

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

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28 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

56 (3) CLASS SIZE GRANT PROHIBITIONS.--A student is not  
57 eligible for a class size grant while he or she is:

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

61 (b) Receiving a corporate income tax credit scholarship  
62 under s. 220.187;

63 (c) Receiving an educational scholarship pursuant to this  
64 chapter;

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

67 (e) Participating in a private tutoring program pursuant  
68 to s. 1002.43;

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

73 (g) Enrolled in the Florida School for the Deaf and the  
74 Blind; or

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

77 (4) TERM OF CLASS SIZE GRANT.--

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

82 (b) Upon reasonable notice to the department and the  
83 school district, the student's parent may remove the student

84 from the private school and place the student in a public school  
85 in accordance with this section.

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

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

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

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

110 3. A parent is not required to accept the offer of  
111 enrolling the student in another public school in lieu of

HB 999

2009

112 requesting a class size grant to a private school. However, if  
113 the parent chooses the public school option, the student may  
114 continue attending a public school chosen by the parent until  
115 the student graduates from high school.

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

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

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

135 (6) DEPARTMENT OF EDUCATION OBLIGATIONS.--The department  
136 shall:

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

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

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

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

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

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

165       (g) Select an independent research organization, which may  
166 be a public or private entity or university, to which  
167 participating private schools must report the scores of

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

192 (h)1. Conduct random site visits to private schools  
193 participating in the Class Size Grant Program. The sole purpose  
194 of the site visits is to verify the information reported by the  
195 schools concerning the enrollment and attendance of students,

HB 999

2009

196 the credentials of teachers, background screening of teachers,  
197 and teachers' fingerprinting results, which information is  
198 required by rules of the State Board of Education, subsection  
199 (8), and s. 1002.421. The department may not make more than  
200 three random site visits each year and may not make more than  
201 one random site visit each year to the same private school.

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

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

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



HB 999

2009

224 (b) The commissioner's determination is subject to the  
225 following:

226 1. If the commissioner intends to deny, suspend, or revoke  
227 a private school's participation in the grant program, the  
228 department shall notify the private school of such proposed  
229 action in writing by certified mail and regular mail to the  
230 private school's address of record with the department. The  
231 notification shall include the reasons for the proposed action  
232 and notice of the timelines and procedures set forth in this  
233 paragraph.

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

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

251 recommended order. The provisions of this subparagraph may be  
252 waived upon stipulation by all parties.

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

256 1. An imminent threat to the health, safety, or welfare of  
257 the students; or

258 2. Fraudulent activity on the part of the private school.  
259 Notwithstanding s. 1002.22(3), in incidents of alleged  
260 fraudulent activity pursuant to this section, the Department of  
261 Education's Office of Inspector General is authorized to release  
262 personally identifiable records or reports of students to the  
263 following persons or organizations:

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

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

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

279  
280 The commissioner's order suspending payment pursuant to this  
281 paragraph may be appealed pursuant to the same procedures and  
282 timelines as the notice of proposed action set forth in  
283 paragraph (b).

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

287 (a) Comply with all requirements for private schools  
288 participating in state school choice scholarship programs  
289 pursuant to s. 1002.421.

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

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

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

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

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

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

311 (9) PARENT AND STUDENT RESPONSIBILITIES.--

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

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

316 (c) Any student participating in the Class Size Grant  
317 Program must remain in attendance throughout the school year  
318 unless excused by the school for illness or other good cause.

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

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

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

333 (10) GRANT FUNDING, REPORTING, AND PAYMENT.--

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

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

344       (c) Following notification on July 1, September 1,  
345 December 1, or February 1 of the number of program participants,  
346 the department shall transfer, from general revenue funds only,  
347 the amount calculated under paragraph (a) from the school  
348 district's total funding entitlement under the Florida Education  
349 Finance Program and from authorized categorical accounts to a  
350 separate account for the grant program for quarterly  
351 disbursement to the parents of participating students. When a  
352 student enters the grant program, the department must receive  
353 all documentation required for the student's participation,  
354 including the private school's and student's fee schedules, at  
355 least 30 days before the first quarterly grant payment is made  
356 for the student.

357       (d) Upon notification by the department that it has  
358 received the documentation required under paragraph (c), the  
359 Chief Financial Officer shall make grant payments in four equal  
360 amounts no later than September 1, November 1, February 1, and  
361 April 1 of each academic year in which the grant is in force.

362 The initial payment shall be made after department verification  
 363 of admission acceptance, and subsequent payments shall be made  
 364 upon verification of continued enrollment and attendance at the  
 365 private school. Payment must be by individual warrant made  
 366 payable to the student's parent and mailed by the department to  
 367 the private school of the parent's choice, and the parent shall  
 368 restrictively endorse the warrant to the private school for  
 369 deposit into the account of the private school.

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

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

376 (12) SCOPE OF AUTHORITY.--The inclusion of eligible  
 377 private schools within options available to Florida public  
 378 school students does not expand the regulatory authority of the  
 379 state, its officers, or any school district to impose any  
 380 additional regulation of private schools beyond those reasonably  
 381 necessary to enforce requirements expressly set forth in this  
 382 section.

383 (13) RULES.--The State Board of Education shall adopt  
 384 rules 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  
 398 in state school choice scholarship programs.--

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



HB 999

2009

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.