

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7095      PCB EDC 15-03      Florida Personal Learning Scholarship Accounts

**SPONSOR(S):** Education Committee, Bileca

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee	16 Y, 0 N	Healy	Mizereck
1) Education Appropriations Subcommittee	13 Y, 0 N, As CS	Seifert	Heflin

### SUMMARY ANALYSIS

The 2014 Legislature established the Florida Personal Learning Scholarship Account (PLSA) program to enable parents of students with disabilities to customize their child's education. Parents can request and receive a scholarship that can be used to purchase a wide range of services. Scholarship accounts are established by eligible nonprofit scholarship funding organizations (SFO), and parents are reimbursed for instructional materials, curriculum, and approved services. A total of \$18.4 million was appropriated for the 2014-2015 school year. At the time of this analysis, over 1,600 students are participating in the program. The bill includes a number of provisions that increase access, strengthen accountability, and streamline administration.

The bill increases the pool of eligible applicants by expanding the definition of autism to include all students on the autism spectrum disorder and to include students who have muscular dystrophy.

The bill increases the types of services available to participants, including:

- Tuition and fees for part-time tutoring services provided by a certified teacher; a certified adjunct teacher; or an individual who demonstrates mastery of subject area knowledge.
- Fees for an annual evaluation of educational progress for home education students.
- Fees associated with use of an electronic payment system.

The bill strengthens accountability by:

- Clarifying that funds must be expended for the student's educational needs.
- Outlining specific criteria for when payments to a personal learning scholarship account would cease and when an account is closed and funds revert to the state.
- Requiring review of all expenditures prior to reimbursement.
- Authorizing the Commissioner of Education to deny, suspend, or revoke program participation or use of program funds in specified circumstances.
- Requiring that a high-risk child who reaches 6 years of age has documentation of an eligible disability in order to continue in the program.
- Requiring the Auditor General to provide a copy of the annual operational audit to the Commissioner of Education.

Among other provisions, the bill streamlines program administration by removing obsolete language for implementation of the program for the 2014-2015 school year, specifying that appropriated funds be made available earlier in the fiscal year, and ensuring eligible students who participated in the previous year are given priority for re-enrollment in subsequent years. The bill also authorizes a SFO to retain and expend an administrative fee of five percent.

The PLSA is provided on a first-come, first-served basis based upon funding provided in the GAA. The Proposed Committee Bill GAA provides \$31.9 million in recurring funding for this program. See Fiscal Analysis & Economic Impact Statement.

The bill takes effect July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Personal Learning Scholarship Account**

The 2014 Legislature created the Florida Personal Learning Scholarship Account (PLSA) program to provide parents of students with disabilities more flexibility to customize their child's education.<sup>1</sup> Funds are distributed to qualified<sup>2</sup> Scholarship Funding Organizations (SFO) to establish accounts for eligible students.<sup>3</sup> Parents can use funds from their account to choose from a variety of approved items for their student including, but not limited to: specialized services, curriculum, instructional materials, tuition, and contracted services.<sup>4</sup> A total of \$18.4 million was allocated for the 2014-15 school year.<sup>5</sup>

#### **Student Eligibility**

##### **Present Situation**

The parent of a student, who is a resident of this state, may request and receive an account if the student:

- Is eligible to enroll in kindergarten through 12th grade in a public school in this state;
- Has one of the following disabilities: autism, cerebral palsy, down syndrome, an intellectual disability, Prader-Willi syndrome, or spina bifida, Williams syndrome; or for a student in kindergarten, as a high-risk child<sup>6</sup>; and
- Has an Individual Education Plan (IEP) written in accordance with rules of the state board or has received a diagnosis of one of the above disabilities from a licensed physician or a licensed psychologist.<sup>7</sup>

A student is not eligible for the program:

- While enrolled in a public school;
- While enrolled in a Department of Juvenile Justice school commitment program;
- While receiving a scholarship from the Florida Tax Credit Scholarship Program or the McKay Scholarship for Students with Disabilities;
- If the student or parent has accepted any payment, refund, or rebate from a program provider;
- If the Commissioner of Education has denied or revoked the student's participation in the program; or
- If the parent forfeits participation in the program by failing to comply with program requirements.<sup>8</sup>

Parents must apply to an eligible SFO to participate in the program by February 1 before the school year in which the student wishes to participate or an alternative date set by the SFO. The SFO must notify the district and the Department of Education (DOE) of the parent's intent to participate.<sup>9</sup> The PLSA is provided on a first-come, first-served basis based upon the funding in the General Appropriations Act (GAA).

##### **Effect of Proposed Changes**

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<sup>1</sup> Section 16, ch. 2014-184, L.O.F.

<sup>2</sup> Section 1002.385(2)(e), F.S.

<sup>3</sup> Section 1002.385, F.S.

<sup>4</sup> Section 1002.385(5), F.S.

<sup>5</sup> Specific Appropriation 110, s. 2, ch.2014-51, L.O.F.

<sup>6</sup> Section 1002.385(2)(d), F.S.

<sup>7</sup> Section 1002.385(3)(a), F.S.

<sup>8</sup> Section 1002.385(4), F.S.

<sup>9</sup> Section 1002.385(3)(b), F.S.

The bill expands the pool of eligible applicants by including students with muscular dystrophy and including a broader definition of autism.

The current statutory definition of “autism” means a pervasive, neurologically based developmental disability of extended duration which causes severe [emphasis added] learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted [emphasis added] repertoire of activities and interests.<sup>10</sup> This definition requires that the individual exhibit severe and substantial deficits in certain areas.

The new definition of “autism spectrum disorder” as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) includes autism, Asperger’s syndrome, and any pervasive developmental disorder not otherwise specified. This broader definition allows students with an Autism Spectrum Disorder with lesser degrees of severity to be eligible for the program.<sup>11</sup>

The bill clarifies that a high-risk child who reaches six years of age must have documentation of an eligible disability in order to continue in the program.

The bill also provides that an eligible student who participated in the program the prior year be given priority for re-enrollment the following year.

## **Scholarship Funding Organization Responsibilities**

### **Present Situation**

An eligible participating scholarship funding organization is a nonprofit scholarship funding organization that is approved by DOE to participate in the Florida Tax Credit Scholarship Program.<sup>12</sup> An SFO is required to:

- Receive applications, determine student eligibility, and notify the DOE of the applicants by March 1 the year prior to a student’s participation.<sup>13</sup>
- Notify parents of their receipt of a scholarship on a first-come, first-served basis.<sup>14</sup>
- Establish a date by which a parent must confirm initial or continuing program participation.<sup>15</sup>
- Establish a date by which students on the wait list or late-filing applicants may participate, if funds are still available.<sup>16</sup>
- Establish and maintain separate accounts for each student.<sup>17</sup>
- Verify eligible expenditures.<sup>18</sup>
- Return any unused funds to DOE when a student is no longer eligible for the program.<sup>19</sup>

An SFO must verify that expenditures for curriculum and instructional materials are eligible before reimbursing a parent for such expenditures. However, an SFO can review expenditures made for all other services after the payment has been made.<sup>20</sup>

### **Effect of Proposed Changes**

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<sup>10</sup> Section 393.063(3), F.S.

<sup>11</sup> Email, Florida Department of Education, Independent Education and Parental Choice (March 6, 2015).

<sup>12</sup> Section 1002.385(2)(e), F.S.

<sup>13</sup> Section 1002.385(12)(a), F.S.

<sup>14</sup> Section 1002.385(12)(b), F.S.

<sup>15</sup> Section 1002.385(12)(c), F.S.

<sup>16</sup> Section 1002.385(12)(d), F.S.

<sup>17</sup> Section 1002.385(12)(e), F.S.

<sup>18</sup> Section 1002.385(12)(f), F.S.

<sup>19</sup> Section 1002.385(12)(g), F.S.

<sup>20</sup> Section 1002.385(9)(b), F.S.

The bill requires an SFO to maintain a record of accrued interest that can be retained in each student's account and used for authorized program purchases. Additionally, the SFO must verify that all expenditures are eligible prior to reimbursement to the parent.

## **Allowable Expenditures**

### **Present Situation**

Program funds may be spent for the following purposes:

- Instructional materials and curriculum.
- Specialized services, including but not limited to, applied behavior analysis, speech language pathologist, occupational therapy, physical therapy, and services provided by listening and spoken language specialists.
- Enrollment in, or tuition and fees for enrollment in an eligible private school or postsecondary education institution, a private tutoring program, or virtual education programs or courses.
- Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement Examinations, industry certification examinations, assessments related to postsecondary education, or other assessments.
- Contributions to the Stanley G. Tate Florida Prepaid College Program.
- Contracted services provided by a public school or school district, including classes.<sup>21</sup>

### **Effect of Proposed Changes**

The bill clarifies that funds must be spent to meet the individual educational needs of the student and expands the types of services available to program participants by including:

- Tuition and fees for part-time tutoring services provided by a Florida certified teacher, a Florida certified adjunct teacher, or a person who has demonstrated a mastery of subject area knowledge in accordance with s. 1012.56(5), F.S.
- Fees for an annual evaluation of educational progress for a home education student.
- Fees associated with the use of an electronic payment system.

## **Eligible Providers**

### **Present Situation**

Entities eligible to provide specialized services or educational programs include:

- A provider approved by the Agency for Persons with Disabilities, a health care practitioner or a provider approved by the DOE.<sup>22</sup>
- A postsecondary educational institution including a Florida College System institution, a state university, a school district technical center, a school district adult general education center, or an accredited, postsecondary educational institution which is licensed to operate in this state.<sup>23</sup>
- A private school that is located in this state, offers education to students in any grade from kindergarten to grade 12, meets all the requirements of a private school operating in Florida, and meets all the requirements of a private school participating in the John M. McKay Scholarship Program or the Florida Tax Credit Scholarship Program.<sup>24</sup>

Eligible providers may not share, refund, or rebate any money from a student's Personal Learning Scholarship account with the parent or participating student.<sup>25</sup>

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<sup>21</sup> Id.

<sup>22</sup> Section 1002.385(2)(a), F.S.

<sup>23</sup> Section 1002.385(2)(f), F.S.

<sup>24</sup> Section 1002.385(2)(g), F.S.

<sup>25</sup> Section 1002.385(5), F.S.

## **Effect of Proposed Changes**

The bill expands eligible providers to include an independent college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program and specified individuals who provide part-time tutoring services.

## **Parent Responsibilities**

### **Present Situation**

Current law requires a parent to sign an agreement with an eligible SFO and annually submit a notarized, sworn compliance statement to the organization to:

- Affirm that the student participating in the PLSA program meets regular school attendance requirements.
- Affirm that program funds are used only for authorized purposes.
- Affirm that the student takes all appropriate standardized assessments, whether enrolled in a private school or a home education program.
- Notify the school district that the student is enrolled in the PLSA program, if the parent chooses to enroll in a home education program.
- Request participation in the program by the date established by the SFO.
- Affirm the student remains in good standing with the provider or school.
- Apply for admission of the student to a private school, if this option is chosen.
- Annually renew participation in the program.
- Affirm the parent will not transfer any college savings funds to another beneficiary.
- Affirm the parent will not take possession of any PLSA funds.
- Maintain a portfolio of records and materials which must be preserved for 2 years and made available for inspection by the district superintendent or designee upon 15 days' written notice.<sup>26</sup>

## **Effect of Proposed Changes**

The bill clarifies that the parental agreement and sworn, notarized compliance form are not only for enrollment in the program, but are necessary to maintain program eligibility, including receiving and expending program payments. The compliance form must also include language stating that program funds may be used for authorized purposes serving the student's educational needs.

The bill allows a parent to request that their student participate in the statewide, standardized assessments and removes the requirement that all participants maintain a portfolio of records and materials. Only parents who choose to enroll their child in a home education program will have to maintain a portfolio in compliance with current home education law.

## **Term of the Program**

### **Present Situation**

Program payments to a student's PLSA remain in effect until:

- A student participates in any of the prohibited activities outlined in law<sup>27</sup>;
- The commissioner revokes funds;
- The student returns to public school; or
- The student graduates from high school or turns 22 years old, whichever occurs first.<sup>28</sup>

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<sup>26</sup> Section 1002.385(11)(a), F.S.

<sup>27</sup> Section 1002.385(4), F.S.

<sup>28</sup> Section 1002.385(6), F.S.

A student's account shall be closed and any remaining funds revert to the state:

- When the student graduates from an eligible postsecondary educational institution; or
- After any period of 4 consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary educational institution.

### **Effect of Proposed Changes**

The bill adds the following circumstances under which payments to the account would cease:

- If the parent does not renew program eligibility; or
- If the commissioner denies, suspends, or revokes program participation or use of funds.

The bill clarifies that an account shall be closed, and any remaining funds, including accrued interest or contributions made to the Stanley G. Tate Prepaid College Program, shall revert to the state when:

- A student's program eligibility has been denied or revoked;
- A student's application has been denied by an SFO;
- A student does not enroll in an eligible postsecondary education institution within 4 years after high school graduation or completion; or
- A student is no longer enrolled in an eligible postsecondary institution or a program offered by the institution.
- A student graduates from an eligible postsecondary educational institution.

### **DOE and Commissioner of Education Responsibilities**

#### **Present Situation**

The DOE is required to:

- Maintain a list of approved providers.
- Require eligible SFOs to verify eligible expenditures.
- Investigate any written complaint of a program violation.
- Require quarterly reports from SFOs, with specified information.
- Compare lists of PLSA students against public school enrollment lists before payments to a PLSA account.<sup>29</sup>

Current law outlines the commissioner's role and responsibilities with regard to denying, suspending, or revoking a student's participation in the program or the use of program funds, if the health, safety, or welfare of the student is threatened or fraud is suspected.<sup>30</sup> Use of program funds can also be denied, suspended, or revoked for material failure to comply with program requirements.<sup>31</sup>

The law identifies several factors that the commissioner may consider in determining whether to deny, suspend, or revoke an entity or its officers' participation in the program or ability to expend funds, including but not limited to:

- Acts or omissions that led to an entity's previous denial or revocation in an education scholarship program;
- Failure to reimburse an SFO for funds improperly received or retained by an entity;
- Imposition of a prior criminal sanction;
- Imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation.

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<sup>29</sup> Section 1002.385(9), F.S.

<sup>30</sup> Section 1002.385(10)(a)1. & 2., F.S.

<sup>31</sup> Section 1002.385(10)(a)3., F.S.

## **Effect of Proposed Changes**

The bill requires DOE to compare the lists of PLSA students to those students participating in the Florida Tax Credit Scholarship Program, the John M. McKay Scholarship Program, and public school enrollment lists throughout the year to avoid duplicate payments and confirm program eligibility.

The bill specifies that the commissioner's authority to deny, suspend, or revoke program participation or use of program funds applies to all of the following: students; SFOs; eligible private schools; eligible postsecondary institutions; approved providers; or any other appropriate party that violates program requirements.

The bill authorizes the commissioner to determine the length of, and conditions for lifting, a suspension or revocation and requires the commissioner to deny or revoke a student's participation in the program if the parent participates in any activities that result in forfeiture of the PLSA. The factors used in determining a denial, suspension, or revocation, would also apply to persons, not just entities and their officers.

## **Program Administration and Accountability**

The bill includes the following provisions to streamline administration and implement guidelines for use in a prepaid college fund:

The bill requires 100% of the appropriated funds for the PLSA program to be released to the DOE in the beginning of the first quarter of each fiscal year. Scholarship payments were delayed in 2014-2015, in part, because funds from the General Appropriations Act are typically released in an equal amount on a quarterly basis.

The bill also allows a SFO to retain and expend an administrative fee of five percent.

The bill removes a duplicative requirement that the Auditor General conduct an annual financial audit of an SFO. Current law already requires an SFO to have an annual financial audit conducted by an independent certified public accountant.

The bill directs the Florida Prepaid College Board to develop procedures, contracts, and other required documentation to allow parents to contribute PLSA funds, in conjunction with other funds, to purchase a prepaid college plan. PLSA funds must be tracked and accounted for separately from other funds, must revert to the state if the PLSA account is closed, and may be used only after private payments have been used for prepaid college plan expenditures.

Finally, the bill removes obsolete language regarding the program implementation schedule for the 2014-2015 school year.

## **Florida Tax Credit Scholarship Program**

### **Present Situation**

In order to participate in the Florida Tax Credit (FTC) Scholarship Program, a SFO must meet a number of requirements, including securing a surety bond or letter of credit for a specified amount for initial approval<sup>32</sup> and a different specified amount for renewal.<sup>33</sup>

If an SFO has participated in the FTC Scholarship Program for at least three years and did not have any negative financial findings in its most recent audit, it may use up to 3 percent of the eligible

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<sup>32</sup> Section 1002.395(16)(a)10., F.S.

<sup>33</sup> Section 1002.395(16)(b)1., F.S.

contributions received during the state fiscal year in which the contributions are collected for administrative expenses.<sup>34</sup>

Finally, if an SFO is disapproved to participate in the scholarship program, all remaining funds held by that SFO revert to the Department of Revenue for redistribution to other eligible SFOs.<sup>35</sup>

### **Effect of Proposed Changes**

The bill clarifies that claims against the surety bond or letter of credit may only be made by another eligible SFO to provide scholarships to eligible students.

The bill allows an SFO that has operated a tax credit scholarship program for at least 3 years in any state and has not had any findings of material weakness or material noncompliance in its most recent audit to qualify for the 3 percent administrative fee.

Additionally, any remaining funds held by a SFO that is disapproved from participation must go to other eligible SFOs to provide scholarships to eligible students who transferred from the ineligible SFO.

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

**Section 1.** Amends s. 1002.385, F.S., to increase access and accountability and streamline administration of the Personal Learning Scholarships Account program.

**Section 2.** Amends s. 1002.395, F.S., to clarify language regarding surety bonds for nonprofit scholarship-funding organizations.

**Section 3.** Amends s. 1002.395, F.S., to revise qualifications for a 3 percent administrative fee, and to clarify language regarding the disbursement of surety bonds or letters of credit for SFOs.

**Section 4.** Amends s. 1009.98, F.S., to require the Florida Prepaid College Board to develop procedures allowing parents to use PLSA funds, in conjunction with other funds, to purchase a prepaid college plan and to develop guidelines for tracking and use of such funds.

**Section 5.** Provides an effective date of July 1, 2015.

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

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

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

None.

##### **2. Expenditures:**

The 2014-15 appropriation of \$18.4 million recurring general revenue would continue the funding for the first year cohort of students, 1,616 students through March 13, 2015. The PLSA is provided on a first-come, first-served basis based upon funding appropriated in the GAA. The House proposed GAA appropriates \$31.9 million in recurring general revenue funding for this program<sup>36</sup>. It is unknown how many additional students will be served by the increased funding.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>34</sup> Section 1002.395(6)(j), F.S.

<sup>35</sup> Section 1002.395(16)(f), F.S.

<sup>36</sup> Specific Appropriation 105, PCB APC 15-01 – General Appropriations Act.



1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Education Appropriations Subcommittee adopted an amendment, and an amendment to the amendment, and reported the bill favorably as a committee substitute. The amendment allows eligible Scholarship Funding Organizations that administer the Personal Learning Scholarship Account program to use up to five percent of the payments it receives in a state fiscal year for administrative expenses. The bill analysis is drafted to the committee substitute.