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DATE: April 1, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION INNOVATION
ANALYSIS**

BILL #: HB 1661
RELATING TO: Scholarships for Students with Disabilities
SPONSOR(S): Representative(s) Mealor
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION INNOVATION
 - (2) EDUCATION APPROPRIATIONS
 - (3) COUNCIL FOR LIFELONG LEARNING
 - (4)
 - (5)
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I. SUMMARY:

HB 1661 amends current law relating to the Scholarship Program for Students with Disabilities and establishes eligibility criteria for students and participating schools; and specifies the duties and responsibilities of parents, private schools, school districts, and the Department of Education (DOE) that are separate and independent of the Opportunity Scholarship Program. In order to qualify for a scholarship, a student with a disability must not have made satisfactory academic progress in at least two areas as determined by the individual educational plan (IEP) for the previous year.

This bill creates a definition for "students with disabilities" and specifies that parents of students with disabilities may request and apply for a scholarship if the following criteria are met:

- The student attended a Florida public school during the prior school year.
- The student's parent obtains acceptance for admission to a participating private school.
- The parent notifies the school district of the request for a scholarship at least 60 days prior to the first scholarship payment.

The bill provides that a parent may remove the student from a public school and place the student in another public school within the school district, or a public school in an adjacent school district, or a private school.

According to the DOE, the state will save the total amount of funds from any difference between the individual scholarship payments and the actual district deduction for those individuals receiving a scholarship. The average scholarship payment for 2000-2001 school year is \$6,500, while the average district deduction is \$7,200, therefore, based on the approximately 900 students participating in the program this year, the state will realize a savings of \$630,000.

Although it is difficult to project the number of participants for next year, the DOE estimates anywhere from 3,000 to 5,000 total students participating next year. If 3,000 students participate in the Scholarship Program for Students with Disabilities, the total cost will be approximately \$22,506,000. If 5,000 students participate in the scholarship program, the total cost will be approximately \$37,600,000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

This bill does not appear to support the principle of less government because

- A school district must notify the parent of the student of all options available;
- The school district must complete a matrix that assigns the student to one of the levels of service;
- The Department of Education must notify the private school of the amount of the scholarship;
- A school district must notify the Department of Education within 10 days after it receives notification of a parent's intent to apply for a scholarship;
- The school district must report all students who are attending a private school under this program;
- The Department of Education must transfer monies from General Revenue to a separate account in order to fund the scholarship program; and
- The Comptroller must make scholarship payments in four equal amounts.

B. PRESENT SITUATION:

See Section-by-Section Analysis.

C. EFFECT OF PROPOSED CHANGES:

See Section-by-Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

History of the Scholarship for Students with Disabilities Program

The Scholarship Program for Students with Disabilities was created by the 1999 Legislature, in Section 229.05371, Florida Statutes, as a pilot program in Sarasota County to provide scholarships to students with disabilities to attend an eligible public or private school of their choice. The Scholarship Program for Students with Disabilities was part of the A+ Education Plan. During the first year, the 1999-2000 school year, two students participated in the pilot program at one private school.

The 2000 Legislature amended section 229.05371, Florida Statutes, to expand the program statewide for the second year, the 2000-2001 school year. In the 2000-2001 school year, approximately 982 students received scholarships in 38 school districts. Currently, 127 private schools are participating in the program and of these participating private schools, 119 of them have registered students in 38 school districts.

Section 1: Amends section 228.041, Florida Statutes, in order to renumber subsections (19) through (44) as subsections (20) through (45), respectively, and create a new subsection (19) that provides a definition for the term “exceptional student.”

PRESENT SITUATION:

Definition of Exceptional Student

Current law, subsection, 228.041(18), Florida Statutes, defines “exceptional student” as any child or youth who has been determined eligible for a special program in accordance with the rules of the Commissioner of Education or the State Board of Education. The term “exceptional students” includes students who are gifted and students with disabilities who are mentally handicapped; speech and language impaired; deaf or hard of hearing; visually impaired; dual sensory impaired; physically impaired; emotionally handicapped; specific learning disabled; hospital and homebound; autistic; developmentally delayed children, ages birth through five years; or children with established conditions, ages birth through two years.

EFFECT OF PROPOSED CHANGES:

Definition of Exceptional Student

This section amends subsection 228.041(18), Florida Statutes, to replace “child or youth” with “student” in the definition of “exceptional student” and deletes references in (18) to specific program areas for exceptional students. This bill creates subsection 228.041(19), Florida Statutes, to define “students with disabilities” by referencing some of the applicable State Board of Education rules for program eligibility for students with disabilities as listed below:

- Rule 6A-6.03012, FAC, (Speech and Language Impaired),
- Rule 6A-6.03013, FAC, (Deaf or Hard of Hearing),
- Rule 6A-6.03014, FAC, (Visually Impaired),
- Rule 6A-6.03015, FAC, (Physically Impaired),
- Rule 6A-6.03016, FAC, (Emotionally Handicapped),
- Rule 6A-6.03018, FAC, (Specific Learning Disabled),
- Rule 6A-6.03020, FAC, (Hospital and Homebound),
- Rule 6A-6.03021, FAC, (Physically Handicapped),
- Rule 6A-6.03022, FAC, (Dual Sensory Impaired), and
- Rule 6A-6.03023, FAC, (Autistic).

The newly created subsection 228.041(19), Florida Statutes, also defines the term “students with disabilities” by listing students who are speech and language impaired, deaf or hard of hearing, visually impaired, physically impaired, emotionally handicapped, specific learning disabled, homebound or hospitalized, dual sensory impaired, or autistic. References to programs for children who are mentally handicapped; children who are developmentally delayed, ages birth through five years, and children with established conditions, ages birth through two years are deleted in this section.

Section 2: Amends section 229.05371, Florida Statutes, in order to: (1) create a scholarship program for students with disabilities that is separate and distinct from the Opportunity Scholarship Program; (2) to provide eligibility of participants; (3) establish obligations of school districts and the Department of Education; (4) establish criteria for private school eligibility; (5) establish obligations of program participants; (5) provide for funding and payment; and (6) authorize the State Board of Education to adopt rules.

PRESENT SITUATION:

The Scholarship Program

Current law establishes the Scholarship Program for Students with Disabilities in section 229.05371, Florida Statutes, to provide scholarships to a public or private school of choice for students with disabilities that is separate and distinct of the Opportunity Scholarship.

EFFECTS OF PROPOSED CHANGES:

The Scholarship Program

This section of the bill substantially rewords section 229.05371, Florida Statutes, to specify the Scholarship Program for Students with Disabilities is separate and distinct from the Opportunity Scholarship Program, and the bill deletes all cross references to the Opportunity Scholarship Program in section 229.0537, Florida Statutes. Although current law states it is a program that is separate and distinct from the Opportunity Scholarship Program, certain definitions and criteria are cross referenced to the Opportunity Scholarship Program in section 229.0537, Florida Statutes, so that when referring to those cross referenced statutes, the section refers to the opportunity scholarship throughout even though it outlines procedures for the Scholarship Program for Students with Disabilities. In addition, some of the criteria in section 229.0537, Florida Statutes, does not apply to the Scholarship Program for Students with Disabilities and, therefore, might possibly lead to confusing the two programs.

PRESENT SITUATION:

Eligibility of Participants

Subsection 229.05371(1), Florida Statutes, specifies that students with disabilities whose academic progress in at least two areas has not met expected levels for the previous year, as determined by the student's individual education plan (IEP), are eligible for scholarships.

Current law, subsection 229.05371(1)(d), Florida Statutes, refers to subsection 229.0537(2)(b), Florida Statutes, for procedures the parents of eligible participants must follow to request a scholarship. Subsection 229.0537(2)(b), Florida Statutes, provides that a public school student's parent or guardian may request and receive from the state an opportunity scholarship for the child to enroll in and attend a private school if the parent or guardian obtains acceptance for admission of the student to an eligible private school. The parent must notify the Department of Education and the school district of the request for an opportunity scholarship no later than July 1 of the first year in which the student intends to use the scholarship. Students enrolled in a Department of Juvenile Justice commitment center are excluded from participation.

Additionally, subsection 229.5371(1), Florida Statutes, limits student participation in the program to five (5) percent of students with disabilities in the school district for the first year, ten (10) percent of students with disabilities during the second year, twenty (20) percent of students with disabilities during the third year, and all students with disabilities in subsequent years.

EFFECTS OF PROPOSED CHANGES:

Eligibility of Participants

Amends section 229.05371, Florida Statutes, to provide all of the requirements for participation in the Scholarship Program for Students with Disabilities in one section with no references to the Opportunity Scholarship Program. This bill provides a more efficient way of administering the Scholarship Program for Students with Disabilities because all of the eligibility requirements for students are established in this section, as well as, the procedures for administering the program.

This section of the bill amends current law to specify that the parent of a public school student with a disability whose academic progress in at least two areas has not met expected levels for the previous year, as determined by the student's IEP, may request and receive from the state a scholarship for the child to enroll in and attend a private school if the following criteria are met.

- The student, by assigned school attendance area or by special assignment, has spent the prior school year attending a Florida public school.
- The student's parent has obtained acceptance for admission to a participating private school.
- The parent has notified the school district of the request for a scholarship at least 60 days prior to the first scholarship payment.

This section amends current law to exclude students in a Department of Juvenile Justice commitment program and provides that the scholarship remains in force until the student returns to public school or graduates from high school. However, this section provides that the parent, at anytime, may remove the student from the private school and place the student in another private school, public school within the district, or a public school in an adjacent district. This section of the bill deletes the school district limits for student participation in the program as provided for in current law.

PRESENT SITUATION:

Obligations of School Districts and the Department of Education

Subsection 229.05371(1)(b), Florida Statutes, states that the school district must comply with the requirements in subsections 229.537(3)(a)2, 229.537(3)(c), and 229.537(3)(d), Florida Statutes.

Subsection 229.537(3)(a)2, Florida Statutes, specifies that a school district must offer a student's parent or guardian an opportunity to enroll the student in the public school within the district that has been designated by the state, as a school performing higher than that in which the student is currently enrolled or to which the student has been assigned, but not to a school that has been designated with less than a performance category of "C." The parent is not required to accept this offer in lieu of requesting a state opportunity scholarship to a private school. The opportunity to continue attending the higher performing public school shall remain in force until the student graduates from high school.

Subsection 229.537(3)(c), Florida Statutes, requires the district to provide locations and times to take all statewide assessments for students in the district who are participating in the state Opportunity Scholarship Program.

Subsection 229.537(3)(d), Florida Statutes, provides that students with disabilities who are eligible to receive services from the school district under federal or state law, and who participate in the Opportunity Scholarship Program, remain eligible to receive services from the school district as provided by federal or state law.

EFFECT OF PROPOSED CHANGES:

Obligations of School Districts and the Department of Education

This section of the bill requires school districts to timely notify the parent of a student of all options available pursuant to the Scholarship Program for Students with Disabilities and offer the student's parent an opportunity to enroll the student in another public school within the district. The parent is not required to accept this offer in lieu of requesting a scholarship to a private school. However, if the parent chooses a public school option, the student may continue attending the public school

chosen by the parent until the student graduates from high school. When a parent chooses a public school option, the school district will provide transportation to the public school selected by the parent. The DOE must notify the private school of the amount of the scholarship within 10 days after receiving the school district's notification of the student's matrix level.

This section requires the district to report all students who are attending a private school under this program and to report them separately from other students reported for the purposes of the Florida Education Finance Program (FEFP).

The bill amends current law to provide a procedure for determining funding for a student with disabilities that does not have a matrix of services under section 236.025, Florida Statutes, and requires the district to:

- Complete a matrix that assigns the student to one of the levels of service as they existed prior to the 2000-2001 school year;
- Complete the matrix of services for any student who is participating in the scholarship program for students with disabilities; and
- Notify the DOE of the student's matrix level within 30 days after receiving notification by the student's parent of intent to participate in the scholarship program.

The parent of a student may choose, as an alternative, to enroll the student in and transport the student to a public school in an adjacent school district that has an available space, and that school district must accept the student and report the student for the purposes of the district's funding pursuant to the FEFP.

The school district must notify the DOE within 10 days after it receives notification of the parent's intent to apply for a scholarship for a student with a disability.

PRESENT SITUATION:

Criteria for Private School Participation

In order to participate in the Scholarship Program for Students with Disabilities, private schools must comply with eligibility criteria as set forth in subsection 229.0537(4), Florida Statutes. The private schools must be located in Florida, may be sectarian or nonsectarian, and must meet the following requirements:

- demonstrate fiscal soundness by being in operation for one school year, or provide the Department of Education with a statement by a certified public accountant confirming that the private school desiring to participate is insured, and the owner or owners have sufficient capital or credit to operate for the upcoming school year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected, or file a surety bond or letter of credit with the department for the amount equal to the scholarship for any quarter;
- except for the first year of implementation, notify the Department of Education and the school district in whose service area the school is located of its intent to participate in the program by May 1 of the school year preceding the school year in which it intends to participate in the program;
- comply with antidiscrimination provisions of 42 U.S.C. s. 2000d, which prohibits discrimination based on race, color, and national origin;
- meet state and local health laws and codes;
- be academically accountable to the parent or guardian for meeting the educational needs of the student.

- accept the scholarship students on a random, religious-neutral basis without regard to the student's past academic history;
- must furnish a school profile that includes student performance;
- employ or contract with teachers who hold a baccalaureate or higher degree; have at least three (3) years of teaching experience in public or private schools; or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught;
- comply with all state statutes relating to private schools;
- accept as full tuition and fees the amount provided by the state for each student;
- agree not to compel any student attending the private school on a scholarship to profess a specific ideological belief, to pray, or to worship; and
- adhere to the tenets of its published disciplinary procedures prior to the expulsion of any scholarship students.

EFFECT OF PROPOSED CHANGES:

Criteria for Private School Participation

This section provides for the eligibility criteria for private school participation and includes the same provisions currently in law, except for when noticing the DOE of their intent to participate in the Scholarship Program for Students with Disabilities, private schools are required by this section to specify the grade levels and services that the private school has available for students with disabilities who are participating in the scholarship program.

This section differs from current law because the provision that private schools must accept the scholarship students on a random, religious-neutral basis without regard to the student's past academic history has been deleted from the bill. Additionally, this section deletes from current law the requirement that private schools must agree to not to compel any student attending the private school on a scholarship to profess a specific ideological belief, to pray, or to worship. This section also deletes the provision that private schools must furnish a student profile that includes student performance.

PRESENT SITUATION:

Obligations of Program Participants

Current law (section 229.05371, Florida Statutes) refers to subsection 229.0537(2)(b), Florida Statutes, and all provisions of section 229.0537, Florida Statutes that apply to students with disabilities for determining the obligations of program participants. Any student participating in the scholarship program must remain in attendance throughout the school year, unless excused by the school for illness or other good cause, and must comply fully with the school's code of conduct. The parent or guardian of each student participating in the scholarship program must comply with the following criteria to retain their scholarship:

- obtain acceptance for admission of the student to a private school eligible for the program; and
- notify the Department of Education and the school district of the request for a scholarship no later than July 1 of the first year in which the student intends to use the scholarship; and ensure that the student participating in the opportunity scholarship program takes all statewide assessments required pursuant to section 229.57, Florida Statutes.

EFFECTS OF PROPOSED CHANGES:

Obligations of Program Participants

This section amends current law and clarifies that a parent who applies for a scholarship is exercising his or her parental option to place his or her child in a private school. The bill specifies program participants must meet the following requirements:

- the parent must select the private school and apply for the admission of his or her child;
- the parent must request the scholarship at least 60 days prior to the date of the first scholarship payment;
- the child must remain in attendance throughout the school year, unless excused by the school for illness or other good cause, and must comply fully with the school's code of conduct;
- the parent must comply fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause; and
- upon receipt of the scholarship warrant, the parent to whom the warrant is made must restrictively endorse the warrant to the private school for deposit into the account of the private school.

Current law is confusing at best; however, this section of the bill clearly outlines the obligations of program participants in one section, so everyone knows what is expected of the participants.

PRESENT SITUATION

Provisions for Funding and Payment

Current law, subsection 229.05371(1)(c), Florida Statutes, provides that the maximum scholarship granted for students with disabilities is equal to the amount the student would have received under the Florida Education Finance Program (FEFP) in the public school to which the student is assigned or the amount of the private school's tuition and fees, whichever is less.

EFFECT OF PROPOSED CHANGES:

Provisions for Funding and Payment

This section of the bill amends current law to provide a procedure for calculating the scholarship amounts for students with disabilities who receive a scholarship. The maximum scholarship must be a calculated amount equal to the base student allocation (BSA) in the FEFP multiplied by the appropriate cost factor for the educational program to which the student was assigned to in the school district, and then multiplied by the district cost differential. In addition, the calculated amount must include the per-student share of instructional materials funding, technology funding, and other categorical funds as provided for in the General Appropriations Act (GAA). The amount of the scholarship for students with disabilities must be the calculated amount or the amount of the private school's tuition and fees; whichever is less.

If the GAA does not specify a program cost factor for the program to which a student is assigned, then based upon completion of a matrix of services for the student, a program cost factor is to be calculated using the following procedure:

- First, historical cost factor ratios must be calculated by dividing the Level 1, Level 2, and Level 3 program cost factors by the program cost factor for Level 5 for the most recent year for which all five exceptional-child program cost factors were defined in the GAA.
- Second, the historical cost factor ratio for the program to which the student is assigned and for which a scholarship entitlement is being calculated must be multiplied by the Level 5 program cost factor defined in the GAA for the school year for which the scholarship entitlement is being calculated.

Following notification on July 1, September 1, December 1, or February 1 of the number of program participants, the DOE must transfer, from the GAA, funds in the amount calculated for each student participating in the program from the school district's total funding from the FEFP and from authorized categorical accounts to a separate account for the scholarship quarterly disbursements to the parents of participating students.

After proper documentation review and approval by the DOE, the Comptroller must make scholarship payments in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year in which the scholarship is in force. The DOE will make the initial payment and all subsequent payments admission acceptance has been verified. Payments must be made by individual warrant made payable to the student's parent and mailed by the DOE to the private school of the parent's choice, and the parent will restrictively endorse the warrant to the school for deposit into the private school's account.

This bill provides that no liability will arise on the part of the state based on any grant or use of a scholarship for students with disabilities.

PRESENT SITUATION

Authorization for State Board of Education Rules

Current law authorizes the State Board of Education to adopt rules to administer the Scholarship Program for Students with Disabilities. However, inclusion of eligible private schools as an option for public school students does not expand the authority of the state, its officers, or any school district to impose any additional regulation of private schools.

EFFECT OF PROPOSED CHANGES:

Authorization for State Board of Education Rules

This section of the bill does not differentiate from current law.

Section 3: Amends section. 228.121, Florida Statutes, to correct the cross reference that provides a definition for "homeless children."

Section 4: Amends section 230.2316, Florida Statutes, to correct the cross reference that provides a definition for "habitual truant."

Section 5: Amends section 230.23161, Florida Statutes, to correct the cross reference that provides a definition for "juvenile justice school year."

Section 6: Amends section 232.246, Florida Statutes, to correct the cross reference that provides a definition for a "vocational course."

Section 7: Amends section 240.116, Florida Statutes, to correct the cross reference that provides a definition for "Home Education Programs."

Section 8: Amends section 414.125, Florida Statutes, to correct the cross reference that provides a definition for "habitual truant."

Section 9: Provides that this bill will take effect on becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Non-recurring Effects:

According to the DOE, districts may experience a reduction in class size due to students choosing to attend private schools, and may save funding that may have been needed to hire more teachers and build more student facilities.

Recurring Effects:

According to the DOE, districts may incur additional costs of administering matrices for students they may not have evaluated otherwise.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct Private Sector Costs:

According to the DOE, private schools may incur expenses for hiring new teachers, expanding programs, and expanding facilities. They may also experience additional costs for matrix of services training and administering matrices for participating students.

Direct Private Sector Benefits:

According to the DOE, private schools will benefit from additional income from scholarship students and may be able to use such funding to hire more teachers and expand programs and facilities.

Effects on Competition, Private Enterprise, and Employment Markets:

According to the DOE, private school business will experience growth and competition within the private sector.

D. FISCAL COMMENTS:

Recurring Effects:

According to the Department of Education, the state will save the total amount of funds from any difference between individual scholarship payments and the actual district deduction for those individuals receiving a scholarship. The average scholarship payment for 2000-2001 is \$6,500, while the average district deduct is \$7,200. Based on approximately 900 students who participated this year, a savings of \$630,000 should be realized.

The DOE further states that the program serves over 900 students this year and is extremely labor intensive. As the participation is expected to at least triple next year, additional positions will be needed to ensure the best quality service to parents and private schools in the future. The DOE estimates the annual cost to administer the Scholarship Program for Students with Disabilities will be approximately \$380,000.

Total Revenues and Expenditures:

According to the DOE, current data indicate that over 900 students have participated in the Scholarship Program for Students with Disabilities during the 2000-2001 school year with an annual projected total of \$6 million in scholarship payments. The average scholarship amount is approximately \$6,500.

Also, beginning with the 2001-2002 school year, scholarships will include all formula components and major categorical program allocations included in the calculation of the state share of the districts' total potential funding entitlements. Based on current figures, it is estimated that an additional \$1,020 per student will be required.

Although it is difficult to project the number of participants for next year, the DOE estimates anywhere from 3,000 to 5,000 total students participating next year. If 3,000 students participate in the Scholarship Program for Students with Disabilities, the total cost will be approximately \$22,506,000. If 5,000 students participate in the scholarship program, the total cost will be approximately \$37,600,000.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The Scholarship Program for Students with Disabilities was created in 1999 in section 229.03571, Florida Statutes, as a pilot program in Sarasota County. In the first year of implementation, two students participated at one private school. The 2000 Legislature authorized statewide implementation of the program. In the 2000-2001 school year, 982 students received scholarships in 38 school districts. Currently there are 119 private schools that are serving students with disabilities under this scholarship program. As of this date, there have been no court challenges to the constitutionality of the Scholarship Program for Students with Disabilities.

In order to be eligible for a scholarship, a student with disabilities or parent must, among other things:

For the school year immediately prior to the year in which the scholarship will be in effect, have documented the student's failure to meet specific performance levels identified in the individual education plan; or, absent specific performance levels identified in the individual education plan, the student must have performed below grade level on state or local assessments and the parent must believe that the student is not progressing adequately toward the goals in the individual education plan . . . subsection 229.05371(1)(d)2., Florida Statutes.

In essence, a student with disabilities must first show that he or she is not progressing under the program established at that student's current public school before the student is eligible for a scholarship to attend another public school or a private school. The Florida Supreme Court has previously cited this type of "trigger" mechanism that must be met before students can attend private schools with public money approvingly.

In the case of *Scavella v. School Board of Dade County*, 363 So. 2d 1095, 1098 (Fla. 1978), the Florida Supreme Court favorably considered a similar plan and explained that "[r]ealizing that the public schools may not have the special facilities or instructional personnel to provide an adequate educational opportunity for the exceptional students, the legislature has allowed the school boards to make contractual arrangements with private schools." The Florida Supreme Court further characterized the *Scavella* case as involving "exceptional students who have been attending private schools *because of the lack of special services in the Dade County public schools to meet their special needs.*" *Id.* at 1097 (emphasis added).

Similarly, in 1999 the Legislature enacted the Opportunity Scholarship Program (OSP) in section 229.0537, Florida Statutes, which provides scholarships to students whose educational needs have not been met because they are in failing schools. The OSP has been challenged on constitutional grounds and was recently ruled facially constitutional by the Florida First District Court of Appeal in *Bush v. Holmes*, Nos. 1D00-1121 and 1D00-1150 (October 3, 2000). In its decision, the court cited the *Scavella* case and noted that "the [Florida] supreme court upheld a legislative program authorizing the payment of private school tuition *for students whose needs could not be met in the public schools* and specified that, in implementing this program, students could not be deprived of "a right to a free education." *Id.* at p. 9 (emphasis added).

If challenged, it is impossible to determine whether the Florida courts would uphold the constitutionality of this scholarship program under Article IX, section 1, Fla. Const. or similar constitutional grounds. However, it would seem that this scholarship program would be more in line with previous legislation considered favorably by the courts if, as is done in existing law and in this bill, some type of "trigger" must be met before scholarships are granted.

B. RULE-MAKING AUTHORITY:

This bill grants the State Board of Education rulemaking authority to administer the program.

C. OTHER COMMENTS:

The Department of Education recommends the following amendments:

Amendment 1: Amend to delete proposed revisions to statutory definitions of exceptional students and substitute listing of disabilities for which an individual education plan has been written.

Amendment 2: Amend to eliminate the eligibility component of failed academic progress making it easier for parents to obtain a scholarship.

Amendment 3: Amend to clarify that parent's notice of intent must be in writing; define prior year in attendance and grades for student eligibility; and clarify parents' options.

Amendment 4: Amend to clarify that public school choice provided to parents must be consistent with the district's school choice plan; clarify that transportation must be provided to public school of choice consistent with the district's school choice plan.

Amendment 5: Amend to establish a timeline that allows for confirmation of eligibility of the student, participation of private school, and the calculation of scholarship amount.

Amendment 6: Amend to clarify district responsibility regarding statewide assessments.

Amendment 7: Amend to clarify parent responsibilities regarding statewide assessments.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Staff Director:

Elsie J. Rogers

Daniel Furman