

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7145      PCB SLC 07-06    Scholarship Programs  
**SPONSOR(S):** Schools & Learning Council and Representative Pickens  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Schools & Learning Council	11 Y, 4 N	Hassell	Cobb
2)			
3)			
4)			
5)			

## SUMMARY ANALYSIS

For the Corporate Income Tax Credit Scholarship (CITC) program, the bill provides “whereas clauses,” legislative findings, and revises the program’s purpose. It further revises the CITC program by:

- Adding that the sibling of a renewing student who lives with the renewing student will be eligible as a first-time CITC recipient as long as the household income does not exceed 200% of Federal Poverty Level.
- Increasing the amount of the scholarship awards available to students in middle and high school.
- Requiring a scholarship funding organization (SFO) to annually expend at least 75%, rather than obligate 100%, of the eligible contributions made in that fiscal year for scholarships.
- Clarifying that a taxpayer who has made or who makes an eligible contribution to a SFO will not lose the tax credit retroactively if a court holds any provision of s. 220.187(5), F.S., unconstitutional.

For the McKay Scholarship Program, the bill:

- Creates an exception to the requirement that a scholarship recipient have regular and direct contact with his or her teacher at the school's physical location. For the exception to apply, the student's doctor must annually provide a sworn statement indicating that the student's welfare or the welfare of other students in the classroom will be jeopardized if he or she is required to attend class at the school's physical location.
- Provides that a student, who received a scholarship in 2005-2007, but who became ineligible because he or she could not meet regular and direct contact requirements, is eligible for a scholarship in the 2007-2008 school year.

The bill does not appear to have a fiscal impact on state or local governments. Please see FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Safeguard individual liberty* – The bill provides parents of low-income students with the continued opportunity to exercise educational choice by increasing scholarship award amounts and by revising provisions related to the income guidelines for siblings. The bill provides parents of students with disabilities whose welfare would be jeopardized if required to regularly attend classes at a school's physical location with the opportunity to continue exercising educational choice.

*Empower families* - The bill benefits low-income families and families of students with disabilities by providing them with the continued opportunity to exercise educational choice.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Corporate Income Tax Credit Scholarship Program**

The 2001 Legislature passed the Corporate Income Tax Credit Scholarship Program<sup>1</sup> (CITC program) with an implementation date of January 1, 2002. The program's purpose is to expand educational opportunities for families that have limited financial resources and enable Florida's children to achieve a greater level of excellence in their education. The 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 under the National School Lunches Act. According to the February 2007 quarterly report by the Florida Department of Education (DOE), there are 926 participating schools and 16,629 scholarship recipients.<sup>2</sup>

The bill contains "whereas clauses" that state generally that the CITC program has: produced substantial cost savings to the state; relieved public school class size; and improved the educational outcomes of both participating students and public schools.

##### Findings and Purpose

The bill includes legislative findings and revises the purpose of the CITC program. The findings provide that the Legislature has the inherent power to determine subjects of taxation for general or particular public purposes. Thus, the Legislature may promote the following valid public purposes: expanding educational opportunities; improving the quality of educational services within the state; and ensuring that parents may exercise and enjoy their basic right to educate their children as they see fit. Further, the legislative findings provide that per-student funding in Florida public schools has risen each year since the inception of programs that provide educational opportunities and that these opportunities are critical to improving Florida's quality of education and ensuring that all children receive the high quality education to which they are entitled.

The bill revises the purpose of the program to enable taxpayers to make private, voluntary contributions to SFOs in order to promote the general welfare and to financially help parents with limited resources exercise their basic right to educate their children as they see fit. Also, the bill provides that the purpose of the CITC program is to improve Florida's quality of education, both by expanding educational opportunities and by creating incentives for schools to achieve excellence.

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<sup>1</sup> Section 220.187, F.S., Credits for contributions to nonprofit scholarship-funding organizations.

<sup>2</sup> [http://www.floridaschoolchoice.org/Information/CTC/quarterly\\_reports.asp](http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports.asp)

## Student Eligibility

A student is eligible for a CITC scholarship if he or she qualifies for free or reduced-price school lunch (FFRL) 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, 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.

Currently, a student is eligible for a renewal scholarship if the student's parent (household) documents that the household income qualifies for 200% of Federal Poverty Level.<sup>3</sup> However, the parent of a sibling add-on, i.e., a new student to the program with a sibling continuing in the program, must document that the household income qualifies for FFRL, i.e., 185% of Federal Poverty Level, in order for the add-on sibling to be eligible for a new scholarship.<sup>4</sup> Consequently, a renewing family that applies to add-on a sibling for participation in the program may meet the renewing income guideline, but may not meet the FFRL income guideline. Thus, the renewing student receives the scholarship to continue participating in the program, but the add-on sibling does not.

Under the bill, the sibling of a renewing student who resides in the same household as the renewing student will be eligible as a first-time CITC scholarship recipient as long as the household income does not exceed 200% of Federal Poverty Level.

## 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:

- \$3,750 for a scholarship awarded to a student for enrollment in an eligible private 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.

SFOs are also required to obtain verification from the private school of the scholarship student's continued attendance prior to each scholarship payment and to make such payments on no less than a quarterly basis.

The tuition charged by a private school often increases from elementary to middle to high school resulting in a difference between the scholarship amount and the price of tuition. The families of the scholarship student are required to pay that difference and if they cannot afford to do so the student cannot attend. The bill revises the amount of the scholarship based on the student's grade level so that

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<sup>3</sup> Additionally, the household must complete the renewal application, must have been actively using the scholarship for the prior school year, must be free of debt to the current private school for the prior school year, and must not have been disqualified by Florida P.R.I.D.E. for any reason, including internal audit process. <http://www.floridapride.org/index.cfm/fuseaction/Parents.Home> (parent handbook)

<sup>4</sup> Additionally, the household must complete the scholarship application, must not have been disqualified by Florida P.R.I.D.E. for any reason, including internal audit process, and must be an enrolling student entering kindergarten or 1<sup>st</sup> grade or entering 2<sup>nd</sup>-12<sup>th</sup> grade and attended a Florida public school for the entire prior school year, by law. By law, students who have been attending a private school if entering 2<sup>nd</sup> grade or higher are not eligible to participate. <http://www.floridapride.org/index.cfm/fuseaction/Parents.Home> (parent handbook)

the amount of the scholarship provided to any child for any single school year may not exceed the following limits:

- \$3,750 for a scholarship awarded to a student enrolled in kindergarten through the fifth grade in an eligible private school.
- \$4,000 for a scholarship awarded to a student enrolled in sixth through eighth grade in an eligible private school.
- \$4,250 for a scholarship awarded to a student enrolled in ninth through twelfth grade in an eligible private school.

### Obligation of SFO

SFOs must provide scholarships from eligible contributions to eligible students for tuition, textbook expenses, or transportation to an eligible private school. The bill adds that eligible students may also use scholarships for registration fees. Also, the bill clarifies that the amount of the scholarship is the maximum allowed by statute<sup>5</sup> or the amount of the private school's textbook expenses and published tuition and registration fees, whichever is less.

Current law requires SFOs to obligate, in the same fiscal year in which the contribution was received, 100% of the eligible contribution to provide annual or partial-year 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. Under the bill, a SFO is no longer required to *obligate* 100% of the contributions; instead, they are required to *expend* at least 75% of the eligible contributions on annual or partial-year scholarships during the fiscal year that the contributions are collected. The bill retains current law authorizing up to 25% of eligible contributions to be carried forward to the succeeding fiscal year.

### Preservation of Tax Credit

The bill clarifies that a taxpayer, who has made or who makes an eligible contribution<sup>6</sup> to a SFO under s. 220.187(5), F.S.,<sup>7</sup> will not lose the tax credit retroactively if a court holds: (a) any provision or portion of s. 220.187(5), F.S., unconstitutional or invalid; or (b) the application of s. 220.187(5), F.S., to any person or circumstance unconstitutional or invalid. Further, the bill specifies that this "preservation of tax credit" provision may never result in the allowance of more than one dollar of credit for each dollar paid to a SFO.

## **The John M. McKay Scholarship for Students with Disabilities**

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 over the entire state. According to the February 2007 quarterly report by the DOE, there are 802 participating schools and 17,844 scholarship recipients.<sup>8</sup>

Current law prohibits scholarship students from receiving funding from more than one scholarship program<sup>9</sup> and makes ineligible a McKay scholarship student that does not have "regular and direct

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<sup>5</sup> Section 220.187(11), F.S., scholarship amount and payment.

<sup>6</sup> Section 220.187(2)(b), F.S., defines eligible contribution to mean a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible nonprofit scholarship funding organization.

<sup>7</sup> Section 220.187(5), F.S., Authorization to Grant Scholarship Funding Tax Credits; Limitations on Individual and Total Credits.

<sup>8</sup> [http://www.floridaschoolchoice.org/Information/McKay/quarterly\\_reports.asp](http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp)

<sup>9</sup> Section 1002.39(3), F.S., provides that a student is ineligible for a McKay scholarship while he or she is: enrolled in a DJJ commitment program; receiving a CITC scholarship or a scholarship under ch. 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; or enrolled in the Florida School for the Deaf and Blind.

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 with occasional off-site activities under the supervision of the private school teacher.”<sup>10</sup> 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, codes, and rules.”<sup>11</sup> Participating private schools are also required to maintain a physical location in Florida where a student regularly attends classes.<sup>12</sup>

Under the “regular and direct contact” requirement, some scholarship recipients became ineligible for participation in the program because they were unable to have that 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 provides an exception to the “regular and direct contact” requirement. For the exception to apply, the student’s primary care physician or a medical doctor or clinical psychologist treating the student’s disability must provide a notarized, sworn statement to the DOE stating that the student’s welfare or the welfare of the other students in the classroom will be jeopardized if the student is required to regularly attend class at the school’s physical location. The student’s doctor must annually review the case and must recertify his or her findings by May 1 to the DOE.

Additionally, the bill allows a student who received a scholarship in the 2005-2006 or 2006-2007 school years, but who was unable to continue participating in the program because he or she could not meet the “regular and direct contact” requirement to be eligible to receive a scholarship for the 2007-2008 school year. The student must provide the sworn statement, discussed above, from his or her doctor.

#### C. SECTION DIRECTORY:

- Section 1.** Amends s. 220.187, F.S.; creates Legislative findings; revises program purpose; clarifies scholarship eligibility for siblings of a renewing student; clarifies SFO requirements to expend eligible contributions received during the fiscal year; allows scholarships to be used for registration fees; revises scholarship amounts; and provides for the preservation of tax credits.
- Section 2.** Amends s. 1002.39, F.S.; revises scholarship ineligibility provision so certain students are excluded from regular and direct contract requirements under specified conditions.
- Section 3.** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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

##### 2. Expenditures:

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<sup>10</sup> Rule 6A-6.03315(1)(c), F.A.C., Private School Scholarship Compliance

<sup>11</sup> Rule 6A-6.03315(1)(d), F.A.C., Private School Scholarship Compliance

<sup>12</sup> Section 1002.39(8)(d), F.S.

The bill does not appear to have a fiscal impact on state expenditures. Please see FISCAL COMMENTS.

**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 increases the permissible scholarship amounts for middle and high school private school recipients; i.e., the scholarships may be as much as \$4,000 for middle school and \$4,250 for high school. Thus, parents of middle and high school scholarship recipients may receive larger financial awards to pay for private school expenses.

The parents of a disabled student, who could not meet the “regular and direct contact” requirements of the McKay Scholarship Program, will be able to receive private school financial assistance under the bill if the student’s doctor certifies that his or her welfare or the welfare of the other will be jeopardized if he or she is required to regularly attend class at the school’s physical location.

**D. FISCAL COMMENTS:**

Currently, the maximum amount of tax credits that may be awarded to taxpayers who make eligible contributions to the CITC Scholarship Program is \$88 million.<sup>13</sup> This bill does not amend this amount and as such, the bill does not impact state revenues or expenditures.

**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:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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<sup>13</sup> Section 220.187(5), F.S.

D. STATEMENT OF THE SPONSOR

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**