

# 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: Judiciary Committee

BILL: CS/SB 256

INTRODUCER: Judiciary Committee and Senators King and Wise

SUBJECT: Scholarship Programs

DATE: April 7, 2006

REVISED: \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION                 |
|----|-----------------|----------------|-----------|------------------------|
| 1. | deMarsh-Mathues | Matthews       | ED        | <b>Fav/7amendments</b> |
| 2. | Chinn           | Maclure        | JU        | <b>Fav/CS</b>          |
| 3. |                 |                | GE        |                        |
| 4. |                 |                | EA        |                        |
| 5. |                 |                | WM        |                        |
| 6. |                 |                |           |                        |

## I. Summary:

The bill makes several changes to provide for 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 and students who participated in Department of Juvenile Justice (DJJ) commitment programs the previous year;
- Requiring parents to notify Department of Education (DOE) instead of the school district of the parent's request for a scholarship;
- Revising conditions for eligibility for a student receiving a McKay scholarship, including prohibiting a student from receiving a McKay scholarship along with a Corporate Tax Credit (CTC) scholarship;
- 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 employees, officers, and contracted personnel;
- Prohibiting scholarships for virtual schools, correspondence schools, or distance learning programs that receive state funding, or for students who do not have regular contact with their teachers;
- Revising the criteria for forfeiture of a student's scholarship;
- Clarifying the obligations of school districts, private schools, and program participants;

- Providing the DOE with additional authority and responsibilities for administering the program, including the ability to sanction private schools that fail to comply with the requirements in law;
- Revising the fiscal soundness requirements to require private schools to be in operation for at least three school years or to obtain 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 DOE;
- Providing that a scholarship ends at age 22 or upon graduation from high school, whichever occurs first;
- Prohibiting a public school district from modifying a student's matrix, except for technical and calculation edits;
- Providing a process for persons to notify the DOE of violations by private schools and requiring the DOE to investigate substantiated complaints;
- Requiring that parents endorse payment warrants and prohibiting them from allowing the private school to act as attorney-in-fact for purposes of endorsement;
- Requiring the Commissioner of Education to deny, suspend, or revoke participation of any private school determined to fail to meet the requirements of s. 1002.39, F.S.;
- Authorizing a private school adversely affected by the denial, suspension, or revocation of participation in the CTC program to file for a hearing; and
- Providing funding calculations for students who qualified for a McKay scholarship based upon their attendance at the Florida School for the Deaf and the Blind or a DJJ commitment program.

**Changes to the Corporate Tax Credit Scholarship Program include the following:**

- Reducing the amount of credit set aside for small businesses from 5 percent to 1 percent;
- Deleting the provision that forbids a taxpayer from contributing more than \$5 million to any single eligible scholarship-funding organization (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 25 percent of the total contributions may be carried forward for scholarships to be granted in the following fiscal year;
- Authorizing a taxpayer to rescind its application for a CTC credit;
- Requiring a nonprofit SFO to file its audit with the Auditor General and the DOE within 180 days after completion of the SFO's fiscal year;
- 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;
- Requiring an SFO to maintain separate accounts for scholarship funds and operating funds;
- Requiring criminal background checks of owners and operators 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 CTC program;
- Allowing private schools to demonstrate fiscal soundness by being in operation for at least three 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;
- Allowing students who received a scholarship from the State of Florida the previous year to have receive the same priority in awarding of scholarships as students who received a CTC scholarship the previous year, subject to the low-income eligibility requirements under the CTC;
- 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);
- Allowing current scholarship students to continue participating in the CTC 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 CTC scholarship;
- Increasing the CTC tuition scholarship amount from \$3,500 to \$3,750;
- Requiring the DOE to revoke the eligibility of SFOs, private schools, and students who fail to meet the requirements of the CTC program; and
- Requiring a public university or other independent researcher to report year-to-year improvements in student performance without disclosing a student's identity.

The bill also creates a new section in statute to provide accountability measures for state scholarship programs which retains several of the provisions that the bill removed from the McKay scholarship section, s. 1002.39, F.S.

This bill substantially amends sections 220.187 and 1002.39, Florida Statutes, and creates section 1002.421, 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 student with disabilities in an eligible private school or another public school. The law also establishes requirements for student eligibility for scholarships to attend an eligible private school or to provide transportation to another public school and provides eligibility requirements for private schools participating in the program. As well, the law establishes responsibilities for school districts and the Department of Education (DOE). The State Board of Education (SBE) has statutory authority to adopt rules to administer the program.<sup>1</sup>

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

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<sup>1</sup> See s. 1002.39(8), F.S.

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.<sup>2</sup> 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.<sup>3</sup>

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,<sup>4</sup> and
- Have spent the prior school year in attendance at a Florida public school, by assigned school attendance area or by special assignment.<sup>5</sup>

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 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. Under s. 1002.39(3) and (5), F.S., parents are responsible for the following:

- Requesting the scholarship at least 60 days prior to the first scholarship payment;<sup>6</sup>
- 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;

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<sup>2</sup> Section 1002.39(1), F.S.

<sup>3</sup> Residential commitment programs include low, moderate, high, and maximum risk Florida Department of Juvenile Justice (DJJ) programs. Students temporarily reside in these programs while committed to DJJ.

<sup>4</sup> 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 have an IEP.

<sup>5</sup> 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 Florida Education Finance Program (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.

<sup>6</sup> A participant who fails to comply with this requirement forfeits the scholarship.

- Complying fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause;<sup>6</sup>
- Restrictively endorsing the warrant to the private school for deposit into the account of the private school, upon receipt of a scholarship warrant;<sup>6</sup>
- 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.<sup>6</sup>

Section 1002.39(5)(c), F.S., requires students participating in the scholarship program to:

- Remain in attendance throughout the school year, unless excused by the school for illness or other good cause, and<sup>7</sup>
- Comply fully with the school's code of conduct.<sup>7</sup>

### **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<sup>8</sup> chosen by the parent until the student graduates from high school.

### **School District Obligations**

Under current law,<sup>9</sup> school districts must:

- Timely notify parents of all options available in s. 1002.39, F.S.;
- Offer students' parents an opportunity to enroll a student in another public school within the district;
- Notify the DOE within 10 days after the district receives parental notification of intent to participate in the program;
- Complete a matrix of services for any student who is participating in the scholarship program;<sup>10</sup>
- 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;

<sup>7</sup> A participant who fails to comply with this requirement forfeits the scholarship.

<sup>8</sup> Section 1002.39(2)(b), F.S.

<sup>9</sup> Section 1002.39(3), F.S.

<sup>10</sup> 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.

- 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 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 another 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<sup>11</sup> 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;
- Transferring funds from the school district's total funding entitlement under FEFP to a scholarship fund for disbursement by the Chief Financial Officer for quarterly scholarship payments to parents of scholarship students;<sup>12</sup>
- 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.<sup>13</sup>

### **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:
  - Operating for one school year;
  - Providing DOE with a statement by a certified public accountant (C.P.A.) confirming that the school is insured and that the owner or owners have sufficient capital or credit to operate the school for the upcoming year; or

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<sup>11</sup> Section 1002.39(3) and (6), F.S.

<sup>12</sup> Funds are derived from the school district's total funding entitlement under the FEFP and from authorized categorical amounts.

<sup>13</sup> Section 1002.39(6)(e), F.S.

- 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 three 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.<sup>14</sup>

### **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.<sup>15</sup> 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.<sup>16</sup>

### **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.<sup>17</sup> 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

<sup>14</sup> Section 1002.39(4), F.S.

<sup>15</sup> Section 1002.39(6), F.S.

<sup>16</sup> Section 1002.39(6)(f), F.S.

<sup>17</sup> Section 1011.62(1)(e), F.S.

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 three 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,<sup>18</sup> 2005-127,<sup>19</sup> and 2006-117<sup>20</sup>**

Senate Education Committee interim project reports noted that the McKay program has grown dramatically and rapidly since its inception in 1999 when it had 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 with limited resources the option of enrolling their children in a private school. Anecdotal, 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.<sup>21</sup> Accordingly, the 2003 Senate Education Committee voted unanimously to draft legislation to provide for accountability in the CTC program.<sup>22</sup>

**Section 220.187, F.S., 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 scholarship-funding organizations (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 grade<sup>23</sup>; or
- Received a scholarship under the CTC program the previous school year.

<sup>18</sup> The Florida Senate, Committee on Education, Interim Project 2004-130, *McKay Scholarship Program Accountability*, available at [http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim\\_reports/pdf/2004-130ed.pdf](http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-130ed.pdf).

<sup>19</sup> The Florida Senate, Committee on Education, Interim Project 2005-127, *Elementary and Secondary Private School Accreditation*, available at [http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim\\_reports/pdf/2005-127ed.pdf](http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim_reports/pdf/2005-127ed.pdf).

<sup>20</sup> The Florida Senate, Committee on Education, Interim Project 2006-117, *Private Schools Participating in Educational Scholarship Programs and Criminal Background Checks on Personnel With Direct Student Contact*, available at [http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-117ed.pdf](http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-117ed.pdf).

<sup>21</sup> The Florida Senate, Interim Project Report 2004-132, *Corporate Tax Credit Scholarship Program Accountability*, available at [http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim\\_reports/pdf/2004-132ed.pdf](http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-132ed.pdf).

<sup>22</sup> Agenda, Senate Education Committee, October 21, 2003.

<sup>23</sup> 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.

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.<sup>24</sup> 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.

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

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. The credit may not exceed 75 percent of the tax due after the application of any other credits. 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.<sup>25</sup>

### **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 year<sup>26</sup> 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.

<sup>24</sup> Section 9, Chapter 2003-391, L.O.F.

<sup>25</sup> 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.

<sup>26</sup> July to June.

**Private Schools**

To demonstrate fiscal soundness as required under s. 220.187(6)(a), F.S., a participating private school must:

- Be in operation for at least one year;
- Provide 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
- Provide 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 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:<sup>27</sup>

| 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                                                  |

<sup>27</sup> Department of Revenue, December 1, 2005.

The following reflects the credit allocations per SFO for 2005-2006:<sup>28</sup>

|                                               |               |
|-----------------------------------------------|---------------|
| 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 |

The Department of Education 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<br>(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 <sup>29</sup>        | Unknown      | Unknown      | Unknown                        |
| Yes Opportunities                             | \$0          | \$1,050,000  | \$250,000                      |

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.<sup>30</sup> 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.

<sup>28</sup> Department of Revenue, December 1, 2005.

<sup>29</sup> 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 found guilty of Grand Theft in the first degree. See Florida Department of Financial Services, Consumer eViews, *Isenhour Found Guilty of Stealing Education Funds*, November 11, 2005, available at [http://www.fldfs.com/pressoffice/newsletter/2005/111405/November\\_1405.htm](http://www.fldfs.com/pressoffice/newsletter/2005/111405/November_1405.htm). DOE removed Silver Archer Foundation from the list of approved SFOs.

<sup>30</sup> The DOE reports that 15,585 students received scholarships for FY 2002-2003, rather than 19,206 as reported by the SFOs.

For the current school year, Academy Prep reports no applicants on a waiting list. According to the Florida Association of Scholarship Funding Organizations, 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.<sup>31</sup>

Four of the five SFOs submitted audits to the Auditor General.<sup>32</sup> 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.<sup>33</sup>
- 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.<sup>34</sup>
- Academy Prep's had adverse findings related to scholarships granted to ineligible students.<sup>35</sup>

#### **Senate Interim Project 2004-132**<sup>36</sup>

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.
- State Board of Education (SBE) has not provided any guidance in improving accountability in the CTC program.
- 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 receiving scholarships.
- 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

<sup>31</sup> Florida Association of SFOs, January 20, 2006.

<sup>32</sup> CFCF has not submitted a report for the FYE June 30, 2005.

<sup>33</sup> Audit of H.E.R.O.E.S., Inc., September 13, 2004.

<sup>34</sup> Audit of Florida School Choice Fund, Inc. (which includes Florida PRIDE), August 12, 2004.

<sup>35</sup> Auditor General, FYE May 31, 2005.

<sup>36</sup> The Florida Senate, Interim Project Report 2004-132, *Corporate Tax Credit Scholarship Program Accountability*, available at [http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim\\_reports/pdf/2004-132ed.pdf](http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-132ed.pdf).

- 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.<sup>37</sup> 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.<sup>38</sup> 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 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.<sup>39</sup> 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.<sup>40</sup>

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<sup>37</sup> Rule 6A-6.03315, F.A.C., presented to the SBE August 17, 2004, and subsequently amended in 2005.

<sup>38</sup> Response from DOE to committee survey dated October 14, 2003.

<sup>39</sup> 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.

<sup>40</sup> Department of Education analysis of SB 256, November 21, 2005.

**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. 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**

The Department of Education 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.<sup>41</sup>

**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.<sup>42</sup> Further, 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.

**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.

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<sup>41</sup> FloridaChild

<sup>42</sup> FloridaChild

**Academic Accountability**

There are no state-mandated academic accountability requirements. Consequently, the state does not know if the program is adequately serving participating students.

Unlike the opportunity scholarship program 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 the SBE to use its rulemaking authority to implement the program. As the head of DOE, the SBE should be a much more visible and active force in providing leadership to improve the program;
- Require the 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 that is 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 the 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 for 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., to 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 should therefore be 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:
  - Performing procedures and actions to ensure legal compliance and accountability of funding;
  - Procedures and actions to ensure eligibility determinations of students, private schools and SFOs;
  - Using financial audit reports (single audit) as a component of program management;

- Requiring SFOs to submit monthly reports on funding and students.
- Verifying school attendance for scholarship recipients;
- On an exception basis, performing site visits of SFOs and private schools;
- Performing reconciliations of tax credits, SFOs, schools, and students; and
- Performing 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. Also, the Legislature may consider adding 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.

The Department of Financial Services reviewed the six SFOs initially authorized by DOE and 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 whether 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 2 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 CTC program or the McKay program, nor does the law require participating schools to report their accreditation status to the DOE or scholarship applicants.<sup>43</sup>

### **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.

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<sup>43</sup> 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.

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.<sup>44</sup> 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.
- 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.

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<sup>44</sup> 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.

- 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 were not eligible receive funding for failing to comply with the sworn compliance form.<sup>45</sup>

The SBE created an administrative rule that 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).<sup>46</sup> 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.

The Department of Education 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.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup>

### III. Effect of Proposed Changes:

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

#### 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.
  - Provides for the eligibility of students from the Florida School for the Deaf and the Blind; for students in a Department of Juvenile Justice commitment program (if

<sup>45</sup> *State Drops Schools from Voucher List*, Palm Beach Post, November 13, 2003.

<sup>46</sup> Rule 6A-6.03315, F.A.C.

<sup>47</sup> Monday Report, Volume XXXVIII, Number 25, October 20, 2003.

<sup>48</sup> *Check Flap May Fuel Close of Voucher-Supported School*, Palm Beach Post, February 21, 2004.

<sup>49</sup> Department of Education, January 28, 2005.

funded under the Florida Education Finance Program); and for students at least four years old who are eligible for special education and related services under s. 1003.21(1)(e). The bill also provides the method for calculating the scholarship amount, and the reporting requirements for school districts.

- **Parent Obligations for Requesting a Scholarship**

- Revises the parental intent notification provisions to require the parent to notify the Department of Education (DOE) of a request for a McKay scholarship rather than the school district.<sup>50</sup>

- **Students Ineligible for Scholarship**

- Provides that a student is not eligible to receive a McKay scholarship if he or she:
  - Is currently enrolled in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs;
  - Receives a scholarship under ch. 1002 or s. 220.187, F.S.;
  - Participates in a home education program, as defined in s. 1002.01(1), F.S.;
  - Participates in a private tutoring program pursuant to s. 1002.43, F.S.;
  - Participates in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation unless the participation is limited to no more than two courses per school year;
  - Is currently enrolled in the Florida School for the Deaf and the Blind; or
  - Does not have regular and direct contact with his or her private school teachers at the school's physical location.

- **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 or older.<sup>51</sup>
- Allows a parent to remove a student from a private school and place the student in public school upon reasonable notice to the DOE.
- Allows a parent to move a student from one participating private school to another participating private school.

- **School District Obligations**

- Revises the matrix provisions to require the district to notify parents of a student of all options provided under s. 1002.39, F.S. (the McKay program), by April 1 of each year and within 10 days after an individual education plan meeting.

<sup>50</sup> The committee substitute removes language from Senate Bill 256 requiring the DOE to notify the district of the parent's intent upon receipt of the parent's notification. There are references later in the committee substitute that assume a district has been notified (e.g., new s. 1002.39(5)(b)2.a., F.S.), and the Legislature may wish to add language similar to the language removed on page 15, lines 12-14 of Senate Bill 256 that requires the DOE to notify the district.

<sup>51</sup> Florida Department of Education, School Year 2005-2006, Exceptional Student Membership (excluding gifted), Survey 9.

- Requires the DOE to inform parents of the availability of the DOE's hotline and Internet website for information on the McKay program.
- Requires the district to notify a student's parents if a matrix of services (required for applying for a McKay scholarship) has not been completed for a student and that the district must complete the student's matrix level within 30 days after receiving notification of the parent's intent to participate in the program.
- Allows changes to a matrix only to correct technical, typographical, or calculation errors.
- Requires notification to parents of the availability of a reassessment of each scholarship student at least every three years.
- **Department of Education Obligations**
  - Requires the DOE to establish a toll-free hotline that provides parents and private schools with information on participation in the McKay program.
  - Requires the DOE to annually verify the eligibility of private schools to participate in the McKay program.
  - Requires the DOE to develop a process for notification by private individuals of violations by a parent, private school, or school district related to this program. 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.
  - Makes the DOE require an annual sworn and notarized statement of compliance with state laws for each participating private school.
  - Requires the DOE to cross-check the list of participating scholarship students with the public school enrollment lists prior to each scholarship payment.
  - Requires the DOE to make 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. The DOE may not conduct more than three random site visits in one year and may not randomly visit the same school twice in the same year.
  - Requires the DOE to report to the Governor and presiding officers of the Legislature on the DOE's actions taken to implement accountability in the McKay program, as well as any substantiated allegations or violations of law or rule by participating private schools.
- **Commissioner of Education Obligations**
  - Requires the DOE to deny, suspend, or revoke 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 in s. 1002.39, F.S. However, if the noncompliance is correctable, the commissioner may issue a notice of noncompliance with a timeframe for correction.
  - Provides mailing and content requirements if/when the commissioner issues a notice of noncompliance, denial, suspension, or revocation of participation.
  - Provides for the ability to request an administrative hearing to participating private schools adversely affected by a notice of proposed action. The bill also provides a

timeframe for requesting hearings and for expediting hearings by the Division of Administrative Hearings.

- Allows the commissioner to immediately suspend payment of scholarship funds where it is found that there is an imminent threat to health, safety, or welfare of the students, or fraudulent activity on the part of a private school.
- Authorizes the release of personally identifiable student records to facilitate investigations of fraud, subject to restriction by the Family Educational Rights and Privacy Act.
- Allows the private school to request a hearing on the suspension of payments.

- **Private School Obligations**

- Requires compliance with all state laws relating to the general regulation of private schools, including, but not limited to, s. 1002.42, F.S.
- Requires schools to provide the DOE with all documentation for each scholarship student's participation in the program, including, the private school's fee schedule, including, but not limited to, fees for services, tuition, and instructional materials, and each scholarship student's schedule of fees and charges at least 30 days prior to the first quarterly scholarship payment.
- Provides that private schools must be academically accountable to the parent for meeting the educational needs of the student.
- Requires participating private schools to maintain a physical location in this state where the scholarship student regularly attends classes.

- **Parent and Student Responsibilities**

- Retains many of the existing requirements in statute.
- 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.

- **Scholarship Funding and Payment**

- Provides that the calculation of a scholarship for a student who attended Florida School for the Deaf and the Blind shall be based upon the school district in which the parent resides. A reporting provision and a hold harmless provision are also included for the school districts in which the parents reside for purposes of this calculation.
- Provides that funds for a scholarship for a student who attended Florida School for the Deaf and the Blind are not taken from that school's budget allocation to pay for a McKay scholarship.
- Provides that calculation for a student who was in a Department of Juvenile Justice commitment program is based upon the district in the student last attended and the funds would be transferred from that district's budget allocation to pay for the scholarship.
- Requires the DOE to request a sample of endorsed warrants from the Department of Financial Services and to review and confirm compliance with endorsement requirements.

- **Scope of Authority**
  - Provides that the inclusion of private schools within options available to Florida public school students does not expand the regulatory authority of the state beyond the amount reasonably necessary to enforce the requirements of s. 1002.39 (the McKay program).

## **Corporate Tax Credit Program**

**Section 2.** The bill amends s. 220.187, F.S., to make the following changes:

- **Definitions**
  - Removes language from the definition for “eligible contribution” that limited taxpayer contribution to no more than \$5 million to any single eligible private scholarship-funding organization (SFO) in a given year.
  - Clarifies definition of “eligible non-profit scholarship-funding organization” to include entities formed under chs. 607, 608, and 617, F.S. (corporations, limited liability companies, and corporations not for profit, respectively), whose principal office is located in the State of Florida.
  - Provides a definition of “owner or operator” to include:
    - An owner, president, officer, or director of an SFO or person with equivalent decisionmaking authority over an SFO; and
    - An owner, operator, superintendent, or principal of an eligible private school or a person with equivalent decisionmaking authority over an SFO.
  - Moves definition of a qualified student to the subsection (3) of s. 220.187, F.S. (corporate tax credit program (CTC)), providing for scholarship eligibility. Eligibility for the scholarship continues to be based upon a student’s qualification for free or reduced-price school lunches under the National School Lunch Act.
- **Scholarship Eligibility/Prohibitions**
  - Allows student who receives a scholarship to continue receiving the scholarship so long as the student’s family income level does not exceed 200 percent of the federal poverty level.
  - Provides that a student is not eligible to receive a CTC scholarship if he or she:
    - Is currently enrolled in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs;
    - Receives a scholarship from another scholarship funding organization under s. 220.187, F.S., or other educational scholarship under ch. 1002, F.S.;
    - Participates in a home education program, as defined in s. 1002.01(1), F.S.;
    - Participates in a private tutoring program pursuant to s. 1002.43, F.S.;
    - Participates in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student’s participation unless the participation is limited to no more than two courses per school year; or
    - Is currently enrolled in the Florida School for the Deaf and the Blind.

- **Authorization for Tax Credits/Limitations**

- Reduces the small business cap reserve from 5 percent to 1 percent, effective for fiscal year 2006-2007. 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 based on an \$88 million cap, DOR reserves \$4.4 million for small businesses.<sup>52</sup> However, for tax credit years 2002 and 2003, DOR only approved \$186,000 and \$79,000 in tax credit applications for small businesses, respectively.<sup>53</sup> Accordingly, \$2,314,000 was not allocated in tax credit year 2002 and \$2,421,000 was not allocated for tax credit year 2003.
- Authorizes a taxpayer (effective for tax years beginning January 1, 2006) to rescind its application for a Corporate Tax Credit Program (CTC) 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.

- **Obligations of Scholarship-Funding Organization**

*General*

- 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.

*Background Checks/Fingerprinting Requirements*

- Requires all owners and operators of an SFO, upon employment and every five years thereafter, to undergo level 2 background checks (screening) under ch. 435, F.S. As mentioned above, owners and operators include the owner, president, officer, or director of an SFO or person with equivalent decisionmaking authority over an SFO, and an owner, operator, superintendent, or principal of an eligible private school or a person with equivalent decisionmaking authority over an SFO. These individuals must electronically file a complete set of fingerprints, taken by an authorized law enforcement agency or an employee<sup>54</sup> of the SFO or a private company who is trained to take fingerprints, with FDLE. The SFO must request that the FDLE file the fingerprints with the Federal Bureau of Investigation for federal processing. Results of the state and national criminal history check shall be provided to the DOE for level

<sup>52</sup> 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.

<sup>53</sup> The 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.

<sup>54</sup> An owner of an SFO may not take his or her own fingerprints.

2 screening. This provision is designed to prevent scholarship funds from being entrusted to an individual with a prior criminal record.

- Requires FDLE to retain fingerprints submitted by owners and operators beginning July 1, 2007, and makes all fingerprints submitted for purposes of s. 220.187(6), F.S., available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system.
- Requires FDLE to check retained fingerprints annually against the statewide automated fingerprint identification system for arrest records of owners or operators and to report these arrests to the DOE. The DOE is responsible for updating FDLE with any changes to employment, engagement, or association status of owners or operators for purposes of these checks.
- Directs FDLE to adopt a rule establishing a fee for performing annual fingerprint searches and establishing procedures for retention and dissemination of fingerprint records. The fee is to be imposed upon the DOE but may be borne by the owner or the operator of an SFO.
- Prohibits SFOs from providing scholarships under the CTC program:
  - When the owner or operator fails to meet level 2 screening requirements;
  - When the owner or operator has filed for personal or corporate bankruptcy (for a corporation in which the owner or operator held a 20 percent ownership interest); or
  - When the owner or operator of the SFO operates an eligible private school that is participating in the CTC program.

#### *Awarding of Scholarships*

- Adds lab schools to the category of schools for which SFOs must provide transportation scholarships. This type of scholarship is currently available for students attending a Florida public school located outside the student's assigned district.
- Adds students who received a scholarship from the State of Florida to a provision that already gives priority in the awarding of CTC scholarships to students who received a scholarship from an eligible SFO the previous year. This provision would allow students who received an opportunity scholarship under s. 1002.39, F.S., to receive priority equal to the CTC scholars if the opportunity scholar qualifies for free or reduced-price school lunches.<sup>55</sup>
- Requires SFOs to provide scholarships on a first come, first served basis unless the student qualifies for priority consideration as previously discussed.
- Prohibits SFOs from restricting or reserving scholarships for use at a particular private school or for a child of an owner or operator.
- Requires SFOs to allow for students to attend any eligible private school and to transfer a scholarship to a different eligible private school during the same school year.

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<sup>55</sup> Technically, this would also allow students who received a McKay scholarship under 1002.39, F.S., in the previous year to receive similar priority in the awarding of CTC scholarships. Under the bill, a student cannot receive both of these scholarships, and at present, a McKay scholarship is usually higher than a CTC scholarship because the former is based upon the level of services needed by a student. Thus, it is likely that an opportunity scholar would be more likely to request a CTC scholarship than a McKay scholar under this new provision.

- Moves provisions providing caps on scholarships to s. 220.187(11), F.S. The cap on scholarships for tuition is raised from \$3,500 to \$3,750, while the transportation scholarship is unchanged at \$500.

*Fiscal Accounting*

- Removes requirement that an SFO could accept only enough in contributions as was needed to provide scholarships for qualified students (as identified by the SFO) and for whom vacancies in nonpublic schools exist.
  - 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. Up to 25 percent of the contributions may be used to pay for scholarships granted in the year immediately following the year in which they were received.
  - Requires SFOs to maintain separate accounts for scholarship funds and for operating funds.
  - 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.
  - 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.
  - Requires an SFO to prepare and submit quarterly reports to DOE providing the number of students participating in the CTC program, the private schools at which they are enrolled, and other information deemed necessary by the DOE. In addition, an SFO must timely respond to any DOE request for additional information relating to the CTC program. Any taxpayer information provided under this provision remains confidential under s. 213.053, F.S.
  - Revises provision providing for payment and endorsement procedures related to scholarships and moves this provision to subsection on parent and student responsibilities.
- **Parental and Student Obligations**
    - Imposes additional parental and student obligations to ensure accountability and provide an opportunity for a quality education. In particular, the bill:
      - Requires parent to select an eligible private school and apply for admission of the student;
      - Requires parent to notify the child's school district when the parent withdraws the student to attend an eligible private school;
      - Requires student to comply with the private school's attendance policies;
      - Requires parent and student to comply with the private school's published policies;
      - Requires a parent to ensure that his or her student participates in the required testing policies; and
      - Requires a parent to restrictively endorse the warrant to the private school and 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.

- Provides that a scholarship is forfeited if the parent refuses to comply with the endorsement procedure.

- **Private School Eligibility/Obligations**

- Imposes accountability measures on private schools as a condition for participating in the scholarship program as provided in new s. 1002.421, F.S. (discussed below).
- Requires private schools to provide all documentation required for participating students upon the request of an eligible SFO.
- Requires private school to be academically accountable to the parents of a CTC scholar, including:
  - Providing parents a written explanation of the student's progress at least annually;
  - Administering annual assessment test and providing results of test to parents and independent research organization;<sup>56</sup> and
  - Cooperating with student whose parent chooses for the student to take the statewide assessment.
- Requires regular and direct contact between teachers and students.

- **Department of Education**

- Imposes additional obligations on DOE and clarifies existing ones to improve accountability in the CTC program.
- Requires DOE to annually determine the eligibility of SFOs and private schools to participate in the program.
- Requires DOE to provide a list of eligible SFOs to the Department of Revenue by March 15. (This provision currently exists in statute but the bill relocates it within the section.)
- Requires DOE to annually review all SFO audit reports for compliance with this section.
- Requires the DOE to establish a procedure for and conduct investigations of any written complaints of a violation under 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. An inquiry under this provision is not subject to ch. 120 (the Administrative Procedures Act).
- Makes the DOE require an annual, notarized, sworn statement, certifying compliance with state laws.
- Requires the DOE to cross check the list of participating scholarship students with the public school enrollment lists to avoid duplication.
- Requires the DOE to identify and select nationally norm-referenced tests that compare to the Florida Comprehensive Assessment Test (FCAT), in accordance with State School Board rule. The bill allows the DOE to select the FCAT as one of the assessment required under this provision.

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<sup>56</sup> Students with disabilities for whom standardized testing is not appropriate are exempt from these tests.

- Requires the DOE to select an independent research organization to receive and analyze norm-referenced assessment test scores of CTC scholars as reported by private schools. The independent research organization must:
  - Annually report to the DOE on the year-to-year improvements of participating students; and
  - Analyze and report student performance data 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);
  - Accumulate historical performance data on students for purposes of conducting longitudinal studies.
- Requires that the DOE work with the third-party research organization on certain calculations for efficient use of resources.
- Requires that all parties preserve the confidentiality of shared student records as required under federal statute.
- Requires the DOE to notify the SFOs of students receiving scholarships under ch. 1002 or scholarships under s. 220.187, F.S., from another SFO, to prevent duplicate payments by SFOs in violation of limiting each student to the receipt of one scholarship.
- Makes the DOE require quarterly reports from SFOs on student participation, schools of enrollment, and information deemed necessary by the DOE.
- Provides for random site visits to verify information reported by private schools concerning enrollment, attendance, teacher credentials, and results of background screening and fingerprinting of teachers. Site visits are limited to seven visits per year and no more than one random site visit to the same private school.
- Requires the DOE to report to the Governor and presiding officers of the Legislature on the DOE's actions taken to implement accountability in the CTC program, as well as any substantiated allegations or violations of law or rule by participating private schools.
- **Commissioner of Education Obligations**
  - Requires the DOE to deny, suspend or revoke 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 in s. 1002.39, F.S. However, if the noncompliance is correctable, the commissioner may issue a notice of noncompliance with a timeframe for correction.
  - Provides mailing and content requirements if/when the commissioner issues a notice of noncompliance, denial, suspension, or revocation of participation.
  - Provides for the ability to request an administrative hearing to participating private schools adversely affected by a notice of proposed action. The bill also provides a timeframe for requesting hearings and for expediting hearings by the Division of Administrative Hearings.
  - Allows the commissioner to immediately suspend payment of scholarship funds where it is found that there is an imminent threat to health, safety, or welfare of the students, or fraudulent activity on the part of a private school.

- Authorizes the release of personally identifiable student records to facilitate investigations of fraud, subject to restriction by the Family Educational Rights and Privacy Act.
- Allows the private school to request a hearing on the suspension of payments.
- **Scholarship Amount/Payment**
  - Increases the cap on scholarships for tuition from \$3,500 to \$3,750, and leaves the transportation scholarship is unchanged at \$500.
  - Retains the current payment method of SFOs issuing warrants to the private school in the parent's name, requiring the parent to restrictively endorse the warrant. A parent may not, however, allow the private school to act as an attorney-in-fact for purposes of endorsement.
  - Requires SFOs to verify students' attendance at private schools before each payment is made and requires payments to be made on a quarterly basis.<sup>57</sup>
- **Administration/Rules**
  - Removes the current, annual \$88 million dollar cap on the amount that can be granted in tax credits for donations to SFOs.
  - Requires State Board of Education to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S. Section 120.54(1)(a), F.S., provides that agency rulemaking is not a matter of agency discretion. At present, SBE has adopted one rule relating to the program since the creation of the CTC program. Under the bill, the SBE must adopt rules in relation to the roles of the Department of Education and the Commissioner of Education.

### **Accountability of Participating Private Schools**

**Section 3.** The bill creates s. 1002.421, F.S., retaining provisions removed from existing ss. 1002.39 and 220.187, and adding provisions on accountability.

- **General Provisions for Participating Private Schools**
  - Provides that schools that do not comply with the accountability section, s. 1002.421, F.S., are ineligible to participate in the program (as determined by the DOE).
  - Requires the schools to comply with proposed s. 1002.421, F.S., provisions relating to private schools in 1002.42, F.S., specific requirements identified within respective scholarship program laws, and other provisions of Florida law applicable to private schools.
  - Requires the schools to be private schools as defined under s. 1002.01(2), F.S., and registered under s. 1002.42. School must:
    - Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d;
    - Notify the department of its intent to participate in a scholarship program;
    - Notify the department of any change in the school's name, school director, mailing address, or physical location within 15 days after the change;

<sup>57</sup> Payments are currently paid on a quarterly basis.

- Complete student enrollment and attendance verification requirements, including use of an on-line attendance verification form, prior to scholarship payment;
  - Annually complete and submit to the department a notarized scholarship compliance statement certifying that all school employees and contracted personnel with direct student contact have undergone background screening pursuant to s. 943.0542;
  - Demonstrate fiscal soundness and accountability (prohibits school from acting as attorney-in-fact for purposes of endorsing payment warrants);
  - Meet applicable state and local health, safety, and welfare laws, codes, and rules (including fire safety and building safety).
- Maintains requirement that schools must employ or contract with teachers holding a college degree or at least three years of teaching experience, special skills, or knowledge.
- **Background Screening/Fingerprinting**
  - Requires background screening of each employee and contracted personnel with direct student contact.<sup>58</sup> (The bill also requires a new background screening every five years following initial employment or engagement and requires fingerprints to be submitted to the Federal Bureau of Investigation for national processing.)
  - Requires these individuals to electronically file a complete set of fingerprints, taken by an authorized law enforcement agency, an employee of the private school, or a private company trained to take fingerprints, with FDLE.
  - Provides that results of the screening be provided to the school and requires the school to terminate an employee who fails the screening standards set forth in s. 435.04, F.S., or the school will be ineligible to receive scholarship funds.
  - Provides an exception to the fingerprinting requirements under s. 1002.421, F.S., for teachers who already have a teaching certification.
  - Provides that the state may not bear the cost for background screening.
  - Requires FDLE to retain fingerprints of employees and contracted personnel beginning July 1, 2007, and to make all fingerprints submitted for purposes of s. 220.187(6), F.S., available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system.
  - Requires FDLE to check retained fingerprints against the statewide automated fingerprint identification system for arrest records of owners or operators and to report these arrests to the employing school. Each private school participating in the program is responsible for updating FDLE with any changes to employment or contractual status of its personnel who have submitted fingerprints.
  - Directs FDLE to adopt a rule establishing an annual fee for performing fingerprint searches and establishing procedures for retention and dissemination of fingerprint records. The fee is to be imposed upon the private school or the person fingerprinted.

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<sup>58</sup> Under the bill, the McKay program requires these individuals to be screened for both state and federal criminal history, but the CTC program only references a state background check upon initial employment. The CTC does, however, require both the state and federal background check once every five years following initial employment. This may be a technical glitch based upon other parts of the bill referencing background screening that require the federal screening as part of an initial screening.

- Provides that employees and contracted personnel whose fingerprints are not retained must be refingerprinted and meet state and federal background screening upon reemployment or reengagement.
- **Scope of Authority**
  - Provides that the inclusion of private schools within options available to Florida public school students does not expand the regulatory authority of the state beyond the amount reasonably necessary to enforce the requirements of s. 1002.421.
- **Rulemaking**
  - Requires State Board of Education to adopt rules to administer this section.

**Section 4.** This bill takes effect on July 1, 2006.

#### **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.”<sup>59</sup> In 1999, certain parents of children in the state’s public schools and several organizations<sup>60</sup> challenged the constitutionality of the state’s Opportunity Scholarship Program,<sup>61</sup> alleging that the program violated Art. I, s. 3 and Art. IX, s. 1 of the State Constitution.<sup>62</sup> 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 which private school a child shall attend under the program.

<sup>59</sup> Art. I, s. 3, FLA. CONST.

<sup>60</sup> 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.

<sup>61</sup> Codified in s. 229.0537, F.S. (1999), now codified in s. 1002.38, F.S.

<sup>62</sup> 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.

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 First 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.<sup>63</sup> 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 First District Court of Appeal.<sup>64</sup> On November 12, 2004, the First District Court of Appeal 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.<sup>65</sup> In addition, the court held that so-called “no-aid provision” does not violate the Free Exercise clause of the United States Constitution.<sup>66</sup> Finally, a five-judge concurring opinion also found the program to violate Art. IX, s. 1 of the State Constitution.<sup>67</sup>

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program violated Art. IX, s. 1(a) of the State Constitution, which mandates an education through a uniform system of free public schools.<sup>68</sup> 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 Court of Appeal, since the program was found unconstitutional based on Art. IX, s. 1(a). 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.

The bill provides that other students who received a scholarship from the State of Florida—in addition to those who received scholarships from a private scholarship-funding organization the previous year—are to be given priority in the awarding of scholarships under the Corporate Tax Credit Scholarship Program (CTC). This may provide a safe guard for those students who will be losing their opportunity scholarships as a result of the Supreme Court decision. However, it is still possible that the underlying programs referenced in this bill may be similarly challenged.

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<sup>63</sup> *Bush v. Holmes*, 767 So.2d 668, 675 (Fla. 1st DCA 2000)(footnote omitted).

<sup>64</sup> *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

<sup>65</sup> *Bush v. Holmes*, 886 So.2d 340 (Fla. 1st DCA 2004).

<sup>66</sup> *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 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).

<sup>67</sup> *Id.* at 371 (Benton, J., concurring opinion).

<sup>68</sup> *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

Reducing the credit set-aside for small businesses to donate to the Corporate Tax Credit Scholarship Program (CTC) from 5 percent to 1 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 Florida Department of Law Enforcement (FDLE) for fingerprinting and background screening. Scholarship-funding organization (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.<sup>69</sup> 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.

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.<sup>70</sup>

**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

<sup>69</sup> Estimates are provided for both state and federal screening even though through a possible technical glitch, the bill does not provide for employees and contractors at private schools to participate in federal screening, initially.

<sup>70</sup> 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.

via the number of years in operation option, a few schools used a surety bond.<sup>71</sup> 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 CTC 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.<sup>72</sup> 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 CTC program if parental income does not exceed \$38,700 (200 percent of the federal poverty level).

The bill provides that other students who received a scholarship from the State of Florida—in addition to those who received scholarships from a private scholarship-funding organization the previous year—are to be given priority in the awarding of scholarships under the Corporate Tax Credit Scholarship Program (CTC). This would enable students in families with limited resources to continue attending the private school of their choice using a CTC scholarship; however, the parents may have to pay the balance of the student's tuition if it exceeds \$3,750 provided by the CTC program.

#### C. Government Sector Impact:

These fiscal estimates are based upon original Senate Bill 256. It is unknown at this time whether the revisions that were adopted in the committee substitute on April 4, 2006, by the Judiciary Committee would affect these figures.

#### **Department of Education**

The DOE collects the accreditation affiliation reported by schools wishing to participate in the McKay Program and the CTC program. The DOE provides this self-reported information on-line by county.<sup>73</sup> 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 recent department estimates, three positions are needed to implement the increased operational

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<sup>71</sup> 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.

<sup>72</sup> U.S. Department of Agriculture, 2005-2006 Income Eligibility Guidelines (effective from July 1, 2005, to June 30, 2006).

<sup>73</sup> Florida Department of Education, Office of Independent Education and School Choice, *available at* <http://www.floridaschoolchoice.org/Information/directory/schoolreport.asp>.

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.

### **Florida Department of Law Enforcement**

The FDLE provided the following fiscal impact estimate for the background screening requirements in the original Senate Bill 256. It is unknown at this time whether the revisions that were adopted in the committee substitute on April 4, 2006, by the Judiciary Committee would affect these figures.

|                                                                                                                  | <b>FY 2005-2006</b> | <b>FY 2006-2007</b> | <b>FY 2007-2008</b> |
|------------------------------------------------------------------------------------------------------------------|---------------------|---------------------|---------------------|
| <b>REVENUE</b>                                                                                                   |                     |                     |                     |
| <b>Nonrecurring</b>                                                                                              | \$1,004,870         | \$0                 | \$0                 |
| State background screening<br>( $23 \times 43,690$ applicants = \$1,004,870)                                     |                     |                     |                     |
| <b>Recurring</b>                                                                                                 | \$0                 | \$374,576           | \$374,576           |
| State background screening<br>(4,369 new applicants = \$112,436)<br>Annual fee<br>(43,690 employees = \$262,140) |                     |                     |                     |
| <b>Total Revenue</b>                                                                                             | \$1,004,870         | \$374,576           | \$374,576           |
| <b>EXPENDITURES</b>                                                                                              |                     |                     |                     |
| <b>Nonrecurring</b>                                                                                              | \$ 20,972           | \$0                 | \$0                 |
| \$20,972 associated with 4 positions                                                                             |                     |                     |                     |
| <b>Recurring</b>                                                                                                 | \$ 185,585          | \$ 185,585          | \$ 185,585          |
| Salaries, Benefits, and Expenses<br>associated with 4 positions                                                  |                     |                     |                     |
| <b>Total Expenditures</b>                                                                                        | \$ 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 scholarship-funding organization (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 July 1, 2007. The delayed date will require FDLE to manually process the arrest notifications. 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.

### **Department of Revenue**

For the Corporate Tax Credit Scholarship Program (CTC) 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 Department of Revenue (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 based upon availability of scholarship funds.

### **Auditor General**

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

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

The bill requires school districts to notify parents of McKay Scholarship students of the availability of reassessment of the student every three 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 such a program. The Department of Education (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.<sup>74</sup>

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.<sup>75</sup> 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.<sup>76</sup>

The bill requires private schools and private scholarship-funding organizations (SFOs) to report to the DOE that a person has failed to meet background screening requirements, as well as other

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<sup>74</sup> Florida DOE, *McKay Scholarships: Services by Public Schools: Questions and Answers*, May 2, 2003.

<sup>75</sup> See 20 U.S.C. s. 1414(a)(2) and 34 C.F.R. s. 300.536.

<sup>76</sup> See also Rule 6A-6.0331(1)(c), F.A.C.,

information. The bill requires DOE to verify information, but does not specify the information that must be verified.

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

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## **VIII. Summary of Amendments:**

None.

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