

**STORAGE NAME:** h1661s2.llc.doc  
**DATE:** April 24, 2001

**HOUSE OF REPRESENTATIVES**  
**COUNCIL FOR LIFELONG LEARNING**  
**ANALYSIS**

**BILL #:** CS/CS/HB 1661  
**RELATING TO:** Scholarships for Students with Disabilities  
**SPONSOR(S):** Council for Lifelong Learning, Committee on Education Innovation, and Representative(s) Mealor  
**TIED BILL(S):** None

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

- (1) COUNCIL FOR LIFELONG LEARNING YEAS 9 NAYS 5
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**I. SUMMARY:**

The bill amends current law to establish the "John M. McKay Scholarships for Students with Disabilities Program;" establish eligibility criteria for students and participating schools; and specify 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.

The program provides a student with disabilities the option to attend a public school other than the one to which the student is assigned or to provide a scholarship to a private school of choice. The scholarships are for students with disabilities for whom an individual educational plan (IEP) has been written according to the rules of the Commissioner of Education or the State Board of Education. Students with disabilities include K-12 students 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, hospitalized or homebound, or autistic.

The bill amends current law to specify that the parent of a public school student with a disability who is dissatisfied with the student's progress may request and receive from the state a John M. McKay Scholarship for the child to enroll in and attend a private school if the following criteria are met: (1) the student, by assigned school attendance area or by special assignment, has spent the prior school year attending a Florida public school; (2) the student's parent has obtained acceptance for admission of the student to a private school that is eligible for the program; and (3) the parent has notified the school district in writing of the request for a scholarship at least 60 days prior to the first scholarship payment.

The bill does not appear to require an appropriation. The bill provides a methodology for calculating the scholarship amount for an eligible student. Essentially, the calculated amount for a scholarship student will be equal to the student's Florida Education Finance Program funds plus the per student share of instructional materials and public school technology categorical funds. The lesser of the student's calculated amount or the private school's tuition and fees will equal the scholarship amount. Funds from General Revenue which are equivalent to the scholarship amount will be transferred to a separate account for quarterly payment by the Department of Education to the parents of the student.

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"/>            |

The 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;
- A school district must complete a matrix that assigns the student to one of the levels of service;
- 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;
- A 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;
- The Department of Education must notify the private school of the amount of the scholarship; and
- The Comptroller must make scholarship payments in four equal payments.

B. PRESENT SITUATION:

**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 of the program, 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.

**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.

### **THE SCHOLARSHIP PROGRAM FOR STUDENTS WITH DISABILITIES**

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; however, current law cross-references the Opportunity Scholarship Program in section 229.0537, Florida Statutes, so that requirements and criteria are provided in two sections.

### **SCHOLARSHIP ELIGIBILITY**

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 a 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 a 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.

Current law provides that a parent must choose a public school performing higher than the school in which the student is currently enrolled or to which the student has been assigned, or the parent must not choose a public school that has been designated with less than a performance category of "C."

Additionally, subsection 229.5371(1), Florida Statutes, limits student participation in the program to five (5) percent of students with disabilities in a 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.

### **SCHOOL DISTRICT AND THE DEPARTMENT OF EDUCATION OBLIGATIONS**

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 scholarship to a private school. The opportunity to continue attending the higher performing public school must remain in force until the student graduates from high school.

Subsection 229.537(3)(c), Florida Statutes, requires the district to provide locations, dates, and times when students that are participating in the scholarship program may take all statewide assessments.

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 scholarship program, remain eligible to receive services from the school district as provided by federal or state law.

### **PRIVATE SCHOOL ELIGIBILITY**

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 prohibit 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;
- 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.

### **OBLIGATION 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:

- 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 scholarship program takes all statewide assessments required pursuant to section 229.57, Florida Statutes.

### **SCHOLARSHIP 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.

### **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.

### **PRIVATE SCHOOLS**

Private elementary and secondary schools in Florida are not licensed, approved, accredited or regulated by the state, however they are required by section 229.808, Florida Statutes, to make their existence known to the Department of Education (DOE) and respond to an annual survey designed to make information about them available to the public. Section 229.808, Florida Statutes, also requires that each person who establishes, purchases, or otherwise becomes an owner of a private school must, within 5 days of assuming ownership, file with the Florida Department of Law Enforcement (FDLE), a complete set of fingerprints for a criminal background check. The owner of a private school may require school employees to file a complete set of fingerprints with FDLE.

According to DOE, in the 2000-2001 school year, there are 2,048 known private schools.

According to DOE, private schools may be accredited by one of several accrediting associations, such as the Southern Association of Colleges and Schools (SACS), Florida Catholic Conference (FCC), or Florida Association of Christian Colleges & Schools (FACCS). These accrediting associations have required standards in several areas such as: admission policies, financial status, salaries and working conditions, record keeping, transportation, length of school year, school size, class size, teacher training and experience, physical plant and equipment, academic programs and media, standardized testing and assessment, health and safety, and discipline.

According to the Florida Association of Academic Nonpublic Schools, an organization representing 85% of the private schools in Florida, the average tuition at private elementary schools is \$3,400/year, while the average tuition at private secondary schools is \$4,000/year.

### **PUBLIC SCHOOL PARENTAL CHOICE**

Beginning with the 1997-1998 school year, each district school board was authorized to offer "controlled open enrollment" within the public schools in addition to existing choice programs such as magnet schools, alternative schools, special programs, advanced placement, and dual enrollment. "Controlled open enrollment" is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor. Section 228.057, Florida Statutes, requires each school district board to develop a "controlled open enrollment" plan that describes its implementation. In order for the plan to comply with current law, each school district must adhere to federal desegregation requirements and must develop a system of priorities that includes consideration of the following:

- An application process required to participate in the “controlled open enrollment” program;
- A process that allows parents to declare school preferences;
- A process that encourages placement of siblings within the same school;
- A lottery procedure used by the school district to determine student assignment;
- An appeals process for hardship cases;
- The procedures to maintain socioeconomic, demographic, and racial balance;
- The availability of transportation;
- A process that promotes strong parental involvement, including the designation of a parent liaison; and
- A strategy that establishes a clearinghouse of information designed to assist parents in making informed choices.

C. EFFECT OF PROPOSED CHANGES:

**THE JOHN M. MCKAY SCHOLARSHIPS FOR STUDENTS WITH DISABILITIES PROGRAM**

CS/CS/HB 1661 amends section 229.05371, Florida Statutes, in order to establish the “John M. McKay Scholarships for Students with Disabilities Program,” a program that is separate and distinct from the Opportunity Scholarship. The program is established to provide a student with disabilities the option to attend a public school other than the one to which the student is assigned, or to attain a scholarship to attend a private school of choice. The scholarships are for students with disabilities for whom an individual educational plan (IEP) has been written according to the rules of the Commissioner of Education or the State Board of Education. Students with disabilities include K-12 students 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, hospitalized or homebound, or autistic.

Although current law states the Scholarship Program for Students with Disabilities 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. Some criteria in section 229.0537, Florida Statutes, do not apply to the Scholarship Program for Students with Disabilities and, therefore, might possibly lead to some confusion between the two programs.

**SCHOLARSHIP ELIGIBILITY**

The bill amends current law to specify that the parent of a public school student with a disability who is dissatisfied with the student’s progress may request and receive from the state a John M. McKay 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 of the student to a private school that is eligible for the program; and
- The parent has notified the school district in writing of the request for a scholarship at least 60 days prior to the first scholarship payment.

Prior school year in attendance means that the student was enrolled and reported by a school district for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys in kindergarten through grade 12.

Students enrolled in a Department of Juvenile Justice commitment center are excluded from participation in the program.

For the purposes of continuity of educational choice, the scholarship must remain in force until the student returns to public school or graduates from high school. However, at any time, the student's parent may remove the student from the private school and place the student in another private school that is eligible for the program, or a public school consistent with the school board's choice plan in section 228.057, Florida Statutes.

The bill differs from current law by requiring that, in order to be eligible, a student's academic progress in at least two areas has not met the expected levels as determined by the student's individual educational plan (IEP). The bill amends current law to require that the parent must be dissatisfied with the student's progress.

The bill amends current law so that the parent "no longer" must choose a school performing higher than that in which the student is currently enrolled or to which the student has been assigned. Additionally, the parent "no longer" has to choose a school that has been designated with at least a performance category of "C." By deleting this provision, a parent is free to choose any school based on the effectiveness and success of its exceptional student education (ESE) program. It is possible that a school with a performance rating lower than "C" could have an excellent ESE program.

The bill removes caps by deleting the provision in current law requiring school districts to limit 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.

The bill provides a more efficient way of administering the "John M. McKay Scholarships for Students with Disabilities Program" because all of the eligibility requirements for students and all of the procedures for administering the program are established in section 229.05371, Florida Statutes.

### **SCHOOL DISTRICT AND DEPARTMENT OF EDUCATION OBLIGATIONS**

The bill amends current law to require school districts to timely notify the parent of a student of all options available pursuant to the "John M. McKay Scholarships for Students with Disabilities Program" 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 within the district that is consistent with the school board's choice plan, the school district will provide transportation to the public school selected by the parent. When a parent chooses a public school that is not consistent with the school board's choice plan, the parent is responsible for transportation.

The bill amends current law relating to students with disabilities who do 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 "John M. McKay Scholarships for Students with Disabilities Program;" 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 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.

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.

If the parent chooses a private school option and the student is accepted by the private school pending the availability of a space for the student, the parent must notify the school district 60 days prior to the first scholarship payment and before entering the private school in order to be eligible for the scholarship when a space becomes available for the student in the private school.

As an alternative, the parent of a student may choose to enroll the student in and transport the student to a public school in an adjacent school district if the school has space available, has a program with services agreed to in the student's individual educational plan (IEP), and the school district must accept the student and report the student for purposes of the district's funding pursuant to the Florida Education Finance Program (FEFP).

For a student in the district who participates in the "John McKay Scholarships for Students with Disabilities Program" whose parent requests that the student take the statewide assessments, the district must provide to the parent the locations and times all statewide assessments are to be given.

#### **PRIVATE SCHOOL ELIGIBILITY**

The bill also specifies that in order to be eligible to participate in the "John M. McKay Scholarships for Students with Disabilities Program" the private school:

- Must be a Florida private school.
- May be sectarian or nonsectarian.
- Must demonstrate fiscal soundness by being in operation for one school year or by providing DOE with a statement by a certified public accountant confirming that the private school is insured and that the owner(s) of the school have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with all revenues that may be reasonably expected; (In lieu of such a statement, a surety bond or letter of credit for the amount equal to the scholarships for any school year may be filed with DOE).
- Must notify DOE and the school district in the service area of which it is located of its intent to participate in the program as early as possible, but no later than July 1, preceding the school year in which it intends to participate and the notice must specify the grade levels and services that the private school has available for the "John M. McKay Scholarships for Students with Disabilities Program."
- Must comply with the antidiscrimination provisions of 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin.
- Must meet state and local health and safety laws and codes.
- Must comply with all state statutes applicable to the general regulation of private schools.
- Must 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.
- Must comply with all state statutes relating to private schools.
- Must be academically accountable to the parent for meeting the educational needs of the student.
- Must adhere to the tenets of its published disciplinary procedures prior to the expulsion of any scholarship students.



The bill differs from current law by deleting the following provisions:

- Private schools must accept the scholarship students on a random, religious-neutral basis without regard to the student's past academic history;
- Private schools must 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
- Private schools must furnish a school profile that includes student performance.

### **OBLIGATION OF PROGRAM PARTICIPANTS**

The bill amends current law to clarify that a parent who applies for the "John M. McKay Scholarships for Students with Disabilities Program" is exercising his or her parental option to place his or her child in a private school. The bill specifies that 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 at the private school 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;
- If the parent requests that the student take all statewide assessments, the parent is responsible for transporting the student to the assessment site designated by the school district; 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.

If a participant in the "John M. McKay Scholarships for Students with Disabilities Program" fails to comply with the above requirements, the participant forfeits the scholarship.

### **SCHOLARSHIP FUNDING AND PAYMENT**

The bill amends current law to provide a procedure for calculating the scholarship amounts for students with disabilities who receive scholarships. 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 that would have been provided for the student in the district school to which he or she was assigned, and then multiplied by the district cost differential.

In addition, a share of the guaranteed allocation for exceptional students must be determined and added to the calculated amount. The calculation must be based on

- methodology and the data used to calculate the guaranteed allocation for exceptional students for each district in Chapter 2000-166, Laws of Florida (2000-2001 GAA); and
- the student's grade, matrix level of services, and the difference between the 2000-2001 basic program and the appropriate level of cost factor services, multiplied by the 2000-2001 BSA and the 2000-2001 district cost differential for the sending district.

In addition, the calculated amount must include the per-student share of instructional material funds, technology funds, and other categorical funds as provided for such purposes in the GAA.

The amount of the John M. McKay Scholarships for Students with Disabilities must be the calculated amount or the amount of the private school's tuition and fees, whichever is less. The amount of any assessment fee required by the participating private school may be paid from the total amount of the scholarship.

If the participating private school requires partial payment of tuition prior to the start of the academic year to reserve space for students admitted to the school, partial payment may be paid by the DOE prior to the first quarterly payment of the year in which the scholarship is awarded, up to a maximum of \$1,000, and deducted from subsequent scholarship payments. If a student decides

not to attend the participating private school, the participating private school must return the partial reservation payment to the DOE. Reservation payments are limited to one payment per student per year.

The school district must report all students who are attending a private school under this program. The students with disabilities attending private schools on scholarships must be reported separately from other students for purposes of the FEFP.

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

When a student enters the scholarship program, the DOE must receive all documentation required for the student's participation, including the private school's fee schedules and student's fee schedules, at least 30 days before the first quarterly scholarship payment is made for the student. The DOE may not make any retroactive payments.

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 15 of each academic year in which the scholarship is in force. The DOE will make the initial payment and all subsequent payments when 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 the award or use of a John M. McKay Scholarship.

### **RULES**

The State Board of Education is authorized to adopt rules to administer the "John M. McKay Scholarships for Students with Disabilities Program." However, by including eligible private schools within options available to Florida public school students does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of private schools beyond those reasonably necessary to enforce the requirements established by this bill.

#### **D. SECTION-BY-SECTION ANALYSIS:**

Section 1: Amends section 229.0537, Florida Statutes, in order to establish the "John M. McKay Scholarships for Students with Disabilities Program;" provide eligibility; establish obligations of school districts and the Department of Education; establish eligibility criteria for participating private

schools; establish obligations of program participants; provide for funding and payments; limit the liability of the state; and authorize the State Board of Education to adopt rules.

Section 2: Provides that the bill becomes effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The bill does not require an appropriation; however, it does require transfer of Florida Education Finance Program and categorical program funds by the Department of Education from public school districts to a separate account for quarterly disbursement to the parents of students taking the scholarship to a private school.

The Department of Education estimates there will be an additional workload to administer this program which will require additional positions and associated costs on a recurring basis, plus completion of the interactive website programming to automate the registration process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does affect individual school district revenues. It requires transfer of Florida Education Finance Program and categorical program funds by the Department of Education from school districts to a separate account for quarterly disbursement to the parents of students taking the scholarship to a private school. Reference "D. FISCAL COMMENTS:" for additional information.

2. Expenditures:

Reference "D. FISCAL COMMENTS:" for additional information.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Reference "D. FISCAL COMMENTS:" for additional information.

D. FISCAL COMMENTS:

According to the Department of Education, current data indicate that over 900 students have participated in the current Scholarship Program for Students with Disabilities during the 2000-2001 school year. The average scholarship amount is approximately \$6,500 which is the average amount the students would generate in the public school.

Private schools that choose to participate may incur expenses and receive benefits from participating in the program.

III. 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 percentage of a state tax shared with counties or municipalities.

IV. 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 permits DOE to adopt rules in order to implement the provisions of the “John M. McKay Scholarships for Students with Disabilities Program.”

**C. OTHER COMMENTS:**

None.

**V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On April 24, 2001, the Council for Lifelong Learning considered PCS for CS/HB 1661 that primarily differs from CS/HB 1661 in the following ways:

- names the scholarship program the “John M. McKay Scholarships for Students with Disabilities Program;”
- provides a list of students with disabilities who may be eligible for a scholarship;
- clarifies that students participating in the scholarship program must be enrolled in a public school and be reported by a school district for funding during both the October and February student surveys of the prior school year;
- provides for a partial prepayment of no more than \$1,000 to reserve a space in a private school, which must be refunded to the DOE if the student does not attend the private school;
- allows the DOE to prorate scholarship payments;
- provides for a more accurate calculation of the scholarship amount; and
- revises the final scholarship payment date from April 1 to April 15 to allow time for completion of the 4<sup>th</sup> FEFP calculation to determine funding.

The Council for Lifelong Learning reported the bill favorably as CS/CS/HB 1661.

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VI. SIGNATURES:

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