

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill appears to increase the regulatory authority over home education programs that choose to participate in the McKay Scholarship Program by requiring these programs to comply with specified accountability provisions for private schools.

Empower families – The bill provides parents of students with disabilities with an expanded opportunity to exercise parental choice by authorizing McKay Scholarships to fund the cost of home education programs and alternative schools. It also provides parents of a child with autism with the opportunity to receive a McKay Scholarship for a home-based Early Intensive Behavioral Intervention Program.

Safeguard individual liberty – The bill maintains parental choice by providing options for alternative schools and home education programs to parents of disabled children and for home-based Early Intensive Behavioral Intervention Programs.

B. EFFECT OF PROPOSED CHANGES:

The John M. McKay Scholarships for Students with Disabilities¹ 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 statewide. According to the February 2007 quarterly report by the DOE, there are 802 participating schools and 17,844 scholarship recipients.²

Scholarship Types and Eligibility Requirements

A parent of a student with a disability, who is dissatisfied with the student's progress, may request and receive a McKay Scholarship for the child for private school tuition if he or she: (a) has had an individual education plan (IEP) written in accordance with the rules of the State Board of Education (SBE); (b) spent the prior school year in attendance at a public school; and (b) obtained acceptance to an eligible private school.³

The bill expands the types of scholarships available to also provide scholarships for home education programs and alternative schools. The term "alternative school" is not defined by the bill. The bill also removes the requirement that a child have attended a public school during the prior school year; thus, making any child with a disability eligible for a scholarship, regardless of whether he or she has ever been served by a school district in Florida.

"Regular and Direct Contact"

Current law requires a scholarship student to have "regular and direct contact" with his or her private school teachers at the school's physical location. State Board of Education rule defines "regular and direct contact" to mean, "...a program of instruction that provides for 170 actual school instruction days with required instructional hours (determined by grade level per Rule 6A-1.09512, F.A.C.) under the direct instruction of the private school teacher at the school's physical location"⁴ A school's physical location is defined by rule to mean, "...the location where regular and direct contact with the private school teacher occurs and must meet applicable state and local health, safety, and welfare laws,

¹ The statute provides that "students with disabilities" include K-12 students who have: (1) a documented mental handicap; (2) a speech or language impairment; (3) a hearing impairment, including deafness; (4) a visual impairment, including blindness; (5) a dual sensory impairment; (6) a physical impairment; (7) a serious emotional disturbance, including an emotional handicap; or (9) a specific learning disability, including, but not limited to: dyslexia, dyscalculia, developmental aphasia, traumatic brain injury, or autism.

² http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp

³ Section 1002.39(1) and (2), F.S.

⁴ Rule 6A-6.03315(1)(c), F.A.C., Private School Scholarship Compliance

codes, and rules....”⁵ Participating private schools are also required to maintain a physical location in Florida where a student regularly attends classes.⁶

Under the “regular and direct contact” requirement, some scholarship recipients during the 2006-2007 school year became ineligible for participation in the program because they were unable to have contact with their teacher at the private school’s physical location. These students otherwise met all other eligibility requirements for participation. Currently, there are no exceptions to the “regular and direct contact” requirement.

The bill removes the requirement that “regular and direct contact” with a teacher occur at the school’s physical location. Accordingly, such contact may occur at any location. Additionally, the bill removes the requirement that private schools participating in the program maintain a physical location in Florida where a student regularly attends classes. As a result, it is unclear under the bill whether private and alternative schools and home education programs participating in the McKay program are required to be in Florida. Please see DRAFTING ISSUES OR OTHER COMMENTS, *infra*.

Private School Eligibility and Obligations

Under current law, participation in the McKay Program is open to all private schools that are willing to satisfy specified requirements. These include:

- Compliance with s. 1002.421, which details the rights and obligations of private schools participating in state school choice scholarship programs.⁷
- Annually providing the parent with a written explanation of the student’s progress.
- Cooperating with a student whose parent chooses to have the student participate in the statewide assessment pursuant to s. 1008.22, F.S.⁸
- Submit all documentation to the DOE for a student’s participation at least 30 days prior to the first quarterly scholarship payment.⁹

The bill amends current law to specify that these requirements apply to home education programs and alternative schools participating in the McKay Scholarship Program. Please see DRAFTING ISSUES OR OTHER COMMENTS, *infra*.

Scholarship Amount

Current law provides that the maximum amount of a McKay Scholarship shall be equal to the total resulting from the addition of the following amounts: (a) the amount of the base student allocation for the student under the Florida Education Finance Program (FEFP) multiplied by the appropriate cost factor for the educational program multiplied by the district cost differential; and (b) the amount of the student’s specified share of the guaranteed cost allocation. The actual amount of a scholarship award is either the calculated amount or the amount of the private school’s tuition and fees, whichever is less. A warrant for the scholarship award is to be drawn by the Chief Financial Officer and made payable to the student’s parent, who is required to restrictively endorse the warrant to the private school. Warrants for the awards are issued four times per year on September 1, November 1, February 1, and April 1.¹⁰

The bill amends current law to provide that the scholarship award amount may be either the calculated amount or the amount of a private or alternative school’s or home education program’s tuition and fees,

⁵ Rule 6A-6.03315(1)(d), F.A.C., Private School Scholarship Compliance

⁶ Section 1002.39(8)(d), F.S.

⁷ The requirements of s. 1002.421, F.S., for private schools include: demonstrating fiscal soundness and accountability by being in operation for at least 3 school years or obtaining a surety bond or letter of credit for a specified amount; hiring or contracting with teachers who hold a baccalaureate or higher degree, have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge, or expertise in subjects taught; and requiring the background screening of all employees and contracted personnel with direct student contact, defined as having unsupervised access to a scholarship student.

⁸ Section 1008.22, F.S., Student Assessment Program for Public Schools

⁹ Section 1002.39(8), F.S.

¹⁰ Section 1002.39(10), F.S.

whichever is less. It also provides that the parent of a scholarship recipient is required to restrictively endorse a warrant to the private or alternative school or to the home education program.

Scholarships for Autistic Children

In Florida, a child between the ages of three and 21 years who has Autism Spectrum Disorder is deemed an exceptional student and is eligible for exceptional student education (ESE), i.e., an appropriate program of special instruction, facilities, and services, from his or her district school board.¹¹ Rule defines “Autism Spectrum Disorder” as:

A range of pervasive developmental disorders that adversely affects a student's functioning and results in the need for specially designed instruction and related services. Autism Spectrum Disorder is characterized by an uneven developmental profile and a pattern of qualitative impairments in social interaction, communication, and the presence of restricted repetitive, and/or stereotyped patterns of behavior, interests, or activities. These characteristics may manifest in a variety of combinations and range from mild to severe. Autism Spectrum Disorder may include Autistic Disorder, Pervasive Developmental Disorder Not Otherwise Specified, Aspergers Syndrome, or other related pervasive developmental disorders.¹²

School districts may provide ESE services within the district school system, in cooperation with other district school systems, or through contractual agreements with an approved private school or community facility.¹³

Multiple programs exist for the treatment of children with autism. One program, referred to as Early Intensive Behavioral Intervention (EIBI) provides intensive treatment and training at a very young age when the central nervous system is pliable and most easily affected. Differences between a typical child and one who needs treatment for autism are minimal in young children. With an increased capability to respond to treatment and the behavioral gap at a minimum, young children with autism make greater progress than older children and acquire new skills with increasing complexity. Intensive intervention at a young age has been proven to be cost effective in comparison with long term treatment and care at a later age.¹⁴

The bill expands the McKay Scholarship Program to provide scholarships to the parents of children with autism for purposes of funding home-based EIBI Programs. The term “Autism Spectrum Disorder” is defined by the bill as, “One of the five specific diagnoses enumerated in the DSM-IV for Pervasive Developmental Disorders which are: Autistic Disorder; Asperger's Disorder; Pervasive Developmental Disorder Not Otherwise Specified, Childhood Disintegrative Disorder; and Rett's Disorder.”

Under the bill, the EIBI Program must be:

- Recommended by a physician or the Early Steps Family Support Team for EIBI as the most effective treatment option for the child.
- Planned and regularly supervised by a person who is, at minimum, a Board Certified Behavior Analyst (BCBA).
- Provided in the family home with a weekly schedule of educational activities.

The scholarship may be used to pay for or to reimburse the following:

- Assessment, program planning, staff and parent training, and supervision by the BCBA.

¹¹ Sections 1003.01(3)(a) and 1003.57(1), F.S.

¹² Rule 6A-6.03023, F.A.C.

¹³ Section 1003.57(1)(b), F.S. See also ss. 1001.42(4)(l) and 1002.42(12), F.S.

¹⁴ See http://www.tipo-international.com/int_background.asp?sak=6

- Direct intervention with the child by the BCBA.
- Services of a person who possesses an associate degree or higher and who has completed 15 hours of training in the EIBI Program.
- Training manuals and books and teaching and learning materials essential for establishing and maintaining the EIBI Program.

Additionally, the bill permits a student with autism who is between 14 and 22 years of age and in public school to receive a McKay Scholarship to pay for services provided by a community-based organization for career or life skills preparation. The student is not required to have spent the prior school year in attendance at a Florida public school.

C. SECTION DIRECTORY:

Section 1.: Amends s. 1002.39, F.S.; authorizes McKay Scholarships for home education programs and alternative schools; authorizes McKay Scholarships for all students with a disability, notwithstanding whether they were attending a public school during the preceding school year; permits a scholarship recipient to have regular and direct contact with his or her teacher at any location; requires home education programs and alternative schools participating in the McKay Program to comply with specified accountability requirements; and authorizes McKay scholarships for specified purposes for children with Autism Spectrum Disorder.

Section 2.: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

Current law requires McKay Scholarship recipients to have attended a public school during the preceding school year. As such, these recipients would have previously been reported for FEFP funding purposes and thus, the scholarships do not generate an increased fiscal impact to the state.

The bill is expected to generate an increased fiscal impact for the state because it would authorize a McKay Scholarship for a student with a disability who has not previously been reported for FEFP funding purposes. Additionally, the bill permits the scholarships to fund home education program and alternative school tuition and fees in addition to current law's authorization for the funding of private school tuition and fees.

The bill's fiscal impact is indeterminate because: (a) the number of students with disabilities who did not attend a public school in the past is unknown; and (b) the cost of tuition and fees for a home education program and an alternative school is unknown.

Additionally, the bill provides that McKay Scholarships are available to a child with autism in order to fund an EIBI Program and to fund services provided by a community-based organization that are related to career or life skills preparation when the child is between 14 and 22 years of age and in public school. The bill does not specify a maximum amount for these scholarships and as such, the fiscal impact cannot be determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide financial assistance to parents of: (a) disabled students in home education programs and alternative schools; and (b) autistic children in a home-based EIBI program. The bill will also provide financial assistance to a child with autism for an EIBI Program and for services by a community-based organization that are related to career or life skills preparation.

D. FISCAL COMMENTS:

Please see FISCAL IMPACT ON STATE GOVERNMENT, *supra*.

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:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill expands the types of McKay Scholarships available to include scholarships for a "home education program." Home education programs are authorized, subject to specified requirements, under s. 1002.41, F.S. For clarity, it may be desirable to amend the bill to cross-reference this section.

The bill expands the types of McKay Scholarships available to include scholarships for an "alternative school." This term is not defined in the bill. Current law in s. 1008.341(2), F.S., refers to an alternative school as a public school that provides dropout prevention and academic intervention. Amendment of the bill to define the term "alternative school" may be desirable if it is the intent to refer a different type of school than that described in current law.

The bill provides that disabled children are eligible for a McKay Scholarship although they may not have attended public school during the preceding school year. The bill does not, however, amend current law in s. 1002.39(1), F.S., which requires a disabled child to have had an IEP written for him or her prior to receipt of a McKay Scholarship. If a child has not been served by a public school district, however, it

is unlikely that he or she would have a current IEP. Accordingly, consideration might be given to addressing the situation in the bill.

On line 47, the bill adds the term “diagnosed” to modify the term “disability.” Current law uses the term “documented” to modify the term “disability.” Consideration might be given to amending the bill so that it uses one of the modifiers consistently.

On lines 228-229, the bill requires the Department of Education to conduct site visits to home education programs “... with 7 days’ scheduled notice....” To insure that timely notice is given to the appropriate party, it may be desirable to clarify the bill to provide that such notice will be in writing and provided to the parent via certified mail.

On lines 335-337, the bill requires home education programs and alternative schools to comply with the requirements for private schools under s. 1002.421, F.S. These requirements include having been in operation for three or more years or the posting of a surety bond; the employing of teachers with baccalaureate degrees, three or more years experience teaching in a public or private school, or having special skills, knowledge, or expertise in subjects taught; and requiring background screening for all personnel with direct student contact. Additionally, the bill provides at lines 338-342 that home education programs and alternative schools must provide fee schedules. Compliance with these requirements may be impracticable for an alternative school, depending upon its definition, and may be impossible for a parent operating a home education program. Consequently, it may be desirable to provide specific requirements applicable only to alternative schools and home education programs.

On lines 350-351, the bill removes the requirement in existing law that participating private schools have a physical presence in Florida. Section 1002.421, F.S., remains applicable under the bill and it specifies that private schools participating in the scholarship program must be Florida private schools. It is unclear, however, under the bill as to whether home education programs and alternative schools must be in Florida. If the bill intends to only provide scholarships for in-state schools and programs, it may be desirable to clarify this intent.

The bill provides that McKay Scholarships are available to a child with autism in order to fund an EIBI Program, but does not specify the age range for eligibility, application procedures, or the maximum amount of the scholarships that may be awarded.

The bill provides that McKay Scholarships are available to a public school student with autism who is between 14 and 22 years of age, but does not specify the application procedures or the maximum amount of the scholarships that may be awarded.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES