

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7041 PCB CI 06-02 Scholarship Accountability  
**SPONSOR(S):** Choice & Innovation Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 10

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Choice & Innovation Committee	5 Y, 2 N	Hassell	Kooi
1) Education Appropriations Committee	15 Y, 5 N	Eggers	Hamon
2) Education Council			
3)			
4)			
5)			

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### SUMMARY ANALYSIS

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

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

The bill creates a new section of law that provides for the obligations of all private schools participating in state school choice scholarship programs. These requirements include having each employee and contracted personnel with direct student contact, defined as having unsupervised access to a scholarship student for whom the private school is responsible, undergo a state and national background screening.

The bill directs the Florida Department of Law Enforcement to adopt a rule setting the annual fee to be imposed upon participating private schools for participation in the fingerprint search process and to establish procedures for the retention of the fingerprints and the dissemination of the results.

The bill will have a minimal fiscal impact on the Department of Education and private schools. Please see the FISCAL ANALYSIS and the DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR section of this analysis.

The bill shall be effective on becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

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

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

#### B. EFFECT OF PROPOSED CHANGES:

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

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

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

The John M. McKay Scholarships for Students with Disabilities Program (McKay Program) was originally created by the 1999 Legislature as a pilot program for Sarasota County in the A+ Education Plan. The program has since been expanded to cover the entire state. For fiscal year 2005-2006, there are 727 schools participating schools and 16,144 scholarship recipients.<sup>1</sup>

#### Student Eligibility

##### *Generally*

Currently, the McKay Program provides an option for students with disabilities, for whom an individual education plan has been written, to either attend a public school other than the one to which assigned, or to receive a scholarship to attend a private school of choice. Students with disabilities include K-12 students who are mentally handicapped, speech and language impaired, deaf or hard of hearing,

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<sup>1</sup> [www.floridaschoolchoice.org/Information/McKay?program\\_statistics.asp](http://www.floridaschoolchoice.org/Information/McKay?program_statistics.asp)

visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospitalized or homebound, or autistic.

The bill revises the definition of students with disabilities to reflect the terminology for disabilities as they are used in the federal regulations.<sup>2</sup> This bill makes ineligible those students whose only qualifying disability was that they were hospitalized or homebound. It does not affect the eligibility of students who would otherwise qualify for a McKay scholarship under any of the other enumerated categories. It is important to note, that a disability in and of itself does not guarantee the right to a McKay scholarship. The disability must be recognized under State Board rules<sup>3</sup> and the student must have a current individual education plan.<sup>4</sup>

Currently, a public school student with disabilities is eligible to receive a McKay scholarship if the student's parent is dissatisfied with the student's progress, the student has spent the prior school year in attendance at a Florida public school, and the parent has obtained acceptance for the student at an eligible private school.<sup>5</sup> Students enrolled in Department of Juvenile Justice (DJJ) commitment programs are ineligible to receive a McKay scholarship during the period of enrollment in the commitment program.

Current law is unclear as to whether a student that has met the McKay scholarship eligibility requirements is eligible to participate in the program immediately upon dismissal from a DJJ commitment program. According to the Department of Education (DOE), implementation of current law has been that "the time in which a student was enrolled in a DJJ commitment program would not 'count' as the required prior year of enrollment in public schools; therefore students dismissed from a DJJ commitment program are only eligible for a McKay scholarship after being in attendance and reported for funding in a regular public school for both the October and February surveys."<sup>6</sup> Accordingly, under current practice, the DOE does not consider a school in a DJJ commitment program to be a Florida public school for purposes of eligibility for the McKay scholarship.

Under this bill, "prior school year attendance" at any Florida public school will qualify; assignment is not a requirement. This bill clarifies that "prior school year in attendance" includes time spent in a DJJ commitment program if funded under the Florida Education Finance Program (FEFP). Prior school year attendance at the Florida School for the Deaf and Blind (FSDB) and time spent by a 4 year old child with disabilities in an FEFP funded program will also qualify.

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

It is not prohibited in current law for students to receive funding from more than one scholarship program. The bill revises such eligibility, stating that a student is ineligible for a McKay scholarship while he or she is:

- Enrolled in a DJJ commitment program.

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<sup>2</sup> See 34 C.F.R. s. 300.7(c)

<sup>3</sup> Rules 6A-6.03011 – 6A-60.03031, F.A.C.

<sup>4</sup> s. 1003.01(3)(a), providing that "exceptional student" means any student who has been determined eligible for a special program in accordance with the rules of the State Board of Education.

<sup>5</sup> s. 1002.39(2)(a), F.S., defines "prior school year in attendance" to mean that the student was enrolled and reported by a school district for funding during the preceding October and February Florida Education Finance Program surveys in kindergarten through grade 12.

<sup>6</sup> Florida Department of Education, Governmental Relations Office, 2004 Legislative Bill Analysis on HB 1579: John M. McKay Scholarships for Students with Disabilities Program.

- Receiving a CITC scholarship or a scholarship under chapter 1002, F.S.
- Participating in a home education or a private tutoring program.
- Participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation unless the student's participation is limited to no more than two courses per school year.
- Enrolled in the Florida School for the Deaf and Blind.

### *Parent and Student Responsibilities*

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

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

The bill adopts a recommendation by the CFO that requires parents to restrictively endorse the scholarship warrant upon receipt to the private school. It also prohibits a parent from designating any entity or individual associated with the participating private school as the parent's attorney in fact to endorse the warrant.

### Private School Eligibility and Obligations

Private schools are not required to participate in the program; however, participation is open to all private schools. The bill provides that failure to meet the following requirements constitutes a basis for the ineligibility of the private school to participate in the McKay Program:

- Comply with the newly created section 1002.421 detailing the rights and obligations of private schools participating in state school choice scholarship programs,<sup>7</sup>
- Annually provide the parent with a written explanation of the student's progress,
- Cooperate with a student whose parent chooses to have the student participate in the statewide assessment pursuant to s. 1008.22, F.S.<sup>8</sup>, and
- Submit all documentation to the DOE for a student's participation at least 30 days prior to the first quarterly scholarship payment.

### Amount of Award

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

### Funding and Payment

Currently, there are no provisions for the calculation of payment for former students of the FSDB. This bill provides that the scholarship amount for a student who has spent the prior year in attendance at the FSDB will be calculated in the same manner as any other McKay scholarship, except that the calculation is based on the school district in which the parent resides at the time of the scholarship

<sup>7</sup> See "Rights and Obligations" section of the analysis beginning on page 12.

<sup>8</sup> s. 1008.22, F.S., Student Assessment Program for Public Schools

request. The bill requires school districts to report to the DOE the scholarship students that are former students of the FSDB who are attending a private school. Also, the school districts are held harmless for these students from the weighted enrollment ceiling for group 2 programs during the first school year in which the students are reported.<sup>9</sup> The bill prohibits the transfer of funds from the FSDB for students to participate in the program.

The bill also clarifies funding for students exiting a DJJ commitment program. It provides that the funds used to provide scholarships to eligible students exiting a DJJ commitment program will come from the school district in which the student last attended a public school prior to commitment.

The bill clarifies that districts are responsible to report all students attending a private school on a McKay Scholarship within their district each year.

Some private schools require pre-paid amounts of tuition to reserve seats in the class. This bill eliminates DOE funding of pre-paid tuition for McKay scholarship recipients. This bill also changes the payment date for scholarship payments from the CFO from April 15 to April 1. This change makes the April payment consistent with the other three scholarship payments, which are made on the first day of September, November, and February, respectively.

Subsequent to each scholarship payment, the Department of Financial Services (DFS) is required to randomly review endorsed warrants to confirm compliance with endorsement requirements. DFS must immediately report inconsistencies or irregularities to the DOE.

### Program Oversight

Currently, the DOE is responsible for verifying the student's initial admission acceptance and continued enrollment and attendance at the private school. The CFO can only make the scholarship payments after proper verification from the DOE. The payment must be made by individual warrant payable to the student's parent and mailed by the DOE to the chosen private school. The parent must restrictively endorse the warrant to the private school.

The bill proposes to make the following changes in program oversight:

#### *School District Obligations*

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

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<sup>9</sup> s. 1011.62(1)(d)3., F.S., provides for the maximum amount of operations funding for special program weighted FTE students.

### *Department of Education Obligations*

- Requiring the DOE to establish a toll-free hotline to provide information to parents and private schools on the McKay Program. This provision would codify current practice.
- Requires the DOE to annually verify that private schools meet the eligibility requirements outlined in statute.
- Requires the DOE to establish a process that allows for individuals to notify the DOE of violations of state laws relating to program participation. This provision also requires the DOE to conduct inquiries of written complaints, or to refer them to the appropriate agency, if the complaint is signed by the complainant and is legally sufficient. These inquiries are not subject to the requirements of ch. 120, F.S.
- Requires the DOE to annually receive from every participating private school a notarized, sworn compliance statement certifying compliance with state laws and to retain such forms. The DOE must ensure that participating private schools submit their sworn compliance forms each year. This is a codification of the sworn compliance form process instituted by the DOE during the summer of 2003 and provided for in State Board of Education rule.
- Requires the DOE, prior to the first scholarship payment, to cross-check the list of participating private scholarship students to the public school enrollment lists. This provision addresses the CFO's finding that students receiving scholarships were also counted as public school students.

### *Commissioner of Education Authority*

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

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

The Corporate Income Tax Credit Scholarship Program (CITC Program) provides an income tax credit for corporations that make eligible contributions to nonprofit scholarship-funding organizations (SFOs). SFOs award scholarships to students from families with limited financial resources as demonstrated by the student qualifying for free or reduced-price school lunches. For fiscal year 2005-2006, there are 852 schools participating schools and 13,497 scholarship recipients.<sup>10</sup>

#### Tax Credits

Current law provides a number of requirements and limitations related to tax credits. For instance, a taxpayer may not designate a specific child as the beneficiary of the contribution and may not contribute more than \$5 million to any single eligible SFO. The total statewide amount of the tax credit and the carryforward of tax credits that may be granted each state fiscal year under this program is

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<sup>10</sup> [www.floridaschoolchoice.org/Information/McKay?program\\_statistics.asp](http://www.floridaschoolchoice.org/Information/McKay?program_statistics.asp)

limited to \$88 million. At least 5% of the total statewide amount authorized for the tax credit must be reserved for small businesses.<sup>11</sup>

The bill modifies the above provisions as follows:

- Allows a taxpayer's eligible contribution to a single SFO to exceed \$5 million.
- Limits the total amount of allowable tax credits to \$88 million for the 2006-2007 fiscal year.
  - Provides that in each year thereafter the total amount of allowable tax credits and carryforward of tax credits shall be adjusted annually by the percent increase or decrease in total FEFP funds as provided in the General Appropriations Act workpapers, not to exceed 5% in any year. The maximum increase in 2006-07 would be \$4.4 million (\$88 million x 5.0%).
  - Requires the Commissioner of Education to certify to the Department of Revenue (DOR) and the SFO of the resulting value of tax credits within 30 days after the General Appropriations Act becomes law.
- Reduces the amount of the total tax credit allocation reserved for small business from 5% to 1%.

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

### Student Eligibility

#### *Generally*

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

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

Based on available funds, the bill provides that a scholarship student will not lose his or her scholarship due to a change in the economic status of the student's parents unless the parent's economic status exceeds 200% of the Federal poverty guidelines.

It is not prohibited in current law for students to receive funding from more than one scholarship program. The bill revises such eligibility, stating that a student is ineligible for a CITC scholarship while he or she is:

- Enrolled in a DJJ commitment program.
- Receiving a CITC scholarship or a scholarship under chapter 1002, F.S.
- Participating in a home education or a private tutoring program.

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<sup>11</sup> According to current law, small businesses are defined as taxpayers who independently own and operate businesses that employ 200 or fewer full-time permanent employees and have a net worth of not more than \$5 million at the time of application.

- Participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation unless the student's participation is limited to no more than two courses per school year.
- Enrolled in the Florida School for the Deaf and Blind.

### *Parent and Student Responsibilities*

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

- A parent is required to select an eligible private school, apply for admission, and notify the student's school district upon withdrawal.
- Students are required to attend school throughout the school year unless excused by the school for illness or other good cause. Each parent and each student is required to comply with the private school's published policies.
- Parents are required to ensure scholarship student participation in the norm-referenced assessment offered by the private school. Also, parents are given the option to choose to have their child to participate in the statewide assessments pursuant to s. 1008.22.
- Based on a recommendation by the CFO, parents are required to restrictively endorse the scholarship warrant upon receipt to the private school. This provision prohibits a parent from designating any entity or individual associated with the participating private school as the parent's attorney in fact to endorse the warrant.

### Amount of Award

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

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

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

The bill revises the scholarship award to \$3,750 for enrollment in an eligible private school. It also requires SFOs to obtain verification from the private school the scholarship student's continued attendance prior to each scholarship payment and to make such payments on no less than a quarterly basis.

### Scholarship Funding Organization

Currently, there is no requirement that SFOs be Florida corporations and out-of-state corporations are permitted. Upon recommendation by the CFO, the bill requires a SFO to be a Florida entity formed under chapter 607, chapter 608, or chapter 617, whose principal office is located in the state. Additionally, the bill requires that SFOs comply with antidiscrimination provisions of 42 U.S.C. s. 2000d, which prohibit discrimination based on race, color, or national origin.

Current law does not define or address the role of owners and operators of SFOs. The bill defines the term "owner or operator" of a SFO to include an owner, president, directors, officers, or other person



with the equivalent decision making authority over a SFO. Also, it provides that an owner or operator may not own or operate a private school that is participating in the CITC program.

Moreover, owners or operators are required to comply with the following background requirements:

- Submit to a level 2 background screening as provided under chapter 435.<sup>12</sup> The fingerprints are to be submitted to the Florida Department of Law Enforcement (FDLE). The results of the screening are required to be provided to the DOE. An owner or operator that fails the level 2 background screening is ineligible to provide CITC scholarships.
- Submit to background screenings every 5 years and the fingerprints are to be retained by the FDLE as part of the statewide automated fingerprint identification system. Any arrest record of the owner or operator must be reported to the DOE.
- Not have filed for personal bankruptcy or corporate bankruptcy within the last 7 years. In the case of corporate bankruptcy, however, the individual must have owned more than 20% of the corporation.

#### *Determination of Scholarship Recipients*

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

The bill maintains the current law requiring SFOs to give priority to eligible students who received a CITC scholarship during the previous school year. However, the bill requires that SFOs provide scholarships on a first-come, first-served basis unless the student is a returning student from the previous school year. Also, the bill prohibits SFOs from restricting or reserving a scholarship for use at a particular private school or from providing a scholarship to a child of an owner or operator. Further, students are allowed to attend any eligible private school and transfer to any other eligible private school at any time.

#### *SFO Fiscal Accountability*

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

Current law provides that SFOs that receive an eligible contribution must spend 100% of the eligible contribution to provide scholarships in the same state fiscal year in which the contribution was received. This bill revises the SFOs use of eligible contributions. The bill requires SFOs to obligate, in the same fiscal year in which the contribution was received, 100% of the contribution to provide scholarships provided that up to 25% of the total contribution may be carried forward for scholarships to be granted in the following state fiscal year. This provision allows for SFOs to commit funds, particularly those received toward the end of the fiscal year, to the next state fiscal year for future scholarships rather than requiring SFOs to spend all of the eligible contributions within the same state fiscal year in which they were received.

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

The bill provides for the transfer of funds to another eligible SFO when additional funds are required to meet scholarship demands. However, a transfer is limited to the greater of \$500,000 or 20% of the total contributions received by the SFO making the transfer. This provision allows for flexibility in the

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<sup>12</sup> See s. 435.04, F.S. for level 2 screening standards.

transfer of funds between eligible SFOs and should result in an increased ability to match eligible contributions with eligible students.

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

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

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

### Private School Eligibility and Obligations

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

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

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

Private schools are not required to participate in the program; however, participation is open to all private schools. The bill provides that failure to meet the following requirements constitutes a basis for the ineligibility of the private school to participate in the CITC Program:

- Comply with the newly created section 1002.421 detailing the rights and obligations of private schools participating in state school choice scholarship programs,<sup>13</sup>
- Annually provide the parent with a written explanation of the student’s progress,
- Annually administer or make provisions for students to participate in one of the nationally norm-referenced tests identified by the DOE, and report the student’s scores to the parent and to an independent private research organization selected by the DOE,
- Cooperate with a student whose parent chooses to have the student participate in the statewide assessment pursuant to s. 1008.22, F.S.<sup>14</sup>, and
- Submit all documentation, upon request, to the SFO for a student’s participation.

The bill exempts students with disabilities for whom standardized testing is not appropriate from the requirement that private schools administer a nationally norm-referenced test to all CITC scholarship students within their school.

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<sup>13</sup> See “Rights and Obligations” section of the analysis beginning on page 12.

<sup>14</sup> s. 1008.22, F.S., Student Assessment Program for Public Schools

## Program Oversight

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

### *Department of Education Obligations*

The DOE's obligations can be broken down into those dealing primarily with fiscal oversight and those related to academic oversight; however, some of the oversight requirements do affect both fiscal and academic issues.

### Fiscal Oversight

- Requires the DOE to establish a process that allows for individuals to notify the DOE of violations of state laws relating to program participation. This provision also requires the DOE to conduct inquiries of written complaints, or to refer them to the appropriate agency, if the complaint is signed by the complainant and is legally sufficient. These inquiries are not subject to the requirements of ch. 120, F.S.
- Requires the DOE to annually receive from every participating private school a notarized, sworn compliance statement certifying compliance with state laws and to retain such forms. The DOE must ensure that participating private schools submit their sworn compliance forms each year. This is a codification of the sworn compliance form process instituted by the DOE during the summer of 2003 and provided for in State Board of Education rule.
- Requires the DOE to cross-check the list of participating private scholarship students to the public school enrollment lists. This provision addressed the CFO's finding that students receiving scholarships were also counted as public school students.
- Requires the DOE to notify any SFO if one of its recipients is also receiving scholarship monies from an educational scholarship pursuant to chapter 1002, or from another SFO. This provision compliments the provisions elsewhere in the bill that require SFOs and participating private schools to provide notification of any instances of student enrollment in more than one program.
- Requires that the DOE receive from each SFO a quarterly report detailing the number of participating students and the private schools in which they are enrolled, and any other information the DOE deems necessary. The DOE must ensure that all SFOs submit these quarterly reports. This provision will codify current operational practice.

### Academic Oversight

- Requires the DOE to annually verify, rather than monitor, that SFOs and private schools meet eligibility requirements and verify the eligibility of expenditures.
- Requires the DOE to establish a toll-free hotline providing information on participation in the CITC Program.
- Requires the DOE to select nationally norm-referenced tests that are comparable to the norm-referenced test portions of the Florida Comprehensive Assessment Test (FCAT). One of the tests selected may be the FCAT. This provision implements part of the nationally norm-

referenced testing program for scholarship recipients found elsewhere in the bill in that it requires DOE to proactively identify which standardized tests will fulfill the requirement for testing.

- Requires the DOE to select an independent research organization to analyze and report annually to the DOE on the year-to-year improvement of participating students. The provision requires that the scores from the nationally norm-referenced tests be forwarded to the independent research organization and that in the course of its analysis the research organization must not disaggregate the data in such a way as to identify the academic level of individuals or individual schools. Independent research organizations are required to accumulate historical performance data and conduct longitudinal studies. This provision provides a mechanism for annually and longitudinally monitoring academic performance of the scholarship program. The independent research organizations are required to analyze and report student data in compliance with the Family Educational Rights and Privacy Act.<sup>15</sup>
- Requires the DOE to conduct analysis of matched students from public school assessment data and calculate control group learning gains using an agreed upon methodology between the third party evaluator and the DOE. The sharing of data must be in accordance with Family Educational Rights and Privacy Act requirements and shall be used solely for the purpose of comparing the progression of scholarship students to their public school counterparts. This provision substantially reduces the cost of the independent research organization's services to the DOE.

#### *Commissioner of Education Authority*

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

#### *State Board of Education*

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

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

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

#### *General Requirements*

- Be a Florida private school, as defined in s. 1002.01(2), F.S.
- Be registered as a Florida private school pursuant to s. 1002.42, F.S.

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<sup>15</sup> 20 U.S.C s. 1232g

- Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.
- Comply with applicable state and local health, safety, and welfare laws, codes, and rules, including fire and building safety, and
- Meet all requirements outlined in this proposed section.

#### *Notifications to the DOE*

- Requires notification of its intent to participate in a scholarship program.
- Requires notification within 15 days of any change in the school's name, school director, mailing address, or physical location.
- Requires the annual completion and submission to the DOE of a notarized scholarship compliance statement certifying that all school employees and contracted personnel have undergone background screening pursuant to s. 943.0542.
- Requires the completion of student enrollment and attendance verification requirements, including using an on-line attendance verification form, prior to scholarship payment.

#### *Fiscal Accountability*

- Requires demonstration of fiscal soundness and accountability by being in operation for at least 3 school years or obtaining a surety bond or letter of credit for the amount equal to the scholarship funds for any one quarter and filing the bond or letter of credit with the DOE.
  - This increases the number of years a school must have been in operation to prove fiscal soundness and specifies the means by which scholarship monies are to be secured against unlawful uses when a school has been in operation less than 3 years.
  - The surety bond or letter of credit secures the scholarship monies paid to the school should it be found that the funds were used for improper purposes
- Requires parents to restrictively endorse the scholarship warrant upon receipt to the private school, as recommended by the CFO. It also prohibits a parent from designating any entity or individual associated with the participating private school as the parent's attorney in fact to endorse the warrant.

#### *Educator Eligibility*

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

#### *Background Screening*

- Requires each employee and contracted personnel with direct student contact, defined as having unsupervised access to a scholarship student for whom the private school is responsible, undergo a state and national background screening.<sup>16</sup> Provides for an exemption for persons holding a valid teaching certificate who have been fingerprinted pursuant to s. 1012.32, F.S.

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<sup>16</sup> See s. 943.0542, F.S.

- Requires any employee or contracted personnel that fails to meet the screening standards pursuant to s.435.04, F.S. to be denied employment or terminated. Also provides a participating private school that continues the employment of such person is ineligible to participate in a scholarship program.
- Requires the fingerprints to be submitted to the FDLE and the results to be provided to the participating private school. The state is not responsible for the cost of the fingerprinting and background check.
- Beginning July 1, 2007, the bill requires the FDLE to retain all fingerprints submitted as part of the statewide automated fingerprint identification system, and to search all arrest fingerprint cards received under s. 943.021 against all fingerprints retained in the statewide identification system. Requires FDLE to report to the employing school the arrest record of a person that is identified with the retained fingerprints.
- Requires participating private schools to notify the FDLE of any change in the employment status of its personnel whose fingerprints are retained by FDLE. The fee assessed by the FDLE is the responsibility of the private school or the person fingerprinted.
- Provides that the FDLE adopt a rule setting the annual fee that will be imposed upon participating private schools and to establish procedures for the retention of the fingerprints and the dissemination of the results.
- Requires those personnel whose prints are not retained by the FDLE to be reprinted and to meet the background requirements upon reemployment or reengagement to provide services. Requires employees and contracted services personnel to be screened every five years. Provides that the private school request the FDLE to forward the fingerprints to the FBI for processing.

*Failure to meet requirements*

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

*Regulatory authority*

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

*State Board of Education*

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

C. SECTION DIRECTORY:

- Section 1.** Amends s. 1002.39, F.S., relating to the John M. McKay Scholarship for Students with Disabilities Program.
- Section 2.** Amends s. 220.187, F.S., relating to the Corporate Income Tax Credit Scholarship Program.

**Section 3.** Creates s. 1002.421, F.S., relating to the rights and obligations of private schools participating in state school choice scholarship programs.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Beginning in 2007-08, the total amount of allowable tax credits and carryforward of tax credits shall be adjusted annually by the percent increase or decrease in total FEFP funds as provided in the General Appropriations Act workpapers, not to exceed 5% in any year. The maximum increase in 2006-07 would be \$4.4 million (\$88 million x 5.0%), which is a direct offset of general fund revenue. For an analysis of the corresponding direct offset in state expenditures caused by the increase in allowable credits, see Expenditures under "FISCAL IMPACT ON STATE GOVERNMENT."

#### 2. Expenditures:

The increase in allowable tax credits will be used to provide scholarships for students of low income parents, which is a direct offset to the number of public school students funded from state and local operating and capital outlay funds. The most recent calculation of public school operating funding shows a statewide average of \$6,153 per FTE.<sup>17</sup> The bill increases the scholarship amount from \$3,500 to \$3,750 per student.

This bill requires the DOE to identify nationally norm-referenced tests that are comparable to the norm-referenced test portions of the Florida Comprehensive Assessment Test (FCAT) provided that one of the tests selected may be the FCAT. The DOE is also required to contract with an independent research organization to receive and analyze the results of the nationally norm-referenced tests taken by the CITC Program scholarship recipients. The DOE is required to conduct analysis of matched students from public school assessment data and calculate control group learning gains using an agreed upon methodology between the third party evaluator and the DOE. The costs associated with these requirements are indeterminate at this time.

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The combined affect of raising the authorized credit amount for the CITC Scholarship Program and increasing the per student scholarship amount could result in a maximum of 500 fewer scholarships. The issuance of fewer scholarships would result in a direct increase in public school enrollment and in the revenue associated with the increased enrollment. In the 2005-06 fiscal year, an additional 500 students would result in approximately \$3.1 million<sup>18</sup> of additional revenue for public schools.

#### 2. Expenditures:

<sup>17</sup> Florida Education Finance Program third calculation, dated December 19, 2006.

<sup>18</sup> The statewide per student funding amount is \$6,153 as listed in the 2005-06 Florida Education Finance Program third calculation, dated December 19, 2006.

The potential issuance of 500 fewer scholarships could result in a public school enrollment increase of 500 students, for which the public schools would receive approximately \$3.1 of revenue to spend on the education of these students. See "Revenues" section above.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill places no requirements upon private schools that choose not to participate in the state school choice scholarship programs. However, private schools that choose to participate in the McKay Program, CITC Program, or any other state school choice scholarship program are eligible to receive state-funded scholarship students and are responsible for complying with the private school requirements contained in this bill. The requirements will result in some compliance costs.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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