these transfers.

The bill prohibits an SFO from using a line of credit or other financing schemes to fund scholarships in anticipation of eligible contributions. This provision matches the DFS report recommendation and is designed to prevent an SFO from:

- Circumventing the requirement that an SFO spend 100 percent of the eligible contributions in the same state fiscal year in which the contribution was received;
- Using non-eligible contributions to fund scholarships;
- Leveraging its scholarship base as the SFO is unable to meet its liability (scholarship payments to qualified students) if an eligible contribution that is pledged to a particular SFO is not received; and
- Undermining any certainty in the enrollment estimating conference for purposes of determining the budget.

Certain SFOs have been able to successfully use a line of credit as a means of smoothing out the peaks and troughs associated with the different timeframes for contributions and scholarship payments.³⁹ Unfortunately, other SFOs have not been so lucky. FloridaChild drew upon a \$5.2 million line of credit and was unable to make payment when pledged contributions failed to materialize. The bill also prohibits an SFO that fails to comply with this section of the bill from participating in the CSP program. This provision operates in tandem with DOE's enforcement power to revoke the participation of SFOs that fail to comply with the law.

- **Student eligibility**

The bill prohibits a student from receiving a scholarship if he or she is enrolled in a school providing educational services in DJJ commitment programs. The bill prohibits a student from using time in DJJ commitment programs to meet the prior year public school attendance requirement necessary to qualify for a CSP scholarship. Current scholarship students may continue to participate in the scholarship program if parental income does not exceed 200 percent of the federal poverty level.

- **Parental and Student Obligations**

The bill imposes additional parental and student obligations to ensure accountability and provide an opportunity for a quality education. In particular, the bill:

- Requires a student to comply with the private school's attendance policies;
- Requires a parent to comply with the private school's parental involvement policies;
- Prohibits a parent from authorizing the private school, its owners, or employees from acting as an attorney in fact for purposes of endorsing scholarship warrants;
- Requires a parent to ensure that their student participates in the required testing; and
- Requires a parent to restrictively endorse the warrant to the private school.

A student or parent who fails to comply with these requirements may not participate in the CSP scholarship program. The grounds for forfeiture of the scholarship include the parent's refusal to restrictively endorse the warrant.

³⁹ Arguably, using a line of credit in this manner violates s. 220.187, F.S.

- **Private Schools**

The bill imposes accountability measures on private schools as a condition for participating in the scholarship program. The bill places additional restrictions on the type of private schools that may participate in the program.

The bill prohibits a correspondence school, private tutoring program, home education program, or distance learning school from participating in the CSP program. In addition, a private school must maintain a physical location in this state where a scholarship student regularly attends classes and may not direct or provide scholarship funds to a parent of a scholarship student who receives instruction under the program at home. This provision clarifies the original legislative intent to preclude the participation of these entities in the CSP program.

Under current law, a private school only needs to be in operation for at least one year to be exempt from demonstrating fiscal soundness through a letter of credit, surety bond, or a statement from an accountant that the private school has sufficient capital or credit. More than 90 percent of all private schools demonstrated fiscal soundness by being in operation for more than one year. However, these schools are not regulated by the state with respect to their fiscal integrity. Accordingly, the number of years a school has operated does not provide adequate safeguards that a student's education continuity would not be disrupted because of a weak business model or poor financial management. Of the 1,167 private schools participating in the Opportunity Scholarship Program, McKay Program, and the CSP program, only three percent reported being in operation less than one year and only 19 percent reported being in operation less than three years.⁴⁰

The bill requires evidence of fiscal solvency by being in operation for at least 3 school years or filing a surety bond or letter of credit for the amount equal to the scholarship amount for each quarter of the school year and specifies the purpose of the bond. If participating private schools become subject to an action taken by the DOE for a violation of s. 220.187, F.S., they must file a surety bond after the date on which the action was taken, but prior to the next quarterly payment. The schools are prohibited from accepting new scholarship students until they comply with all requirements of s. 220.187, F.S., and all applicable SBE rules, as determined by the DOE.

The bill requires a private school to employ or contract with teachers who have regular and direct contact with each student receiving a CSP scholarship at the school's physical location. This provision is designed to prevent internet and correspondence schools from participating in the CSP program. In addition, the bill requires a private school to hire teachers who hold at least a baccalaureate degree or who have at least 3 years of teaching experience or who have special expertise that qualifies them to provide instruction in subjects taught. The bill requires the private school to report to DOE the number of teachers employed or under contract, along with the manner in which the teacher is qualified to provide instruction to CSP students. The reporting requirement is designed to present DOE with information that may be included in the online prospectus of each private school participating in the program for the benefit of parents.

⁴⁰ Source: Department of Education, November 4, 2003.

The bill requires the private school to annually register with DOE by providing the school's legal name, location, list of owners, list of students participating in the CSP program, and a notification of the private school's intent to participate in the program.

The bill subjects the following private school personnel to the same federal and state criminal background screening requirements that are imposed upon SFO personnel: the private school owner, president, chairperson of the board of directors, superintendent, principal, or person with equivalent decision-making authority who owns, operates or administers a private school, and any individual at a private school that has direct contact with students or has access to scholarship funds. The bill specifies the same requirements for the DOE and FDLE that are delineated in the provisions of the bill for background screening of SFO personnel.

Individuals found to have committed a crime involving moral turpitude or failing to meet Level 2 screening requirements may not be employed or engaged to provide services. The private school or the private school personnel being checked must pay for the costs of the background check. The bill provides grounds for barring and suspending the participation of a private school, based on the results of the background checks of private school personnel. This provision is designed to prevent an individual with a prior criminal record from having direct contact with students.

The bill requires the private school to report any change in status of private school personnel to FDLE. FDLE shall adopt a rule establishing a fee for performing fingerprint searches, which shall be borne by the private school, the employee or the owner.

The bill requires the private school to annually administer or make provisions for scholarship students to take one of the nationally norm-referenced tests identified by the SBE. The private school selects one of the four tests. The private school must use the test initially selected for no less than 5 consecutive years, unless an updated version of the same test is used. A participating private school must report a student's scores to the parent and to the public university as provided in the bill. This provision is designed to provide academic accountability in the program such that the state can measure if it is receiving an appropriate rate of return on its investment. In addition, academic accountability would provide parents with more information to assist them in making an informed decision on whether to enroll or continue the studies of his or her child in a particular private school.

The bill requires a private school to annually comply with DOE's affidavit requirements as specified in administrative rule. This provision provides statutory authority for DOE to require the sworn compliance form that documents the private school's compliance with the requirements for participating in the program.

The bill requires a private school to provide timely written notification to DOE and the SFO if a student is ineligible to participate in the program. The bill requires a private school to annually report to DOE and to scholarship applicants whether the school has been in existence for 3 years or less. This provision is designed to give parents more information concerning the longevity of the private school.

The bill requires a private school to annually report to DOE and to scholarship applicants whether the private school is accredited or in the process of receiving accreditation candidate status, and if so, the name of the accrediting association. DOE must make the list of accredited and nonaccredited private schools available to the public by county. This provision is designed to give scholarship applicants information concerning the private schools participating in the program so that the parent can make an informed decision concerning the enrollment of their child at the private school.

The bill provides that a private school that fails to comply with this section of the bill is ineligible to participate in the CSP program. This provision operates in tandem with DOE's enforcement power to revoke the participation of private schools that fail to comply with the law.

The bill requires a private school to accept scholarship students on a religious-neutral basis. It may not discriminate against a student on the basis of the religion of the student, the parent, or the private school.

- **Department of Education**

The bill imposes additional obligations on DOE and clarifies existing ones to improve accountability in the CSP program. The bill requires DOE to annually determine the eligibility of SFOs and private schools to participate in the program. DOE must act on a first year SFO's application for participation in the program within 90 days of receipt, and must provide written notice of approval or denial and the reasons for the determination to the SFO. DOE must maintain a list of eligible private schools and make that list accessible to the public. DOE must review and verify the results of the required background checks that are provided by private schools and SFOs for those individuals who fail to meet level 2 background checks or who are convicted of a crime involving moral turpitude.

The bill requires DOE to annually verify the eligibility of students. DOE must maintain a database of CSP students and run the database, at least quarterly, to ensure that a CSP student is not also receiving a McKay Scholarship or an Opportunity Scholarship, is not enrolled in another private school, or is not enrolled in a public school. This provision is designed to prevent a private school from double dipping or reporting phantom students.

The bill requires DOE to annually review all SFO audit reports for compliance with this section. The bill requires DOE to annually administer affidavits to private schools in accordance with SBE rules. This provision provides statutory authority for the sworn compliance form that documents compliance with the requirements for participating in the program.

The bill requires DOE to identify and select nationally norm-referenced tests that compare to the Florida Comprehensive Assessment Test (FCAT). No more than four tests may be identified. The bill allows the SBE to select the FCAT to meet the assessment requirements in s. 220.187, F.S. The Commissioner of Education must select a public university that must annually report on the year-to-year improvements of scholarship students. In addition, the university must analyze and report student performance data, including test scores by grade level, in a manner that comports with 20 U.S.C. s. 1232g to protect the identity of students. The university is prohibited from reporting data at a disaggregated level, which would reveal the student's identity. This provision is designed to ensure that the state can monitor the performance of students under the

CSP program and measure program effectiveness on an output basis. Comparisons of student performance data between two or more schools must be based on the performance of scholarship students.

The bill clarifies that DOE must revoke the eligibility of SFOs, private schools, or students who fail to meet the requirements for participation in the CSP program.

Under the bill, the DOE must conduct an investigation of any written complaint of violations of s. 220.187, F.S., if the complaint is signed by the complainant and is legally sufficient. To determine legal sufficiency, the DOE may require supporting information or documentation. DOE may investigate any complaint, including but not limited to, anonymous complaints.

The bill requires DOE to report annually to the Governor and the Legislature on its accountability actions, including an annual report on substantiated allegations or violations of law or rule by an SFO or a private school and the specific corrective action taken by DOE to cure the violation. This provision is designed to provide information to the Legislature to determine the scope of program defects and to ensure that DOE is complying with its programmatic requirements.

- **Rulemaking**

Section 120.54(1)(a), F.S., provides that agency rulemaking is not a matter of agency discretion. Unfortunately, SBE has adopted one rule relating to the program since the creation of the CSP program. The bill requires SBE to adopt rules pursuant to ss. 120.536(1), F.S., and 120.54, F.S.:

- To administer s. 220.187, F.S.;
- To determine the eligibility of SFOs and private schools;
- To identify qualified students;
- To require documentation to establish eligibility for SFOs;
- To require an affidavit of private schools; and
- To require the income verification requirements of students.

- **Delegation**

The bill authorizes SBE to delegate its authority, with the exception of rulemaking, to the Commissioner of Education.

Section 4. The bill provides that if the McKay Scholarship Program is found to violate s. 3 of Art. I of the State Constitution, a nonsectarian private school may continue to participate in the program.

Section 5. This bill takes effect upon becoming 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:

The State Constitution provides, in pertinent part, that “No 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.”⁴¹ In 1999, certain parents of children in the state’s public schools and several organizations⁴² challenged the constitutionality of the state’s Opportunity Scholarship Program,⁴³ alleging that the program violated Art. I, s. 3 and Art. IX, s. 1 of the State Constitution.⁴⁴ The Opportunity Scholarship Program allows a student attending certain failing public schools to attend a private school, sectarian or nonsectarian, with the financial assistance of the state. The parent selects the private school under which their child shall attend under the program.

The trial court first determined that the Opportunity Scholarship Program violated Art. IX, s. 1 of the State Constitution, which required that “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools...” The 1st District Court of Appeal reversed the trial court’s finding that Art. IX, s. 1 does not prohibit the Legislature from authorizing the well-delineated use of public funds for private school education, particularly when the Legislature finds such use is necessary.⁴⁵ On remand, the trial court determined that the program facially violated Art. I, s. 3 of the State Constitution, which prohibited the use of state revenues directly or indirectly in aid of sectarian institutions. This decision was upheld by a three-judge panel of the 1st District Court of Appeal.⁴⁶ 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.⁴⁷ In addition, the court held that so-called “no-aid provision” does not violate the Free Exercise clause of the United States Constitution.⁴⁸

⁴¹ Art. I, s. 3, FLA. CONST.

⁴² The organizations consisted of the Florida State Conference of Branches of the NAACP, the Citizen’s Coalition for Public Schools, the Florida Congress of Parents and Teachers, Inc., and the League of Women Voters, Inc.

⁴³ Codified in s. 229.0537, F.S. (1999), now codified in s. 1002.38, F.S.

⁴⁴ The plaintiffs also alleged a violation of the Establishment Clause of the First Amendment to the United States Constitution, 42 U.S.C. s. 1983, and Art. IX, s. 6 of the State Constitution. Following the *Zelman v. Simmons-Harris*, 536 U.S. 639, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002), decision which upheld a Cleveland tuition voucher program under the U.S. Constitution Establishment Clause, the plaintiffs voluntarily dismissed these challenges.

⁴⁵ *Bush v. Holmes*, 767 So.2d 668, 675 (Fla. 1st DCA 2000)(footnote omitted).³⁵

⁴⁶ *Bush v. Holmes*, 2004 WL 1809821, 29 Fla. L. Weekly D1877 (Fla.App. 1 Dist. Aug 16, 2004) (NO. 1D02-3160, 1D02-3163, 1D02-3199).

⁴⁷ *Bush v. Holmes*, 886 So.2d 340 (Fla. 1st DCA 2004).

⁴⁸ *Id.* citing *Locke v. Davey*, 540 U.S. 712, 124 S.Ct. 1307, 158 L.Ed.2d 1 (2004) (which upheld a Washington state statute that prohibited certain scholarship funds from being used to pay for a theology degree (program taught from a religious

Finally, a five-judge concurring opinion also found the program to violate s. 1, Art. IX of the State Constitution.⁴⁹

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program violated s. 1(a), Art. IX of the State Constitution which mandates an education through a uniform system of free public schools.⁵⁰ The Florida Supreme Court opinion further stated that the court found it unnecessary to address whether the program is a violation of the “no aid” provision in Art. I, s. 3 of the State Constitution, as held by the First District, since the program was found unconstitutional based on s. 1(a), Art. IX. In order to minimize the disruption of the education of current scholarship students, the court permitted these students to continue receiving Opportunity Scholarships until the end of this school year.

It is possible that the underlying programs referenced in this bill may be similarly challenged.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Reducing the credit set-aside for small businesses from 5 percent to one percent is expected to result in an annualized reduction in General Revenue of \$3.5 million.

Scholarship funding organizations, private schools, owners, or employees will be assessed a fee by the FDLE for fingerprinting and background screening. SFO personnel were not previously required to be fingerprinted. Private school owners have been required to comply with fingerprinting requirements in s.1002.42(2)(c), F.S.; however, the fingerprint and background screening requirements of the bill are more stringent than the current statutory requirements and will increase the cost for either the private school employee or the private school. Currently, some private schools voluntarily participate in the Volunteer and Employee Criminal History System (VECHS). The initial costs for VECHS and Level 2 background screening of employees are the same.

The bill provides that the school, SFO, owner, or employee may pay for the required background screening. According to the FDLE, the costs of the initial screening total approximately \$47: \$23 for Florida records checks and \$24 for FBI national records checks. Additionally, there is an annual fee to retain the prints (\$6) and a fee (\$24) for an FBI national records re-check every five years. There is no need for state screening at that time if the arrest records are screened against the retained prints on a regular basis. The annual fee will be set by FDLE rule. Fees for fingerprint searches must be paid to the FDLE.

viewpoint rather than a comparative study of religion) from a challenge alleging that the statute discriminated against religious viewpoints in violation of the Free Exercise Clause of the 1st Amendment to the U.S. Constitution).

⁴⁹ *Id.* at 371 (Benton, J., concurring opinion).

⁵⁰ *Bush v. Holmes*, 2006 WL 20584 (Fla. 2006).

FDLE estimates that the initial background screening costs will be \$2,053,430 for FY 2005-2006. For FY 2006-2007 and FY 2007-2008, FDLE estimates that the screening costs will be \$467,483 each year.⁵¹

B. Private Sector Impact:

Additional efforts for participating private schools to comply with the requirements in the bill suggest that there will be increased costs for the schools, including screening background results. With regard to the surety bond, according to a representative of the Florida Surety Association, the surety company will require a school to demonstrate its financial standing and may require a review of assets, financial statements, cash flow and bank use history, an audit, or a quality review. Generally, the bond amount will be based on the number of scholarship students and the dollar value of the scholarships for a period of time (e.g., a \$25,000 bond for 10 students at \$2,500 per scholarship for a school year). While most participating private schools previously demonstrated fiscal soundness via the number of years in operation option, a few schools used a surety bond.⁵² The bill imposes fiscal accountability requirements on private schools and SFOs that would require these entities to incur additional administrative costs.

The number of students from the Florida School for the Deaf and the Blind who will choose to receive a McKay scholarship is unknown at this time. Current CSP scholarship students may continue to participate in the program, if parental income does not exceed 200 percent of the federal poverty level. The number of current scholarship students who will benefit from this provision is unknown. The current federal poverty level for a household of four individuals is \$19,350.⁵³ For a student to be eligible for reduced price meals under the National School Lunch Program, the annual household income may not exceed \$35,798 (185 percent of the federal poverty level). For a student to be eligible for free meals, the annual household income may not exceed \$25,155 (130 percent of the federal poverty level). Under the provisions of the bill, a student from a family of four could continue to participate in the CSP program if parental income does not exceed \$38,700 (200 percent of the federal poverty level).

C. Government Sector Impact:

The DOE collects the accreditation affiliation reported by schools wishing to participate in the McKay Program and the tax credit scholarship program. The DOE provides this self-reported information on-line by county.⁵⁴ Additional efforts for the Department of Education to administer the program and monitor the participating schools as required by the bill, suggest that there will be an increased cost for the department. According to

⁵¹ DOE estimates a range of nonrecurring costs (from approximately \$2.3 million to \$2.8 million) and \$1.3 million in recurring costs, based upon 44,686 applicants for background screening.

⁵² Florida Department of Education, Response to Senate Education Committee interim project questionnaire, October 16, 2003. Fiscal soundness was demonstrated via surety bond for 2% of the private schools participating in the McKay Program in 2001-2002. No private schools used a surety bond in 2002-2003 and only one school (or less than 1%) used a surety bond in 2003-2004 (as of October 16, 2003) to demonstrate fiscal solvency.

⁵³ U.S. Department of Agriculture, 2005-2006 Income Eligibility Guidelines (effective from July 1, 2005, to June 30, 2006).

⁵⁴ See <http://www.floridaschoolchoice.org/Information/directory/schoolreport.asp>

recent department estimates, three positions are needed to implement the increased operational academic, program, and fiscal accountability requirements in the bill. The estimated costs associated with these positions are \$194,035 annually.

There may be some cost for a public university to analyze test scores and student performance unless this is accomplished within existing resources.

The FDLE provided the following fiscal impact estimate for the background screening requirements in the bill:

	FY 2005-2006	FY 2006-2007	FY 2007-2008
REVENUE			
Nonrecurring	\$1,004,870	\$0	\$0
State background screening ($\$23 \times 43,690$ applicants = \$1,004,870)			
Recurring	\$0	\$374,576	\$374,576
State background screening (4,369 new applicants = \$112,436) Annual fee (43,690 employees = \$262,140)			
Total Revenue	\$1,004,870	\$374,576	\$374,576
EXPENDITURES			
Nonrecurring	\$ 20,972	\$0	\$0
\$20,972 associated with 4 positions			
Recurring	\$ 185,585	\$ 185,585	\$ 185,585
Salaries, Benefits, and Expenses associated with 4 positions			
Total Expenditures	\$ 206,557	\$ 185,585	\$ 185,585

The fees associated with criminal history background checks are deposited into FDLE’s Operating Trust Fund. The bill requires the FDLE to retain all fingerprint records submitted on private school and SFO personnel for entry into the statewide automated fingerprint identification system authorized by s. 943.05(2)(b), F.S. The bill delays the implementation dates for fingerprint searches and records retention until December 15, 2006. The delayed date will require FDLE to manually process the arrest notifications to the schools and SFOs until late 2007. FDLE would require four FTE to handle the increase in fingerprint searches and the required retention of fingerprints. According to FDLE, the department is requesting budget authority to use the trust fund and the corresponding positions, rather than revenue.

For the CSP, the bill allows for the transfer of funds by SFOs and provides for the carry forward of contributions to the SFOs for the scholarship program. The provisions of the bill have no fiscal impact on the DOR. The DOR reports that administrative rules can address the effect of a rescindment on a taxpayer's installment payment requirements, as well as the mechanism for notifying taxpayers that additional credit money is available because of a rescindment. This can be accomplished within existing resources.

This bill relaxes the requirement that SFOs spend all eligible contributions in the same fiscal year in which they were received. Instead, they are required only to obligate the contributions to provide scholarships in that year or the next fiscal year. This change makes it more difficult to forecast the impact of this program on public school enrollment.

The Auditor General indicated that the additional audits will be funded from existing funds and will not require an appropriation.

VI. Technical Deficiencies:

On page 34 (lines 22-31) and page 35 (lines 1-2), the Auditor General is tasked with making random site visits to verify information reported by private schools that participate in the McKay program (e.g., student attendance and enrollment and the credentials and background screening results for instructional personnel). The random site visits are limited to one per school per year and must be based upon probable cause of a violation of the law. The Auditor General indicated that it would be difficult to make *random* site visits that are based upon probable cause. It may be helpful to clarify that the purpose of any *additional* site visits is to investigate a violation of law. On page 8, line 31, a conforming title amendment is needed.

VII. Related Issues:

The bill requires school districts to notify parents of McKay Scholarship students of the availability of reassessment of the student every 3 years. Current law (s. 1002.39, F.S.) is silent on the issue of reevaluations of scholarship students who are placed by their parents in private schools and there are no administrative rules for the program. The DOE advised participating private schools and school district exceptional student education administrators that school districts are required to notify parents of McKay Scholarship students when it is time for their child's three-year reevaluation. In addition, districts were informed that parental consent is not required before reviewing existing data as a part of a reevaluation, but must be obtained prior to conducting formal testing. If the parent declines to give consent for a reevaluation, the district should document the parent's intent that no formal reevaluation testing occur.⁵⁵

Federal law requires school districts to ensure that a reevaluation of each child with a disability is conducted if conditions warrant or if the child's parent or teacher requests a reevaluation, but at least once every three years. However, parental consent is required prior to any reevaluation. There is, however, an exception to the parental consent requirement if the school district can demonstrate that it has taken reasonable measures to obtain consent and the parent has failed to respond.⁵⁶ Current Florida administrative rule 6A-6.0331(7), F.A.C., requires school districts to provide a reevaluation of each student with a disability at least every three years, in accordance with the requirements prescribed in rule, or more frequently if conditions warrant or if required by other administrative rules.⁵⁷

The bill requires private schools and SFOs to report to the DOE that a person has failed to meet background screening requirements, as well as other information. The bill requires DOE to verify information, but does not specify the information that must be verified. The bill does not currently require private schools and SFOs to notify the DOE if a person does not meet the moral turpitude standard, when a match is found for retained fingerprints and an arrest record. Also, the bill and current law do not specify the offenses that constitute "moral turpitude." Private schools may interpret the "moral turpitude" standard differently. To meet the notification requirements, a

⁵⁵ Florida DOE, *McKay Scholarships: Services by Public Schools: Questions and Answers*, May 2, 2003.

⁵⁶ See 20 U.S.C. s. 1414(a)(2) and 34 C.F.R. s. 300.536.

⁵⁷ See also Rule 6A-6.03311(1)(c), F.A.C.,

private school would need to report to the DOE the specific moral turpitude offenses that disqualify an individual.

Under the bill, a person would fail to meet the level 2 background screening requirements if he or she was guilty, had adjudication withheld, or entered a plea of nolo contendere or guilty to any of the specified offenses listed in s 435.04, F.S. The bill provides that persons who are *convicted* of a crime involving moral turpitude may not be employed by or under contract with a school or SFO participating in the McKay and CSP scholarship programs. Similarly, a school or SFO that employs or contracts with an individual who is convicted of a crime involving moral turpitude is barred from participating in the scholarship programs. However, the bill does not bar the participation of a person who has had adjudication withheld or entered a plea of nolo contendere to a crime involving moral turpitude. Nor does the bill prohibit a school or SFO from employing or contracting with a person with this background. Unless these prohibitions are included in the bill, it is possible that person could be employed or under contract with a school or SFO, if he or she has had adjudication withheld or entered a plea of nolo contendere to a crime involving moral turpitude.

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

VIII. Summary of Amendments:

Barcode 494966 by Education:

Technical correction to the title.

Barcode 805060 by Education:

Prohibits a person who has had adjudication withheld or pled no contest to a crime involving moral turpitude from participating in the program. Prohibits private schools participating in the Corporate Tax Credit Scholarship Program and the John M. McKay Scholarships for Students with Disabilities Program and nonprofit scholarship-funding organizations (SFOs) from employing or contracting with these individuals.

Barcode 521792 by Education:

Provides for the suspension of private schools participating in the Corporate Tax Credit Scholarship Program and the John M. McKay Scholarships for Students with Disabilities Program and SFOs if specified individuals fail to meet moral turpitude standards.

Barcode 325318 by Education:

Specifies how the Department of Education verifies background screening information reported by private schools participating in the John M. McKay Scholarships for Students with Disabilities Program.

Barcode 631668 by Education:

Specifies how the Department of Education verifies background screening information reported by private schools and SFOs participating in the Corporate Tax Credit Scholarship Program.

Barcode 534882 by Education:

Provides that subsequent site visits by the Auditor General to private schools participating in the John M. McKay Scholarships for Students with Disabilities Program must be based on a violation of law.

Barcode 115690 by Education:

Deletes the savings clause.