

By Senator Wise

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1 A bill to be entitled
2 An act relating to educational choice; creating s.
3 1002.395, F.S.; establishing the Class Size Grant
4 Program to provide the option to attend a public
5 school other than the one to which a student is
6 assigned, or to provide a class size grant to a
7 private school of choice, for students assigned to
8 classrooms that exceed constitutional class size
9 limits; providing eligibility requirements for receipt
10 of a class size grant; providing restrictions on
11 eligibility; providing for the term of a grant;
12 providing school district, Department of Education,
13 and Commissioner of Education obligations and
14 authority; providing for parental options; providing
15 eligibility requirements and obligations of private
16 schools participating in the program; providing parent
17 and student responsibilities for receipt of a grant;
18 providing for grant funding, reporting, and payment;
19 restricting liability and the expansion of regulatory
20 authority; requiring rulemaking; amending s. 1003.03,
21 F.S.; requiring the department to report on school
22 district implementation of and compliance with the
23 Class Size Grant Program; amending s. 1002.421, F.S.;
24 conforming provisions relating to accountability of
25 private schools participating in state school choice
26 scholarship programs to include the Class Size Grant
27 Program and the class size grant; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Section 1002.395, Florida Statutes, is created
33 to read:

34 1002.395 Class Size Grant Program.—There is established a
35 program to provide a tool for the implementation of s. 1, Art.
36 IX of the State Constitution relating to class size.

37 (1) PROGRAM; GRANTS.—The Class Size Grant Program is
38 established to provide the option to attend a public school
39 other than the one to which a student is assigned, or to provide
40 a grant to a private school of choice, for students assigned to
41 classrooms that exceed the constitutional class size limits as
42 provided in s. 1003.03(1).

43 (2) CLASS SIZE GRANT ELIGIBILITY.—The parent of a public
44 school student assigned to a classroom that exceeds the
45 constitutional class size limits as provided in s. 1003.03(1)
46 may request and receive from the state a class size grant for
47 the child to enroll in and attend a private school in accordance
48 with this section if the parent has obtained acceptance for
49 admission of the student to a private school that is eligible
50 for the program under subsection (8) and has requested from the
51 Department of Education a grant at least 60 days prior to the
52 date of the first grant payment. The request must be through a
53 communication directly to the department in a manner that
54 creates a written or electronic record of the request and the
55 date of receipt of the request. The department must notify the
56 school district of the parent's intent upon receipt of the
57 parent's request.

58 (3) CLASS SIZE GRANT PROHIBITIONS.—A student is not

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59 eligible for a class size grant while he or she is:

60 (a) Enrolled in a school operating for the purpose of
61 providing educational services to youth in Department of
62 Juvenile Justice commitment programs;

63 (b) Receiving a corporate income tax credit scholarship
64 under s. 220.187;

65 (c) Receiving an educational scholarship pursuant to this
66 chapter;

67 (d) Participating in a home education program as defined in
68 s. 1002.01(1);

69 (e) Participating in a private tutoring program pursuant to
70 s. 1002.43;

71 (f) Participating in a virtual school, correspondence
72 school, or distance learning program that receives state funding
73 pursuant to the student's participation unless the participation
74 is limited to no more than two courses per school year;

75 (g) Enrolled in the Florida School for the Deaf and the
76 Blind; or

77 (h) Not having regular and direct contact with his or her
78 private school teachers at the school's physical location.

79 (4) TERM OF CLASS SIZE GRANT.—

80 (a) For purposes of continuity of educational choice, a
81 class size grant shall remain in force until the student returns
82 to a public school or graduates from high school, whichever
83 occurs first.

84 (b) Upon reasonable notice to the department and the school
85 district, the student's parent may remove the student from the
86 private school and place the student in a public school in
87 accordance with this section.

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88 (c) Upon reasonable notice to the department, the student's
89 parent may move the student from one participating private
90 school to another participating private school.

91 (5) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.-

92 (a)1. At the beginning of the school year, a school
93 district shall notify the parent of each student in a classroom
94 that does not meet the constitutional class size limits provided
95 in s. 1003.03(1) of all options available pursuant to this
96 section, inform the parent of the availability of the
97 department's toll-free hotline and Internet website for
98 additional information on class size grants, and offer the
99 student's parent an opportunity to enroll the student in another
100 public school within the district that meets the constitutional
101 class size limits provided in s. 1003.03(1).

102 2. At any point during the school year that a classroom
103 exceeds the constitutional class size limits provided in s.
104 1003.03(1), the school district shall notify the parent of each
105 student in that classroom of all options available pursuant to
106 this section, inform the parent of the availability of the
107 department's telephone hotline and Internet website for
108 additional information on class size grants, and offer the
109 student's parent an opportunity to enroll the student in another
110 public school within the district that meets the constitutional
111 class size limits provided in s. 1003.03(1).

112 3. A parent is not required to accept the offer of
113 enrolling the student in another public school in lieu of
114 requesting a class size grant to a private school. However, if
115 the parent chooses the public school option, the student may
116 continue attending a public school chosen by the parent until

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117 the student graduates from high school.

118 4. If a parent chooses a public school consistent with the
119 district school board's choice plan under s. 1002.31, the school
120 district shall provide transportation to the public school
121 selected by the parent. The parent is responsible for providing
122 transportation to a public school chosen that is not consistent
123 with the district school board's choice plan under s. 1002.31.

124 (b) The parent of a student may choose, as an alternative,
125 to enroll the student in and transport the student to a public
126 school in an adjacent school district that has available space
127 and a classroom that does not exceed the constitutional class
128 size limits provided in s. 1003.03(1), and that school district
129 shall accept the student and report the student for purposes of
130 the district's funding pursuant to the Florida Education Finance
131 Program.

132 (c) For a student who receives a class size grant whose
133 parent requests that the student take the statewide assessments
134 under s. 1008.22, the school district in which the student
135 attends private school shall provide locations and times to take
136 all statewide assessments.

137 (6) DEPARTMENT OF EDUCATION OBLIGATIONS.—The department
138 shall:

139 (a) Establish a toll-free hotline that provides parents and
140 private schools with information on participation in the Class
141 Size Grant Program.

142 (b) Annually verify the eligibility of private schools by
143 meeting the requirements in subsection (8).

144 (c) Establish a process by which individuals may notify the
145 department of any violation by a parent, private school, or

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146 school district of state laws relating to program participation.
147 The department shall conduct an inquiry of any written complaint
148 of a violation of this section, or make a referral to the
149 appropriate agency for an investigation, if the complaint is
150 signed by the complainant and is legally sufficient. A complaint
151 is legally sufficient if it contains ultimate facts that show
152 that a violation of this section or any rule adopted by the
153 State Board of Education has occurred. In order to determine
154 legal sufficiency, the department may require supporting
155 information or documentation from the complainant. A department
156 inquiry is not subject to the requirements of chapter 120.

157 (d) Require an annual, notarized, sworn compliance
158 statement by participating private schools certifying compliance
159 with state laws and shall retain such records.

160 (e) Cross-check the list of participating grant students
161 with the public school enrollment lists prior to each grant
162 payment to avoid duplication.

163 (f) Maintain a list of nationally norm-referenced tests
164 identified for purposes of satisfying the testing requirement in
165 subparagraph (8)(c)2. The tests must meet industry standards of
166 quality in accordance with State Board of Education rule.

167 (g) Select an independent research organization, which may
168 be a public or private entity or university, to which
169 participating private schools must report the scores of
170 participating students on the nationally norm-referenced tests
171 administered by the private school. The independent research
172 organization must annually report to the department on the year-
173 to-year improvements of participating students. The independent
174 research organization must analyze and report student

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175 performance data in a manner that protects the rights of
176 students and parents as mandated in 20 U.S.C. s. 1232g, the
177 Family Educational Rights and Privacy Act, and must not
178 disaggregate data to a level that will disclose the academic
179 level of individual students or of individual schools. To the
180 extent possible, the independent research organization must
181 accumulate historical performance data on students from the
182 department and private schools to describe baseline performance
183 and to conduct longitudinal studies. To minimize costs and
184 reduce time required for third-party analysis and evaluation,
185 the department shall conduct analyses of matched students from
186 public school assessment data and calculate control group
187 learning gains using an agreed-upon methodology outlined in the
188 contract with the third-party evaluator. The sharing of student
189 data must be in accordance with requirements of 20 U.S.C. s.
190 1232g, the Family Educational Rights and Privacy Act, and shall
191 be for the sole purpose of conducting the evaluation. All
192 parties must preserve the confidentiality of such information as
193 required by law.

194 (h)1. Conduct random site visits to private schools
195 participating in the Class Size Grant Program. The sole purpose
196 of the site visits is to verify the information reported by the
197 schools concerning the enrollment and attendance of students,
198 the credentials of teachers, background screening of teachers,
199 and teachers' fingerprinting results, which information is
200 required by rules of the State Board of Education, subsection
201 (8), and s. 1002.421. The department may not make more than
202 three random site visits each year and may not make more than
203 one random site visit each year to the same private school.

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204 2. Annually, by December 15, report to the Governor, the
205 President of the Senate, and the Speaker of the House of
206 Representatives the department's actions with respect to
207 implementing accountability in the grant program under this
208 section and s. 1002.421, any substantiated allegations or
209 violations of law or rule by an eligible private school
210 concerning the enrollment and attendance of students, the
211 credentials of teachers, background screening of teachers, and
212 teachers' fingerprinting results and the corrective action taken
213 by the department.

214 (7) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.-

215 (a) The Commissioner of Education shall deny, suspend, or
216 revoke a private school's participation in the Class Size Grant
217 Program if it is determined that the private school has failed
218 to comply with the provisions of this section. However, if the
219 noncompliance is correctable within a reasonable amount of time
220 and in which the health, safety, or welfare of the students is
221 not threatened, the commissioner may issue a notice of
222 noncompliance which shall provide the private school with a
223 timeframe within which to provide evidence of compliance prior
224 to taking action to suspend or revoke the private school's
225 participation in the grant program.

226 (b) The commissioner's determination is subject to the
227 following:

228 1. If the commissioner intends to deny, suspend, or revoke
229 a private school's participation in the grant program, the
230 department shall notify the private school of such proposed
231 action in writing by certified mail and regular mail to the
232 private school's address of record with the department. The

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233 notification shall include the reasons for the proposed action
234 and notice of the timelines and procedures set forth in this
235 paragraph.

236 2. A private school that is adversely affected by the
237 proposed action shall have 15 days after receipt of the notice
238 of proposed action to file with the department's agency clerk a
239 request for a proceeding pursuant to ss. 120.569 and 120.57. If
240 the private school is entitled to a hearing under s. 120.57(1),
241 the department shall forward the request to the Division of
242 Administrative Hearings.

243 3. Upon receipt of a request referred pursuant to this
244 paragraph, the director of the Division of Administrative
245 Hearings shall expedite the hearing and assign an administrative
246 law judge who shall commence a hearing within 30 days after the
247 receipt of the formal written request by the division and enter
248 a recommended order within 30 days after the hearing or within
249 30 days after receipt of the hearing transcript, whichever is
250 later. Each party shall be allowed 10 days in which to submit
251 written exceptions to the recommended order. A final order shall
252 be entered by the agency within 30 days after the entry of a
253 recommended order. The provisions of this subparagraph may be
254 waived upon stipulation by all parties.

255 (c) The commissioner may immediately suspend payment of
256 grant funds if it is determined that there is probable cause to
257 believe that there is:

258 1. An imminent threat to the health, safety, or welfare of
259 the students; or

260 2. Fraudulent activity on the part of the private school.
261 Notwithstanding s. 1002.22(3), in incidents of alleged

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262 fraudulent activity pursuant to this section, the Department of
263 Education's Office of Inspector General is authorized to release
264 personally identifiable records or reports of students to the
265 following persons or organizations:

266 a. A court of competent jurisdiction in compliance with an
267 order of that court or the attorney of record in accordance with
268 a lawfully issued subpoena, consistent with the Family
269 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

270 b. A person or entity authorized by a court of competent
271 jurisdiction in compliance with an order of that court or the
272 attorney of record pursuant to a lawfully issued subpoena,
273 consistent with the Family Educational Rights and Privacy Act,
274 20 U.S.C. s. 1232g.

275 c. Any person, entity, or authority issuing a subpoena for
276 law enforcement purposes when the court or other issuing agency
277 has ordered that the existence or the contents of the subpoena
278 or the information furnished in response to the subpoena not be
279 disclosed, consistent with the Family Educational Rights and
280 Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

281
282 The commissioner's order suspending payment pursuant to this
283 paragraph may be appealed pursuant to the same procedures and
284 timelines as the notice of proposed action set forth in
285 paragraph (b).

286 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—To be
287 eligible to participate in the Class Size Grant Program, a
288 private school may be sectarian or nonsectarian and must:

289 (a) Comply with all requirements for private schools
290 participating in state school choice scholarship programs

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291 pursuant to s. 1002.421.

292 (b) Provide to the department all documentation required
293 for a student's participation, including the private school's
294 and student's fee schedules, at least 30 days before the first
295 quarterly grant payment is made for the student.

296 (c) Be academically accountable to the parent for meeting
297 the educational needs of the student by:

298 1. At a minimum, annually providing to the parent a written
299 explanation of the student's progress.

300 2. Annually administering or making provision for students
301 participating in the grant program to take one of the nationally
302 norm-referenced tests identified by the department. Students
303 with disabilities for whom standardized testing is not
304 appropriate are exempt from this requirement. A participating
305 private school must report a student's scores to the parent and
306 to the independent research organization selected by the
307 department as described in paragraph (6)(g).

308 3. Cooperating with the grant student whose parent chooses
309 that the student participate in the statewide assessments
310 pursuant to s. 1008.22.

311 (d) Maintain in this state a physical location where a
312 grant student regularly attends classes.

313 (9) PARENT AND STUDENT RESPONSIBILITIES.—

314 (a) A parent must select the private school and apply for
315 the admission of his or her child.

316 (b) A parent must have requested the grant at least 60 days
317 prior to the date of the first grant payment.

318 (c) Any student participating in the Class Size Grant
319 Program must remain in attendance throughout the school year

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320 unless excused by the school for illness or other good cause.

321 (d) Each parent and each student has an obligation to the
322 private school to comply with the private school's published
323 policies.

324 (e) If the parent requests that the student take all
325 statewide assessments required pursuant to s. 1008.22, the
326 parent is responsible for transporting the student to the
327 assessment site designated by the school district.

328 (f) Upon receipt of a grant warrant, the parent to whom the
329 warrant is made must restrictively endorse the warrant to the
330 private school for deposit into the account of the private
331 school. The parent may not designate any entity or individual
332 associated with the participating private school as the parent's
333 attorney in fact to endorse a grant warrant. A participant who
334 fails to comply with this paragraph forfeits the grant.

335 (10) GRANT FUNDING, REPORTING, AND PAYMENT.—

336 (a) The amount of a grant provided to a student for any
337 single school year shall be calculated by the department and
338 must be equal to 75 percent of the annual average statewide
339 funding per student in the Florida Education Finance Program or
340 the private school's tuition and fees, whichever is less.

341 (b) A school district shall report all students who are
342 attending a private school under the Class Size Grant Program.
343 The students attending private schools on class size grants
344 shall be reported separately from other students reported for
345 purposes of the Florida Education Finance Program.

346 (c) Following notification on July 1, September 1, December
347 1, or February 1 of the number of program participants, the
348 department shall transfer, from general revenue funds only, the

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349 amount calculated under paragraph (a) from the school district's
350 total funding entitlement under the Florida Education Finance
351 Program and from authorized categorical accounts to a separate
352 account for the grant program for quarterly disbursement to the
353 parents of participating students. When a student enters the
354 grant program, the department must receive all documentation
355 required for the student's participation, including the private
356 school's and student's fee schedules, at least 30 days before
357 the first quarterly grant payment is made for the student.

358 (d) Upon notification by the department that it has
359 received the documentation required under paragraph (c), the
360 Chief Financial Officer shall make grant payments in four equal
361 amounts no later than September 1, November 1, February 1, and
362 April 1 of each academic year in which the grant is in force.
363 The initial payment shall be made after department verification
364 of admission acceptance, and subsequent payments shall be made
365 upon verification of continued enrollment and attendance at the
366 private school. Payment must be by individual warrant made
367 payable to the student's parent and mailed by the department to
368 the private school of the parent's choice, and the parent shall
369 restrictively endorse the warrant to the private school for
370 deposit into the account of the private school.

371 (e) Subsequent to each grant payment, the department shall
372 request from the Department of Financial Services a sample of
373 endorsed warrants to review and confirm compliance with
374 endorsement requirements.

375 (11) LIABILITY.—No liability shall arise on the part of the
376 state based on the award or use of a class size grant.

377 (12) SCOPE OF AUTHORITY.—The inclusion of eligible private

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378 schools within options available to Florida public school
379 students does not expand the regulatory authority of the state,
380 its officers, or any school district to impose any additional
381 regulation of private schools beyond those reasonably necessary
382 to enforce requirements expressly set forth in this section.

383 (13) RULES.—The State Board of Education shall adopt rules
384 pursuant to ss. 120.536(1) and 120.54 to administer this
385 section.

386 Section 2. Paragraph (d) is added to subsection (4) of
387 section 1003.03, Florida Statutes, to read:

388 1003.03 Maximum class size.—

389 (4) ACCOUNTABILITY.—

390 (d) Beginning in the 2009-2010 school year, the department
391 shall annually report by January 15 to the President of the
392 Senate and the Speaker of the House of Representatives on school
393 district implementation of and compliance with the Class Size
394 Grant Program established under s. 1002.395.

395 Section 3. Subsections (1) and (4) of section 1002.421,
396 Florida Statutes, are amended to read:

397 1002.421 Accountability of private schools participating in
398 state school choice scholarship programs.—

399 (1) A Florida private school participating in the Corporate
400 Income Tax Credit Scholarship Program established pursuant to s.
401 220.187 or an educational scholarship program established
402 pursuant to this chapter must comply with all requirements of
403 this section in addition to private school requirements outlined
404 in s. 1002.42, specific requirements identified within
405 respective scholarship program laws, and other provisions of
406 Florida law that apply to private schools. For purposes of this

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407 section, the terms "scholarship program" and "scholarship"
408 include the Class Size Grant Program and the class size grant
409 established under s. 1002.395.

410 (4) A private school that accepts scholarship students
411 under s. 220.187, ~~or~~ s. 1002.39, or s. 1002.395 must:

412 (a) Disqualify instructional personnel and school
413 administrators, as defined in s. 1012.01, from employment in any
414 position that requires direct contact with students if the
415 personnel or administrators are ineligible for such employment
416 under s. 1012.315.

417 (b) Adopt policies establishing standards of ethical
418 conduct for instructional personnel and school administrators.
419 The policies must require all instructional personnel and school
420 administrators, as defined in s. 1012.01, to complete training
421 on the standards; establish the duty of instructional personnel
422 and school administrators to report, and procedures for
423 reporting, alleged misconduct by other instructional personnel
424 and school administrators which affects the health, safety, or
425 welfare of a student; and include an explanation of the
426 liability protections provided under ss. 39.203 and 768.095. A
427 private school, or any of its employees, may not enter into a
428 confidentiality agreement regarding terminated or dismissed
429 instructional personnel or school administrators, or personnel
430 or administrators who resign in lieu of termination, based in
431 whole or in part on misconduct that affects the health, safety,
432 or welfare of a student, and may not provide the instructional
433 personnel or school administrators with employment references or
434 discuss the personnel's or administrators' performance with
435 prospective employers in another educational setting, without

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436 disclosing the personnel's or administrators' misconduct. Any
437 part of an agreement or contract that has the purpose or effect
438 of concealing misconduct by instructional personnel or school
439 administrators which affects the health, safety, or welfare of a
440 student is void, is contrary to public policy, and may not be
441 enforced.

442 (c) Before employing instructional personnel or school
443 administrators in any position that requires direct contact with
444 students, conduct employment history checks of each of the
445 personnel's or administrators' previous employers, screen the
446 personnel or administrators through use of the educator
447 screening tools described in s. 1001.10(5), and document the
448 findings. If unable to contact a previous employer, the private
449 school must document efforts to contact the employer.

450
451 The department shall suspend the payment of funds under ss.
452 220.187, ~~and~~ 1002.39, and 1002.395 to a private school that
453 knowingly fails to comply with this subsection, and shall
454 prohibit the school from enrolling new scholarship students, for
455 1 fiscal year and until the school complies.

456 Section 4. This act shall take effect July 1, 2009.