

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1325 Education

SPONSOR(S): Attkisson

TIED BILLS: IDEN./SIM. BILLS: SB 2822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Education Innovation & Career Preparation		White	White
2) Schools & Learning Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The bill revises the Corporate Income Tax Credit Scholarship Program by:

- Providing legislative findings and revising the program's purpose.
- Expanding first-time scholarship eligibility to foster care and former juvenile justice students.
- Revising first-time scholarship eligibility criteria for the sibling of a renewing scholarship recipient.
- Deleting provisions that reserve at least one percent of the maximum tax credit for small businesses.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1325.EICP.doc
DATE: 3/12/2008

- Expanding the authorized uses of scholarship funds to include “registration fees” and deleting the requirement that at least 75% of scholarship funding be used for tuition.
- Requiring a scholarship funding organization (SFO) to annually expend at least 75%, rather than obligate 100%, of eligible contributions.
- Increasing the amount of the scholarship awards available to middle and high school students.
- 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.

The bill revises the McKay Scholarships for Students with Disabilities Program by:

- Creating 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.
- Revising the requirements applicable to cross-checks of public school enrollment lists with McKay scholarship recipient lists.

The bill also creates a new program to improve schools receiving a “F” grade. Under this program, the Commissioner of Education, with the assistance of an advisory council, must design a program for such schools’ improvement and must submit this program, along with implementation progress reports, to the Legislature.

The bill may have negative, but currently indeterminate, fiscal impact on state government. Please see FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty-- The bill enhances school choice options by: expanding first-time eligibility for Corporate Income Tax Credit (CITC) scholarships to foster care and former DJJ students; revising the CITC scholarship eligibility provisions for the sibling of a renewing scholarship recipient; increasing CITC scholarship award amounts; and enabling disabled students, whose welfare would be jeopardized if required to regularly attend classes at a school's physical location, to receive a McKay scholarship.

Empower Families-- The bill enhances school choice options by: expanding first-time eligibility for Corporate Income Tax Credit (CITC) scholarships to foster care and former DJJ students; revising the CITC scholarship eligibility provisions for the sibling of a renewing scholarship recipient; increasing CITC scholarship award amounts; and enabling disabled students whose welfare would be jeopardized if required to regularly attend classes at a school's physical location to receive a McKay scholarship.

B. EFFECT OF PROPOSED CHANGES:

Corporate Income Tax Credit Scholarship Program

The 2001 Legislature passed the CITC Program¹ 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 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.²

According to the DOE, \$59.3 million in scholarships were awarded during the 2006-2007 school year to more than 17,800 students. As of February 2008, 20,076 scholarship recipients are enrolled in 910 participating private schools. Eighty-two percent of participating private schools are religious, whereas 18% of such schools are non-religious.³

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

¹ Section 220.187, F.S.

² 42 U.S.C.A. 1758(b)(1).

³ Florida Department of Education, Office of Independent Education and Parental Choice, *Corporate Tax Credit Scholarship Program* (February 2008) available at http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.

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.

Scholarship Eligibility: A student is eligible for a first-time CITC scholarship if he or she qualifies for free or reduced-priced school lunches under the National School Lunch Act,⁴ and:

- Was counted as a full-time student during the previous state Fiscal Year (FY) for purposes of state per-student funding;
- 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.

In order to qualify for free or reduced-priced school lunches, a student's parents must document that their household income does not exceed 185% of Federal Poverty Level.

The bill expands eligibility for CITC scholarships to a student who qualifies for free or reduced-priced school lunches under the National School Lunch Act and who:

- Was counted as a full-time student in a Department of Juvenile Justice (DJJ) education program under s. 1003.52, F.S., at any time during the previous state fiscal year; or
- Is currently placed, or during the previous state FY was placed, in foster care.⁵

The bill's creation of scholarship eligibility for students who have been in DJJ education programs may assist in minimizing school drop-out risks associated with these children. In some cases, due to their delinquent acts, these children have been expelled and cannot return to their home district public school. The scholarships afforded by the bill may provide them with the opportunity to continue their education in a private school near their home.

Further, the bill's creation of scholarship eligibility for students who are or who have been in foster care will provide these students with greater school choice options. Due to the fact that foster care students may live in multiple environments throughout a year,⁶ many cannot meet current law's requirement that they have been counted as a full-time student during the previous state fiscal year. Under the bill, foster care status will either: (a) allow the student to stay in his or her public school despite a residential change to a different school area through a \$500 transportation scholarship; or (b) provide the student with the opportunity to attend a private school.

Sibling Scholarship Eligibility: A CITC scholarship recipient may be eligible for a renewal scholarship, contingent upon available funds, if the student's parents document that their household income does not exceed 200% of the Federal Poverty Level.⁷ In the event a sibling of a scholarship student wishes to qualify for a first-time scholarship, the parents must document that their income does

⁴ Eligibility for free or reduced-price school lunches under the National School Lunch Act is dependent upon the household size and income of a student's family. If the family's income is: (a) equal to or less than 130% of the federal poverty guidelines for the relevant household size, the student is entitled to free lunches; or (b) more than 130%, but equal to or less than 185%, of the federal poverty guidelines for the relevant household size, the student is entitled to reduced-price lunches. See Federal Register, Wednesday, March 15, 2006, Child Nutrition Programs—Income Eligibility Guidelines, U.S. Department of Agriculture, 42 USC 1758(b)(1).

⁵ The income eligibility requirements under the National School Lunch Act provide that a foster child, who is living with a household but who remains the legal responsibility of the welfare agency or court, is considered a household of one. The foster child's personal income that must be considered consists of: (a) funds provided by the welfare agency for the personal use of the child, such as for clothing, school fees, and allowances; and (b) other funds received by the child, such as employment income and money provided by the child's family for personal use. *Eligibility Guidance for School Meals Manual*, U.S. Department of Agriculture, August 2001, p. 29, available at: http://www.fns.usda.gov/cnd/Guidance/eligibility_guidance.pdf.

⁶ Florida Department of Education Bill Analysis for House Bill 465 (2007) at p. 1.

⁷ Additionally, the household must complete the renewal application, 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, and the student must have taken an approved nationally recognized standardized test for students grade 3-10 and must have been actively using the scholarship for the prior school year. See <http://www.floridapride.org/index.cfm/fuseaction=about.Handbook#New> (parent handbook) .

not exceed 185% of the Federal Poverty Level for the sibling's eligibility. Thus, a household's income could meet the renewing scholarship income guideline, but exceed the first-time scholarship income guideline.

Under the bill, the sibling of a renewing scholarship recipient 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.

Scholarship Award Amounts: Current law provides that the amount of the scholarship provided to any child for any single school year by all eligible SFOs may 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.

Private school tuition charges sometimes increase from elementary to middle to high school. If the tuition exceeds the scholarship award amount, the scholarship recipient's family must pay the difference in order for the student to attend the school, unless this difference is waived by the school.

The bill revises the scholarship award amounts so that the maximum amount increases to:

- \$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.

Obligations of the SFO: Current law requires SFOs to provide scholarships from eligible contributions to eligible students for tuition, textbook expenses, or transportation to an eligible private school. SFOs must also 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 bill adds that scholarships may also be used for registration fees. It clarifies that the amount of the scholarship is the maximum allowed by statute⁸ or the amount of the private school's textbook expenses and published tuition and registration fees, whichever is less. Finally, the bill revises the payment verification provisions to provide that a SFO must obtain verification for *each period covered by a scholarship payment*.

Under current law, SFOs are required to obligate, in the same FY 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 FY. 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 FY in which the contributions are collected. The bill retains current law authorizing up to 25% of eligible contributions to be carried forward to the succeeding FY.

Preservation of Tax Credit: The bill clarifies that a taxpayer, who has made or who makes an eligible contribution⁹ to a SFO under s. 220.187(5), F.S.,¹⁰ 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,

⁸ Section 220.187(11), F.S., scholarship amount and payment.

⁹ 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.

¹⁰ Section 220.187(5), F.S., Authorization to Grant Scholarship Funding Tax Credits; Limitations on Individual and Total Credits.

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 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 2008 quarterly report by the DOE, there are 836 participating schools and 19,439 scholarship recipients.¹¹

Regular and Direct Contact: Current law prohibits scholarship students from receiving funding from more than one scholarship program¹² and makes ineligible a McKay scholarship student that does not have “regular and direct contact” with his or her private school teachers at the school’s physical location.¹³ 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.¹⁴ 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.”¹⁵ Participating private schools are also required to maintain a physical location in Florida where a student regularly attends classes.¹⁶

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 Department of Education (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 1st to the DOE.

The bill also provides that student, who received a scholarship in the 2006-2007 or 2007-2008 school years, but who was unable to continue participating because he or she could not meet the “regular and direct contact” requirement, is to be eligible to receive a scholarship for the 2008-2009 school year. The student must provide the sworn statement, discussed above, from his or her doctor.

Finally, the bill requires a private school that enrolls a student under the exemption from regular class attendance discussed above to: notify the DOE of the student; employ a case manager to assist the student and his parent; require each employee or instructor who serves the student to provide documentation of the instruction, services, and progress to the case manager; and ensure that case manager coordinates and monitors the instruction and services received by the student and provides a quarterly progress report to the student’s parent.

¹¹ http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp

¹² 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.

¹³ Section 1002.39(3)(h), F.S.

¹⁴ Rule 6A-6.03315(1)(c), F.A.C.

¹⁵ Rule 6A-6.03315(1)(d), F.A.C.

¹⁶ Section 1002.39(8)(d), F.S.

Cross-Check Requirement: Current law requires the DOE to cross-check McKay scholarship student enrollment lists with public school enrollment lists to ensure there is no duplication prior to each scholarship payment; however, public school enrollment lists are often not available in sufficient time for cross-checks to be completed prior to the September 1st McKay scholarship payment.¹⁷ Thus, scholarship payments could be made before duplication is discovered.

The bill revises the cross-check process by providing that the DOE must complete the cross-check for the September 1st payment no later than 21 days after the school's opening date. It retains current law requiring the cross-check to be completed prior to other scholarship payments. The bill further requires the DOE to notify private schools in writing within seven days following a discovery of duplication. If such notice is received, the private school must respond by either returning the scholarship warrant or documenting the student's attendance at the private school. If the private school fails to respond in the manner required, the Commissioner is authorized to suspend the school's scholarship payments until the school achieves compliance. The private school may appeal the suspension order under s. 1002.39(7)(b), F.S., which provides for administrative review under Chapter 120, the Administrative Procedure Act.

School Improvement Program

The bill creates s. 1008.346, F.S., to establish a new program designed to improve schools failing to make adequate progress based upon the school performance grading categories already in statute. School performance grade designations ("A," "B," "C," "D," and "F") are based upon a combination of student achievement scores, student learning gains (as measured by annual FCAT assessments in grades 3 through 10), and improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT, unless these students are performing at a satisfactory performance level.¹⁸

The new section directs the Commissioner of Education to create a multifaceted program of policies and practices to facilitate the improvement of "F" schools. The program must be submitted to the Legislature by February 1, 2009, and must consist of the following:

- Assessing the extent to which new policies, or enhancements to existing policies, could be used to facilitate improvement of schools over a five-year period of time;
- Creating an advisory committee comprised of teachers, staff, and parents to assist the Commissioner in creating and implementing the new program;
- Requiring the Commissioner to consult with other entities and to report annually to the Governor and presiding officers in the Legislature on the program's implementation; and
- Requiring specific recommendations for legislative action.

The Commissioner of Education, with assistance from the advisory council, is also required to annually notify the parents of students in failing schools of the availability of CITC scholarships if the students qualify for free or reduced-priced school lunches under the National School Lunch Act.

C. SECTION DIRECTORY:

Section 1.: Amending s. 220.187, F.S.; providing legislative findings; revising program purposes; defining the term "parent"; expanding eligibility for CITC scholarships; expanding authorized uses of scholarship funds; increasing certain scholarship amounts; deleting reservation of at least one percent of total tax credit limit for contributing small businesses; revising requirements for verification of scholarship student attendance; and providing for preservation of tax credit under certain circumstances.

¹⁷ Section 1002.39(6)(e), F.S.

¹⁸ s. 1008.34, F.S.

Section 2.: Amending s. 1002.39, F.S.; providing an exception to “regular and direct contact” requirements for McKay scholarship eligibility; and revising cross-check requirements.

Section 3.: Creating s. 1008.346, F.S.; establishing a new program to improve schools receiving a “F” grade; requiring the Commissioner of Education with the assistance of an advisory council to design a program for such schools’ improvement; and requiring submission of this program, and implementation progress reports, to the Legislature.

Section 4.: Providing 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:

The bill increases the maximum scholarship award amounts under the CITC Program for recipients in middle and high school. This increase could result in an indeterminate decrease in the number of CITC scholarships available through the program. State expenditures for full-time equivalent students through the Florida Education Finance Program could increase if fewer students are served by the CITC Program.

The DOE may incur costs to implement the bill’s requirements for a school improvement program for schools receiving a “F” grade. At the time of this staff analysis, a fiscal analysis from the DOE was not yet available. Thus, these costs are currently indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The 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 CITC scholarship amounts for middle and high school scholarship recipients; i.e., the scholarships may up to \$4,000 for middle school students and up to \$4,250 for high school students. Thus, parents of middle and high school scholarship recipients may receive larger financial awards to pay for private school expenses.

A disabled student, who previously 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 he or she satisfies the bill’s exemption requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Due to the bill's amendments to the "regular and direct contact" requirement for a McKay scholarship, the DOE would be required to amend Rule 6A-6.03315, F.A.C., to the extent of its conflict with the bill's new exemption provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Findings: At lines 72-74, the bill adds a finding to the CITC Program statute, s. 220.187, F.S., stating that per-student funding in public schools had increased each year since 1999. Historical data, however, shows a decrease in 2001-2002.

Conflict with CS/HB 653 (2008): On March 7, 2008, the Schools and Learning Council reported HB 653 favorably as a council substitute. CS/HB 653 amends a number of provisions in CITC Program statute, s. 220.187, F.S., in a manner that conflicts with the following provisions of the instant bill: (a) technical drafting differences at lines 115, 122-127, relating to sibling eligibility for scholarships; (b) authorizes scholarship funds to be used for "registration fees" at line 133, whereas CS/HB 653 authorizes "fees"; (c) drafting differences at lines 143-160 as CS/HB 653 adds authorization for SFO administrative expenses, while this bill retains current law prohibiting such expenses; (d) conflicting scholarship award increases at lines 172-180; and (e) technical drafting differences at lines 189-202.

Regular and Direct Contact: The bill provides that a student, who received a scholarship in the 2006-2007 or 2007-2008 school years, but who was unable to continue participation because he or she could not meet the "regular and direct contact" requirement, is eligible to receive a scholarship for the 2008-2009 school year. The "regular and direct contact" requirement became effective in 2006. Accordingly, it appears that students could not have received a scholarship for the 2006-2007 and 2007-2008 school years without being able to meet the "regular and direct contact" requirement.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES