

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 5103      PCB CIS 14-02      Florida Personal Learning Account Program

**SPONSOR(S):** Choice & Innovation Subcommittee, Bileca

**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Choice & Innovation Subcommittee	11 Y, 2 N	Beagle	Fudge
1) Education Appropriations Subcommittee	7 Y, 4 N, As CS	Seifert	Heflin
2) Appropriations Committee			

### SUMMARY ANALYSIS

The bill conforms statute to the funding decisions in the 2014-2015 General Appropriations Act (GAA) and addresses issues relating to the education system.

The bill establishes the Florida Personal Learning Account program (account) to provide parents of students with disabilities more flexibility to customize their child's education. To be eligible for an account, a student must:

- Be a Florida resident;
- Be eligible to enroll in kindergarten through 5<sup>th</sup> grade or have received an account in the previous year;
- Be identified as having autism, cerebral palsy, down syndrome, an intellectual disability, Prader-Willi syndrome, or Spina bifida, or for a student in kindergarten, as a high-risk child; and
- Have an individual educational plan (IEP) and be eligible for Florida Education Finance Program (FEFP) matrix support levels IV or V.

The parent must select educational services for the student, pay for the services "up front," and request reimbursement for services from the account. Parents may be reimbursed for educational services from a private school, specialized instructional services, private tutoring, virtual education, curriculum, educational evaluations, therapy services, and the \$25 application fee charged by the scholarship funding organization (SFO) that administers the account.

Account funding is calculated using the same calculation as the John M. McKay Scholarships for Students with Disabilities Program. In order to enable the Department of Education (DOE) to calculate funding for a student's account, the student's school district of residence must report him or her for FEFP funding. DOE calculates funding for the student and then transfers the funding quarterly to an SFO. The SFO must maintain separate accounts for each eligible student, verify qualifying expenditures, and reimburse the parent for eligible services provided to the student. When requesting reimbursement for services, the parent must submit receipts or other relevant supporting documentation and an affidavit stating compliance with expenditure requirements.

Specialized instructional service providers must be approved by DOE. Private schools selected by the parent to deliver educational services to the student must be participating in a state school choice scholarship program. Each participating student's educational progress must be evaluated annually in a manner that is similar to the home education law. SFOs are audited annually and must submit quarterly reports to DOE.

Additionally, the bill repeals statutory provisions authorizing the issuance of a special high school diploma to students with disabilities.

The estimated state funding impact is \$8.8 million, which is provided in the FEFP in the House proposed GAA. See Fiscal Analysis & Economic Impact Statement.

The bill takes effect July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Education of Students with Disabilities**

The federal Individuals with Disabilities Education Act provides (IDEA) grants to assist states in providing a free appropriate public education (FAPE) to all children with disabilities residing in the state aged three to 21.<sup>1</sup> A FAPE must include special education services that are provided by the public school system at no cost to the parent, which meet the standards of the state and are in conformity with the student's individual educational plan (IEP).<sup>2</sup>

The IDEA requires states to have policies and procedures in place to identify, locate, and evaluate all children with disabilities in the state who need special education and related services. These policies and procedures are known as "child find." State child find activities must include policies for identifying not only public school children, but also homeless, migrant, and private school children with disabilities.<sup>3</sup>

In Florida, children with disabilities are referred to as exceptional students. The disabilities that qualify a student as exceptional are an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic or other health impairment; a traumatic brain injury; a visual impairment; an emotional or behavioral disability; a specific learning disability, including dyslexia, dyscalculia, or developmental aphasia; deafness, hard of hearing, or dual sensory impairment; or developmental delays from birth through five years old or if the student is hospitalized or homebound.<sup>4</sup>

Special education services are specially designed instruction and related services necessary for an exceptional student to benefit from education. Such services may include transportation; diagnostic and evaluation services; social services; physical and occupational therapy; speech and language pathology services; job placement; orientation and mobility training; braillists, typists, and readers for the blind; interpreters and auditory amplification; services provided by a certified listening and spoken language specialist; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other such services identified in State Board of Education rules.<sup>5</sup>

Students may be referred for an evaluation for exceptional student education (ESE) services by their parents or by school staff and evaluations must be completed within 60 days of such referral.<sup>6</sup> With few exceptions,<sup>7</sup> prior to referring a student for evaluation as a student with a disability, school districts must conduct classroom observations; vision and hearing screenings; review anecdotal, social, psychological, medical, and achievement data; and use a problem solving/response to instruction or intervention (PS/RtI) method to develop and implement evidenced based general education interventions to address the student's academic or behavioral issues.<sup>8</sup> If the school-based team determines that general education interventions are not sufficiently effective, a referral for evaluation is made. A student may not be evaluated for ESE eligibility without the prior informed consent of the parent. A team of professionals and the student's parent (i.e., eligibility staffing committee) review the

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<sup>1</sup> 20 U.S.C. s.1400 et. seq., *as amended* by P.L. 108-446; 34 C.F.R. s. 300.17.

<sup>2</sup> 34 C.F.R. s. 300.17 and 34 C.F.R. s. 300.34 (a); rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

<sup>3</sup> 34 C.F.R. ss. 300.111, 300.131, and 303.321.

<sup>4</sup> Sections 1003.01(3)(a) and 1003.21(1)(e), F.S.

<sup>5</sup> Section 1003.01(3)(b), F.S.

<sup>6</sup> Section 1003.57(1)(c), F.S.; rule 6A-6.0331(3), F.A.C.

<sup>7</sup> For children below mandatory school attendance age and who are not yet enrolled in kindergarten, the general education intervention requirements are not applicable. However, these children are required to have existing social, psychological, and medical data reviewed with a health screening, if necessary; and vision and hearing screenings are required to rule out sensory deficits. Additional screenings may be conducted, if warranted. Rule 6A-6.0331(2), F.A.C.

<sup>8</sup> Rule 6A-6.0331(1), (3), and (6), F.A.C.

evaluation results to determine if the student meets the requirements for eligibility under one or more state board rules and if there is evidence of a need for special education and related services.<sup>9</sup>

If a student is found eligible for an ESE program, an IEP is developed for the student.<sup>10</sup> An IEP team must meet to develop a plan to address the student's needs.<sup>11</sup> The multidisciplinary team includes school and district staff, and other experts who have knowledge or expertise regarding the student, if necessary.<sup>12</sup> Parents also participate in the development of the plans, which may not be implemented until the parent provides consent for initial placement in the ESE program.<sup>13</sup> The IEP must be completed within 30 calendar days following the determination of a student's eligibility for special education services.<sup>14</sup> An IEP must be reviewed at least annually, and may be revised if necessary.<sup>15</sup>

A FAPE must be provided in the least restrictive environment (LRE). To be in compliance with the LRE requirement, states must educate students with disabilities with their nondisabled peers to the maximum extent appropriate. Special classes, special schooling, or other removal of the student from the regular education environment should only occur if the nature and severity of his or her disability is such that an appropriate education in regular classes cannot be achieved satisfactorily.<sup>16</sup> IDEA authorizes instruction to be provided in one or more of the following settings:

- Regular class.
- Special class.
- Special day school or residential school.
- Special class in a hospital or facility operated by a noneducational agency.
- Individual instruction in a hospital.
- Home instruction.<sup>17</sup>

The LRE must be considered during the development of the student's IEP.<sup>18</sup>

### **Funding for Students with Disabilities**

Services for exceptional education students are funded primarily through the Florida Education Finance Program (FEFP) using basic funding, an ESE Guaranteed Allocation, and two weighted cost factors. FEFP funds are calculated by multiplying the number of full-time equivalent (FTE) students in each of the funded education programs by the cost factors to obtain weighted FTE students. Weighted FTE students are then multiplied by a base student allocation and by a district cost differential. Program cost factors are determined by the Legislature and represent relative cost differences among the FEFP programs. Generally speaking, funding generated by a particular exceptional student reflects the severity of his or her disability and resulting educational needs.<sup>19</sup>

Exceptional education cost factors are determined by using a matrix of services to document the services that each exceptional student will receive. In order to generate funds using one of the two weighted cost factors, a matrix of services must be completed at the time of the student's initial placement into an ESE program and at least once every three years.<sup>20</sup> The program cost factors for exceptional students for use in the 2013-14 fiscal year are:

- Kindergarten and Grades 1, 2 and 3 with ESE Services -- cost factor 1.125.

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<sup>9</sup> Rule 6A-6.0331(3)-(6), F.A.C.

<sup>10</sup> Rule 6A-6.03028(3), F.A.C.

<sup>11</sup> Rules 6A-6.03028(3), F.A.C.

<sup>12</sup> Rules 6A-6.03028(3)(c), F.A.C.

<sup>13</sup> Rule 6A-6.0331(4) and (9), F.A.C.

<sup>14</sup> Rule 6A-6.03028(3)(f), F.A.C.

<sup>15</sup> Rule 6A-6.03028(3)(j), F.A.C.

<sup>16</sup> 34 C.F.R. s. 300.114(a)(2); s. 1003.57(1)(a), F.S.; rule 6A-6.03028(3)(i), F.A.C.

<sup>17</sup> 34 C.F.R. ss. 300.103, 300.104, 300.114, 300.115, and 300.116; s. 1003.57(1)(a), F.S.; rule 6A-6.03028(3)(i), F.A.C.

<sup>18</sup> *L.G. et.al. v. School Bd. Of Palm Beach County, Fla.*, 512 F. Supp.2d 1240, 1247-1249 (S.D. Fla. 2007).

<sup>19</sup> Section 1011.62(1), F.S.; Florida Department of Education, 2013-14 Funding for Florida School Districts, at 1, 13-14, and 19 (2013), available at <http://www.fldoe.org/fefp/pdf/fefpdist.pdf> [hereinafter 2013-14 Funding for Florida School Districts].

<sup>20</sup> Section 1011.62(1)(e)a.-b., F.S.

- Grades 4, 5, 6, 7 and 8 with ESE Services -- cost factor 1.000.
- Grades 9, 10, 11 and 12 with ESE Services -- cost factor 1.011.
- Support Level IV -- cost factor 3.558.
- Support Level V -- cost factor 5.089.<sup>21</sup>

ESE services for students below support levels IV and V are considered basic programs and are assigned the same cost factor weighting as regular education students. These students generate FTE funding using the appropriate basic program weight for their grade level and the ESE Guaranteed Allocation provides for the additional services needed by these students. Students funded at support levels IV and V have more severe disabilities and, therefore, receive greater weighting.<sup>22</sup>

## McKay Scholarship Funding

The John M. McKay Scholarships for Students with Disabilities Program (McKay Program) provides scholarships for eligible students with disabilities to attend an eligible public or private school of their choice.<sup>23</sup> The maximum scholarship granted for an eligible student is equivalent to the base student allocation in the FEFP multiplied by the appropriate cost factor for the educational program that would have been provided for the student in the district school to which he or she was assigned, multiplied by the district cost differential. In addition, a share of the ESE guaranteed allocation is added to this amount based on the calculation for the ESE guaranteed allocation provided in the 2000 General Appropriations Act. The calculation is based upon the student's grade level, matrix level of services, and the difference between the FY 2000-2001 basic program and the appropriate level of services cost factor, multiplied by the FY 2000-2001 base student allocation and the FY 2000-2001 district cost differential for the sending district. The calculated amount includes the per-student share of supplemental academic instruction funds, instructional materials funds, technology funds, and other categorical funds. The calculation is based upon the school district in which the parent resides at the time of the scholarship request.<sup>24</sup>

Each student's scholarship is either the calculated amount or the amount of the private school's tuition and fees, whichever is less.<sup>25</sup> Each school district must report scholarship recipients attending a private school to DOE, separately from other students.<sup>26</sup> DOE must transfer, from General Revenue funds only, the applicable scholarship amount from the school district's total FEFP funding entitlement and categorical accounts to a separate account for the scholarship program for quarterly disbursement (on July 1, September 1, December 1, or February 1) to the parents of participating students.<sup>27</sup>

Parents of students entering the scholarship program must submit to DOE all documentation required for the student's participation, including the private school's and the student's fee schedules, at least 30 days before the first quarterly scholarship payment is made for the student.<sup>28</sup> Upon notification from DOE that this documentation has been received, the Chief Financial Officer must make scholarship payments in four equal amounts no later than the quarterly transfer dates. The initial payment is made after DOE verification of admission acceptance, and subsequent payments are made upon verification of continued enrollment and attendance at the private school. Payment must be by individual warrant made payable to the student's parent and mailed by DOE to the private school of the parent's choice, and the parent must restrictively endorse the warrant to the private school for deposit into the account of the private school.<sup>29</sup> Subsequent to each scholarship payment, DOE must request from the

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<sup>21</sup> Section 1011.62(1)(c) and (e), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 1002.39(1), F.S.

<sup>24</sup> Section 1002.39(10)(a), F.S. Until the school district completes the matrix of services, the calculation is based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year. When the school district completes the matrix, the amount of the payment is adjusted as needed. The scholarship amount for a student eligible under s. 504 of the Rehabilitation Act of 1973 is based upon the student's existing FEFP program cost factor. *Id.*

<sup>25</sup> Section 1002.39(10)(b), F.S. The amount of any assessment fee required by the participating private school may be paid from the total amount of the scholarship. *Id.*

<sup>26</sup> Section 1002.39(10)(c), F.S.

<sup>27</sup> Section 1002.39(10)(d), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 1002.39(10)(e), F.S.

Department of Financial Services a sample of endorsed warrants to review and confirm compliance with endorsement requirements.<sup>30</sup>

## Scholarship Funding Organizations

The Florida Tax Credit Scholarship Program (FTC Program)<sup>31</sup> was established to encourage taxpayers to make private, voluntary contributions to non-profit scholarship-funding organizations (SFOs); 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.<sup>32</sup> The FTC Program provides a tax credit to taxpayers that contribute to SFOs. SFOs use these contributions to award scholarships to eligible low-income students for private school tuition and fees or transportation expenses to a Florida public school located outside of the school district in which the student resides.<sup>33</sup>

Eligible nonprofit SFOs are charitable organizations that are exempt from the federal income tax<sup>34</sup> with their principal offices located within the state. Florida law specifies several ethical and accountability requirements for SFOs. Among other things, SFOs must:

- Comply with federal law<sup>35</sup> prohibiting discrimination based on race, color, or national origin by any program receiving federal financial assistance.
- Require owners and operators to submit to a Level 2 background screening<sup>36</sup> upon employment or engagement of services and every five years thereafter. Owners or operators that fail the Level 2 background screening are ineligible to provide scholarships.
- Not own or operate a private school that is participating in the FTC Program.
- Not restrict or reserve scholarships for use at a particular private school or provide a scholarship to the child of an owner or operator.
- Maintain separate accounts for scholarship and operating funds.
- Provide the Auditor General and DOE with an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant.
- Prepare and submit quarterly reports to DOE.<sup>37</sup>

Step Up for Students is currently the only SFO authorized to award FTC scholarships. DOE has approved A.A.A. Scholarship Foundation, Life is Energy Scholarship Foundation, and Rotary Club of Spring Hill Scholarship Fund to begin funding scholarships in the the 2014-15 school year.<sup>38</sup>

## Home Education Student Evaluations

Among other things, the parent of a student enrolled in a home education program must keep a log of educational instruction and services that is made contemporaneously with delivery of the instruction and services and samples of any writings, worksheets, workbooks, or creative materials used or developed by the student. The portfolio must be preserved by the parent for two years and made available for inspection by the district school superintendent, or designee, upon 15 days' written notice.<sup>39</sup>

Additionally, the parent of a home education student must provide for an annual educational evaluation which documents the student's demonstration of educational progress at a level commensurate with his or her ability, which may include:

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<sup>30</sup> Section 1002.39(10)(f), F.S.

<sup>31</sup> Section 1002.395, F.S.

<sup>32</sup> Section 1002.395(1)(b), F.S.

<sup>33</sup> Section 1002.395(3), (5), and (6)(d), F.S. An eligible contribution is a monetary contribution from a taxpayer to an eligible nonprofit SFO. The taxpayer may not designate a specific child as the beneficiary of the contribution. Section 1002.395(2)(e), F.S.

<sup>34</sup> Section 1002.395(2)(f), F.S.; *see* 26 U.S.C. s. 501(c)(3) and chs. 607, 608, and 617, F.S.

<sup>35</sup> *See* 42 U.S.C. s. 2000d.

<sup>36</sup> Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 offenses. *See* s. 435.04, F.S.

<sup>37</sup> Section 1002.395(6)(a)-(n), F.S.

<sup>38</sup> Florida Department of Education, *FTC Program Scholarship Funding Organizations*, <https://www.floridaschoolchoice.org/Information/ctc/SFO.asp> (last visited March 6, 2014).

<sup>39</sup> Section 1002.41(1)(b), F.S.

- Evaluation of the student's work portfolio by a certified teacher selected by the parent;
- Any nationally normed student achievement test administered by a certified teacher;
- A statewide, standardized assessment administered by a certified teacher, at a location and under testing conditions approved by the school district;
- Evaluation by a licensed psychologist or school psychologist; or
- Any other valid measurement tool mutually agreed upon by the district school superintendent of the district in which the student resides and the student's parent.<sup>40</sup>

The district school superintendent must review and accept the results of the annual educational evaluation. If a student fails to make educational progress, the superintendent must notify his or her parent in writing. The parent has one year from the date of receipt of such notice to provide remedial instruction to the student. If the student, upon reevaluation, does not demonstrate educational progress at the end of the probationary period, the home education program must be discontinued.<sup>41</sup>

### **Regular School Attendance**

The law requires all children who have attained the age of six years or who will have attained the age of six years by February 1 of any school year or who are older than six years of age but who have not attained the age of 16 years, to attend school.<sup>42</sup> Each parent of a child within the compulsory attendance age is responsible for the child's school attendance.<sup>43</sup> Compliance with compulsory school attendance requirements, i.e., "regular school attendance," may be achieved by attendance in:

- A public school;
- A private, parochial, religious, or denominational school;
- A home education program; or
- A private tutoring program.<sup>44</sup>

### **High School Graduation**

The three graduation credentials available to students with disabilities are the standard high school diploma;<sup>45</sup> the certificate of completion;<sup>46</sup> and the special high school diploma.<sup>47</sup>

#### Standard High School Diploma

Florida public high school students have four options for obtaining a standard high school diploma -- a Traditional 4-year, 24-credit option;<sup>48</sup> an 18-credit graduation option;<sup>49</sup> or completion of an International Baccalaureate (IB) or Advanced International Certificate of Education (AICE) program.<sup>50</sup> In order to earn a standard diploma, students must earn a 2.0 Grade Point Average (GPA), complete one course online, complete the credit requirements, and pass the 10th grade Florida Comprehensive Assessment Test in Reading and the statewide, standardized Algebra I end-of-course assessment.<sup>51</sup> A student with a disability whom the IEP team determines that the statewide, standardized assessments cannot accurately measure the student's abilities, taking into consideration all allowable accommodations,

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<sup>40</sup> Section 1002.41(1)(c), F.S.

<sup>41</sup> Section 1002.41(2), F.S.

<sup>42</sup> Section 1003.21(1), F.S.

<sup>43</sup> Section 1003.24, F.S.

<sup>44</sup> Section 1003.01(13), F.S.

<sup>45</sup> Section 1003.4282, F.S.

<sup>46</sup> Section 1003.428(7)(b), F.S.

<sup>47</sup> Section 1003.438, F.S.

<sup>48</sup> Section 1003.428, F.S.

<sup>49</sup> Sections 1002.3105(5), F.S. and 1003.429, F.S. (2012).

<sup>50</sup> Section 1003.428(1), F.S.

<sup>51</sup> Sections 1003.4282(3) and 1003.438, F.S.

must have assessment results waived for the purpose of receiving a course grade and a standard high school diploma. Such waiver must be designated on the student's transcript.<sup>52</sup>

### Certificate of Completion

Generally, a certificate of completion may be awarded to students who obtain the required number of credits for graduation without passing required assessments or satisfying the 2.0 grade point average requirement. A student with a disability who does not qualify for an assessment waiver may exit school with a certificate of completion. Any student who is otherwise entitled to a certificate of completion, whether general education or disabled, may elect to remain in school as either a full-time or a part-time student for up to one additional year and receive special instruction designed to remedy his or her identified deficiencies.<sup>53</sup> Because they are entitled to a FAPE until age 22, a student with a disability who does not qualify for a waiver or exemption may choose to remain in school until achieving a standard diploma or reaching age 22, whichever occurs first.<sup>54</sup>

### Special Diploma

A student who has an intellectual disability; an autism spectrum disorder; a language impairment; an orthopedic or other health impairment; a traumatic brain injury; an emotional or behavioral disability; a specific learning disability, including dyslexia, dyscalculia, or developmental aphasia; or a student who is deaf, hard of hearing, or dual sensory impaired may be awarded a special diploma.<sup>55</sup> Each district school board must prescribe specific graduation requirements that such students must meet to achieve a special diploma. District requirements must be based on the completion of basic, vocational, and ESE courses.<sup>56</sup>

## Effect of Proposed Changes

### **Student Eligibility**

The bill establishes the Florida Personal Learning Account (account) program to enable parents of students with disabilities to customize their child's education using a wide range of instructional services. The parent of a student who resides in this state may request and receive an account if the student is:

- Eligible to enroll kindergarten through 5<sup>th</sup> grade or received an account in the previous school year;
- Identified as having autism,<sup>57</sup> cerebral palsy,<sup>58</sup> down syndrome,<sup>59</sup> an intellectual disability,<sup>60</sup> Prader-Willi syndrome,<sup>61</sup> or Spina bifida,<sup>62</sup> or for a student in kindergarten, as a high-risk child,<sup>63</sup>

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<sup>52</sup> Section 1008.22(3)(c), F.S.

<sup>53</sup> Section 1003.428(7)(b), F.S.

<sup>54</sup> Rule 6A-6.03028(1), F.A.C.

<sup>55</sup> Section 1003.438, F.S.

<sup>56</sup> Rule 6A-1.09961, F.A.C.

<sup>57</sup> "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Section 393.063(3), F.S.

<sup>58</sup> "Cerebral palsy" is a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and results in loss or impairment of control over voluntary muscles. Section. 393.063(4), F.S.

<sup>59</sup> "Down syndrome" is a disorder caused by the presence of an extra chromosome 21. Section 393.063(13), F.S.

<sup>60</sup> "Intellectual disability" is significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. Section 393.063(21), F.S.

by the school district in which he or she resides and the district has completed an IEP written in accordance with rules of the state board; and

- Assigned to FEFP matrix support levels IV or V.

At least 60 calendar days prior to one of the payment transfer dates, i.e., May 1, July 1, September 1, or December 1, parents must apply for an account to an eligible SFO. If the student does not already have a qualifying IEP, the parent must request that the school district in which he or she resides evaluate the student and prepare an IEP, which must be completed within 30 calendar days. Upon completion of the IEP, the school district must provide the parent with an estimate of the amount of funds the student may receive in the account. Once a student is determined to be eligible for an account, the SFO establishes an account for the student. The parent must register the student's participation in an account with the school district, which participation satisfies regular school attendance requirements. School districts are not responsible for providing a FAPE to a student who receives an account, unless the student enrolls in public school. Students receiving an account are treated as a unilateral parent placement for purposes of state and federal law, excluding preparation of the IEP.

### **Allowable Expenditures**

Parents first procure allowable services for the student and then must apply for reimbursement of expenses. Expenditures are reimbursed only after the SFO verifies the expenditure was made in compliance with the program. Funds from the account may be used for:

- Specialized instructional services.
- Tuition and fees for instructional services from a private school that is eligible to participate in the McKay Program or FTC Program.
- Private tutoring.
- Curriculum.
- Tuition and fees for virtual instruction<sup>64</sup> or DOE-approved online courses.<sup>65</sup>
- Costs for the annual home education evaluation.
- The \$25 scholarship application fee.
- Services such as applied behavior analysis, speech-language pathology, occupational therapy, or physical therapy.

Specialized instructional service providers must be approved by DOE and include service providers utilized by the Agency for Persons with Disabilities and those authorized by DOE to provide services to students with disabilities enrolled in the Voluntary Prekindergarten Education program. A private school must be participating in the McKay Program or FTC Program.

### **Account Funding**

Account funding is calculated using the same calculation as the McKay Program. In order to enable DOE to calculate funding for a student's account, the student's school district of residence must report him or her for FEFP funding. Students receiving an account must be reported separately from students attending district public schools, but are included in the districts' FEFP allocation. DOE must transfer

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<sup>61</sup> "Prader-Willi syndrome" is an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior. Section 393.063(25), F.S.

<sup>62</sup> "Spina bifida" is a medical diagnosis of spina bifida cystica or myelomeningocele. Section 393.063(36), F.S.

<sup>63</sup> A "high-risk child" is a child from 3 to 5 years of age with a developmental delay in cognition, language, or physical development. Section 393.063(20)(a), F.S.

<sup>64</sup> Participating students may enroll in virtual instruction provided by a DOE approved virtual instruction provider or the Florida Virtual School. *See* ss. 1002.45 and 1002.37, F.S.

<sup>65</sup> Two types of approved online course may be used under the bill- Florida approved courses and college credit for online courses. Florida approved courses include massive open online courses (MOOC) or remedial education associated with courses measured by statewide assessments approved by DOE. MOOCs may be authorized in Algebra I, biology, geometry, and civics. Such course may be used to satisfy promotion or high school graduation requirements. *See* s. 1003.499, F.S. Beginning in the 2015-2016 school year, students will be able to earn college credit for online courses, including MOOCs, prior to initial enrollment at a postsecondary institution. *See* s. 1004.0961, F.S.



the funding quarterly to an SFO. The SFO must maintain separate accounts for each eligible student, verify qualifying expenditures, and reimburse the parent for eligible services provided to the student. When requesting reimbursement for services, the parent must submit receipts or other relevant supporting documentation and an affidavit stating compliance with expenditure requirements.

Any unused funds are rolled over to the next fiscal year, unless the student returns to public school, is determined ineligible for the program based upon reevaluation of the IEP or an annual evaluation of educational progress, graduates from high school, or attains age 22, whichever occurs first. If an account is terminated, remaining funds revert to the state.

### **Program Accountability**

The SFO must verify that expenditures are permissible before reimbursing parents for services. Participating SFOs must submit quarterly reports to DOE regarding students served, services reimbursed, and providers used. SFOs must provide the Auditor General and DOE with an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant. DOE must approve instructional services providers, monitor program compliance, and establish a complaint process and adjudicate complaints.

The bill requires participating students to undergo an annual educational evaluation that is similar to that required for home education students. Parents must participate in annual IEP reviews and may not receive any rebate or refund from service providers. The state is not liable for any claim arising from the award or use of an account.

### **High School Graduation**

The bill repeals statutory provisions authorizing issuance of a special diploma to students with disabilities. Any student who entered 9<sup>th</sup> grade as of the 2013-14 academic year may continue to pursue and be awarded a special diploma if requirements are met.<sup>66</sup> Thus, students with disabilities entering 9<sup>th</sup> grade in the 2014-15 academic year and thereafter must either satisfy requirements for a standard diploma or receive a certificate of completion.

#### **B. SECTION DIRECTORY:**

**Section 1.** Creates s. 1002.411, F.S., relating to Florida Personal Learning Accounts.

**Section 2.** Amends s. 1003.01(13), F.S., relating to the definitions of “regular school attendance.”

**Section 3.** Amends s. 11.45, F.S., relating to authority of the Auditor General.

**Section 4.** Repeals s. 1003.438, F.S., relating to special high school graduation requirements for certain exceptional students.

**Section 5.** Amends s. 120.81, F.S., relating to rulemaking exceptions.

**Section 6.** Provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

##### **1. Revenues:**

None.

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<sup>66</sup> See ss. 11.2421 and 11.2425, F.S. The repeal of any statute by the annual adoption and enactment of Florida Statutes does not affect any right accrued before such repeal or any civil remedy where a suit is pending. Section 11.2425, F.S.

2. Expenditures:

Because there is little to no data available on home school or private school children who might qualify for a Personal Learning Account under the bill, assumptions were made based upon the number of students in public school that would meet the criteria to qualify for an account. That ratio of qualified students was then applied to the total home school population of 75,801 and the private school population of 320,423. The private school population was then adjusted for the students currently receiving funding through the McKay Program. Based upon this methodology, the number of qualified home school students in kindergarten through 5<sup>th</sup> grade is estimated at 432 at an estimated cost of \$5.2 million. The number of qualified private school students in kindergarten through 5<sup>th</sup> grade is 300 at an estimated cost of \$3.6 million. Thus, the total estimated cost of the program is \$8.8 million, which is provided in the FEFP in the House proposed General Appropriations Act. These costs were based on an average of the actual 2012-13 McKay Program payments made for the students that would be eligible to receive an account.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

SFOs may charge parents of participating students a \$25 application fee.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

In *Bush v. Holmes*, the Florida Supreme Court distinguished other publicly funded educational choice programs, such as a program designed to meet the unique educational needs of students with disabilities, from the Opportunity Scholarship Program, which it found unconstitutional.<sup>67</sup>

B. RULE-MAKING AUTHORITY:

The bill directs the State Board of Education to adopt rules to implement the Florida Personal Learning Account program, including any rules necessary to coordinate the respective responsibilities of DOE, district school boards, and SFOs regarding the funding and administration of accounts; criteria, timelines, and a reporting format for quarterly reports by SFOs; and a standard application form to be used by parents and SFOs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>67</sup> *Bush v. Holmes*, 919 So.2d 392, 412 (Fla. 2006).

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 11, 2014, the Choice & Innovation Subcommittee adopted two amendments and reported the proposed committee bill favorably. The amendments:

- Removed provisions requiring the Auditor General to conduct an annual financial and compliance audit of SFOs participating in the Florida Personal Learning Account Program.
- Instead required that the SFO provide the Auditor General and DOE with an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant.
- Clarified that SFOs must submit quarterly reports to DOE.

The amendments align the bill's audit and quarterly reporting requirements with existing law applicable to SFOs participating in the FTC Program.

On March 18, 2014, the Education Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments removed provisions:

- Requiring that specialized instructional services and instructional services from a private school be consistent with the student's IEP in order to be eligible for reimbursement; and
- Authorizing expenditure of Personal Learning Account funds on medical services.

The amendments also added provisions repealing statutory provisions which authorize issuance of a special high school diploma to students with disabilities.

This bill analysis reflects the bill as amended by the Education Appropriations Subcommittee.