



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill increases the regulation of the McKay and Corporate Income Tax Credit Scholarship Programs under ss. 1002.39 and 220.187, F.S., respectively.

#### B. EFFECT OF PROPOSED CHANGES:

Background: The Corporate Income Tax Credit and John M. McKay Scholarship Programs

##### **Corporate Income Tax Credit Scholarship Program** (s. 220.187, F.S.)

The Corporate Income Tax Credit Scholarship Program (CITC Program) provides an income tax credit for corporations that make eligible contributions to nonprofit scholarship-funding organizations (SFOs) that award scholarships to students from families with limited financial resources. An eligible contribution is a monetary contribution from a taxpayer to an eligible nonprofit SFO. The taxpayer may not designate a specific child as the beneficiary of the contribution and may not contribute more than \$5 million to any single eligible nonprofit SFO. The taxpayer may receive a dollar for dollar credit for an eligible contribution against any tax due for a taxable year, but the credit may not exceed 75% of the tax due, after the application of all other allowable tax credits.

The total statewide amount of the tax credit and the carry-forward of tax credits that may be granted each state fiscal year under this program is limited to \$88 million. At least 5% of the total statewide amount authorized for the tax credit must be reserved for small businesses. According to current law, small businesses are defined as taxpayers who independently own and operate businesses that employ 200 or fewer full-time permanent employees and have a net worth of not more than \$5 million at the time of application.

##### Student Eligibility

A student is eligible for a scholarship from a nonprofit SFO through this program, if the student qualifies for free or reduced-price school lunches under the National School Lunch Act and:

- Was counted as a full-time student during the previous state fiscal year for purposes of state per-student funding; or
- Received a scholarship from an eligible nonprofit scholarship-funding organization during the previous school year; or
- Is eligible to enter kindergarten or first grade.

##### Amount of Award

The amount of the scholarship provided to any child for any single school year by all eligible nonprofit SFOs shall not exceed the following limits:

- \$3,500 for a scholarship awarded to a student for enrollment in an eligible nonpublic school.
- \$500 for a scholarship awarded to a student for enrollment in a Florida public school that is located outside the district in which the student resides.

### Provider Eligibility

For a non public school to be eligible to receive a scholarship student it must be located in Florida and:

- Offer an education to students in any grades K-12.
- Demonstrate fiscal soundness by:
  - being in operation for one school year,
  - providing the Department of Education (DOE) with a statement by a certified public accountant confirming that the school is insured and has sufficient capital or credit to operate for the upcoming year, or
  - Securing a surety bond or letter of credit equal to the scholarship funds for any quarter to be filed with the Department of Revenue (DOR).
- Meet state and local health and safety laws and codes.
- Comply with federal provisions, which prohibit discrimination based on race, color, or national origin.
- Comply with all state laws relating to the general regulation of nonpublic schools.

A nonprofit SFO may accept eligible contributions that are needed to provide scholarships for qualified students identified and for which vacancies in eligible nonpublic schools have been identified. Eligible nonprofit SFOs must provide scholarships, from eligible contributions, to qualified students for the following expenses:

- Tuition or textbook expenses for, or transportation to, an eligible nonpublic school (at least 75% must be used to pay tuition expenses); or
- Transportation expenses to a Florida public school that is located outside the district in which the student resides.

The SFO will make payment by check payable to the student's parent. If the parent chooses for his or her child to attend an eligible nonpublic school, the check must be mailed by the eligible SFO to the nonpublic school of the parent's choice, and the parent must restrictively endorse the check to the nonpublic school. The SFO must ensure that the parent endorses the check to the nonpublic school of the parent's choice for deposit into the account of the nonpublic school.

### Program Oversight

The DOR and the DOE will cooperatively administer the CITC Program. The DOE is responsible for adopting rules necessary to determine the eligibility of SFOs and identifying students eligible to participate in the program. The DOE is also responsible for submitting annually, by March 15, a list of eligible SFOs to the DOR.

The DOE must monitor:

- The eligibility of nonprofit scholarship-funding organizations.
- The eligibility of nonpublic schools.
- The eligibility of expenditures.

The DOR is responsible for adopting rules to administer the CITC Program, including:

- Establishing application forms and procedures.
- Governing the allocation of tax credits and carry-forward credits for this program on a first-come, first-served basis.

## **The John M. McKay Scholarship for Children with Disabilities (1002.39, F.S.)**

The John M. McKay Scholarships for Students with Disabilities Program (McKay Program) was originally created by the 1999 Legislature as a pilot program for Sarasota County in the A+ Education Plan. The program has since been expanded to cover the entire state.

### Student Eligibility

The scholarships are available for eligible students with disabilities to attend an eligible public or private school of their choice. 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. A student may use the scholarship through high school graduation.

### Provider Eligibility

Private schools are not required to participate in the program. However, participation is open to all private schools that wish to take part in the program, as long as the schools meet the eligibility criteria set forth by law. To be eligible to participate, the private school must be located in Florida, may be sectarian or nonsectarian, and must meet the following criteria:

- Demonstrate fiscal soundness by being in operation for 1 school year or provide the DOE with a statement by a certified public accountant confirming that the school is insured and has sufficient capital or credit to operate for the upcoming year. (In lieu of such a statement, the school may secure a surety bond or letter of credit equal to the scholarship funds for any quarter to be filed with the DOE).
- Notify the DOE and the school district of its intent to participate in the program (the notice must specify the grade levels and services that the private school has available for students with disabilities).
- Meet state and local health and safety laws and codes.
- Comply with antidiscrimination provisions of 42 U.S.C. s. 2000d, which prohibits discrimination based on race, color, or national origin.
- Maintain academic accountability to the parent for meeting the educational needs of the student.
- Employ or contract with teachers that meet any one of the following criteria: 1) hold a baccalaureate or higher degree, 2) have at least 3 years of teaching experience in public or private schools, or 3) have special skills, knowledge, or expertise in subjects taught.
- Comply with all state statutes relating to private schools.
- Adhere to the tenets of its published disciplinary procedures prior to the expulsion of any McKay Scholarship student.

### Amount of Award

The amount of the scholarship 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. During the 2001-2002 school year, \$27.8 million was awarded to 5,019 McKay Scholarship recipients for an average award amount of \$5,547 per student. During 2002-2003, \$53 million was awarded to 9,130 scholarship recipients for an average award amount of \$5,840 per student.

### Program Oversight

The DOE is responsible for verifying the student's initial admission acceptance and continued enrollment and attendance at the private school. The Comptroller makes the scholarship payments in four equal installments (September 1, November 1, February 1, and April 15) after proper verification

from the DOE. The payment must be made by individual warrant payable to the student's parent and mailed by the DOE to the chosen private school. The parent must restrictively endorse the warrant to the private school.

### **2003 Audit by the Chief Financial Officer**

The Chief Financial Officer (CFO) conducted audits on the McKay and CITC programs in 2003 and found problems with the administration of the programs. The findings of the CFO include:

- Students receiving scholarships from more than one program.
- The transfer of funds between SFOs.
- The lack of program oversight from the DOE.
- The principal of one SFO lives in Texas and there appeared to be no physical location in Florida.
- Internet schools, home schools, and correspondence schools participating in the program.
- SFOs did not base the amount of contributions received on the amounts needed to fill identified scholarships.

The CFO issued a report of his findings on December 10, 2003.

### HB 313 – Proposed Changes

#### A. The Corporate Income Tax Credit Scholarship Program

The bill substantially amends s. 220.187, F.S., relating to the CITC Program as follows:

#### **Scholarship Funding Organizations**

- Removes the \$5 million limit on individual contributions to each SFO.
- Require that all SFOs be registered Florida corporations. (Recommended by CFO)  
*Currently there is no requirement that SFOs be Florida corporations. Out-of-state corporations are permitted.*
- Clarify the meaning of the term "owner or operator" of a scholarship funding organization or participating private school to include the owner, president, chair of the board of directors, superintendent, principal or person with the equivalent decisionmaking authority, who owns or operates an eligible nonprofit SFO. *Currently there is no clear definition of who is an owner or operator of an SFO or of a private school.*
- Reduces the amount of the total tax credit allocation reserved for small businesses from 5% to 1%.
- Allow corporations to rescind all or part of their tax credit allocation under certain conditions. The rescinded tax credit is to be made available on a first-come first-serve basis for eligible corporations. *The CFO report recommended the Legislature create a mechanism to restore unused tax credit allocations.*
- Provide that at least 75% of each scholarship awarded must be used for payment of tuition or transportation to a Florida public school outside the student's district or to a lab school. *Current law provides that 75% of scholarship funding be used for tuition or text book expenses or transportation but is not specific as to the origin of the scholarship funds.* This provision clarifies the statute to require that 75% of funds awarded under the CITC Program be used for the mentioned purpose and includes a provision for transportation to lab schools.

- Prohibit SFOs from granting scholarships to students who are already receiving monies from the McKay or Opportunity Scholarship Programs. The bill also prohibits the issuance of a CITC Scholarship to a student by more than one SFO. (Recommended by CFO). *Currently there is no prohibition in law against students receiving funding from more than one scholarship program or SFO.*
- Clarify that the maximum scholarship amount a child may receive during any one year to attend a private school (\$3,500.00) and the maximum amount for a child attending a public school outside his/her district or a lab school (\$500.00) may be received from only one SFO. The proposal makes the provisions of statute applicable at the individual scholarship level and adds a provision for a child attending a lab school. (Recommended by CFO).
- Provide a minimum length to a student's initial scholarship award of three years from the initial award provided the parents of a scholarship student do not surpass 200% of the Federal income poverty guideline. The bill also provides a sliding fee scale for parents that have surpassed the income threshold for eligibility. The bill instructs the department to adopt a reasonable fee scale by rule. *The CFO report suggested that the Legislature consider a phase-out period for scholarships when the income of parents has increased past the level for eligibility.*
- Require that SFOs "obligate" 100% of the funds they receive during a given state fiscal year during that fiscal year. *Current law requires that SFOs must "spend 100% of the eligible contribution to provide scholarships in the same state fiscal year in which the contribution was received."*
- Require that SFOs maintain separate accounts for scholarship funds and for operating funds. *No such requirement exists in current law.* This will prohibit the commingling of scholarship and operating money. (Recommended by CFO).
- Permit the transfer of funds between SFOs provided the SFOs can match eligible scholarship students to the exact funds transfer and receive DOE approval. *Current law is silent about transfers. However, the CFO report noted some transferring of funds between SFOs to circumvent other statutory requirements, such as that funds be spent by the end of the state's fiscal year. This provision would prohibit that practice but still allow funds to be transferred to eligible students.*
- Require that all SFOs submit annual audits conducted by a Certified Public Accountant to the Auditor General and to the DOE within 120 days after the end of the SFO's fiscal year. This provision improves fiscal accountability requirements by imposing a specific time frame for audit submission and by specifying certain audit procedures. A new requirement is submission of audits to the DOE and meeting of the Florida Single Audit Act requirement. *The report issued by the CFO recommended clarification of the Auditor General's and DOE's role in audits and that DOE require SFOs to have audits under the Florida Single Audit Act.*
- Require that each SFO obtain verification of each recipient child's continued attendance at their private school prior to making each scholarship payment, and that such payments are made no less than quarterly. (Recommended by CFO). *No continuous attendance verification is now statutorily required. There is also no required frequency of payment contained in statute.*
- Require SFOs to submit quarterly reports to the DOE regarding the number of students participating, the names of the private schools in which they are enrolled, and any other information DOE may require. *No quarterly report requirement exists in current law. This provision will codify current operational practice and will allow DOE to track scholarship program activity.*

- Require SFOs to submit in a timely manner any information the DOE requests whether or not that information is connected to the quarterly reports. Makes clear that SFOs are required to comply with all requests for information from DOE.
- Require that SFOs verify the income of all applicants each year by means of independent income verification. While initial participation requirements are clearly identified as being economically disadvantaged, this provision would require an annual assessment of eligibility. (Recommended by CFO). *No annual verification of income of recipients is now required to be undertaken by SFOs.*
- Require an owner or operator of an SFO to submit to the Florida Department of Law Enforcement complete set of fingerprints for the purpose of a level 2 background check prior to assuming ownership of the SFO or decision making authority over the SFO. The results of the background check will be supplied to the DOE, and the state is not responsible for the cost of the background check. (Recommended by CFO). *Current law requires owners/operators to submit fingerprints, but results go back to the private school.*
- Prohibit an SFO under the ownership or control of an individual convicted of a crime involving moral turpitude or a crime that bears upon his/her fitness to have responsibility over the well-being of children to grant scholarships. (Recommended by CFO).
- Prohibit an SFO owned or operated by an individual who has filed for personal bankruptcy or corporate bankruptcy within the last 7 years from participating in the scholarship program. Provided, however, that in the case of corporate bankruptcy the individual must have owned more than 20% of the corporation. (Recommended by CFO). *No prohibition against an SFO being owned or operated by individuals with unsound financial backgrounds exists in current law.*
- Prohibit an owner or operator of an SFO from owning or operating a private school that is participating in the scholarship program. However, this provision may not be enough to prevent related party transactions as recommended in the CFO's recommendations. This provision would still permit relations, such as an SFO owner's spouse or child, to own or operate a private school receiving scholarship funds. *Current law does not contain a prohibition against an owner or operator of an SFO also owning or operating a participating private school.*
- Require SFOs to report to the DOE any school that is not in compliance with the scholarship program requirements, and prohibits the SFO from making any payments to that school until the Commissioner of Education determines it is in compliance. *Current law contains no requirement that an SFO monitor the private schools to determine compliance with the law, and there is no requirement that an SFO report a school that is not in compliance to the DOE.*
- Prohibit SFOs from discriminating against any student based upon race, color, national origin, sex, or religion. This language clarifies the antidiscrimination provisions.
- Provide that an SFO shall allow students to attend any eligible private school, and that the SFO shall allow students to transfer to any other eligible private school at any time.
- Prohibit an SFO from targeting its scholarships to any particular school, and prohibits awarding scholarships to its own employees. (Recommended by CFO - however, the CFO finding indicated that the employees of a private school receiving scholarship funds should also be prohibited from receiving a scholarship for their child to attend that school). *Current law contains no prohibition against targeting a school and contains no provision against an SFO granting scholarships to the children of its own employees.*

- Permit an SFO to obtain a secured line of credit to fund scholarship payments based on estimated contributions to be received within a six month period. All costs of financing are to be paid by the SFO from operating funds and not contributions. *Current law does not prohibit the use of a credit line or other financing vehicles. However, the CFO report stated that a SFO should not use any form of financing to increase the scholarship base of the SFO using anticipated future contributions will be greater to service the debt. This indicates a line of credit should only be used to manage short term cash flow and should not be secured by future contributions.*

## Parent/Student Obligations

The bill amends the statute to:

- Prohibit a student from receiving a CITC Scholarship if they are receiving a McKay or Opportunity Scholarship or are receiving a CITC Scholarship from another SFO.
- Provide that parents, upon receiving a scholarship check, shall restrictively endorse the check to the private school and that no power of attorney shall be valid for the purpose of endorsement. This provision prohibits the use of power of attorney in endorsing scholarship checks. The parents will be required to do so directly. (Recommended by CFO).
- Provide that any student receiving a CITC Scholarship must attend school throughout the school year unless excused by the school for illness or other good cause, and that the student must fully comply with the school's code of conduct. *No requirement for full-time attendance by a scholarship recipient exists in current law.*
- Require parents of a scholarship recipient to fully comply with the private school's parental involvement requirements unless excused by the school for illness or other good cause. *No requirement for parental involvement exists in current law.*
- Require parents to ensure that the student participates in the nationally norm-referenced testing program of the school unless, due to a disability, such participation is not appropriate. *There is currently no state requirement that students take standardized tests to assess learning in private schools.*
- Provide that any participant in the scholarship program who fails to comply with statute forfeits his/her scholarship. *No clear statement concerning disqualification of recipients exists in current law.*

## Private School Obligations

The bill amends the statute governing the participation of those schools to:

- Provide that a private school must demonstrate fiscal soundness by having been in operation for at least 3 school years or by obtaining a surety bond or letter of credit for an amount equal to the amount of scholarship money it receives during any quarter. The surety bond or letter of credit is to serve to secure the scholarship monies paid to the school should it be found that the funds were used for unlawful purposes. This provision increases the number of years a school must have been in operation to prove fiscal soundness and specifies the means by which scholarship monies are to be secured against unlawful uses when a school has been in operation less than three years. This provision does not provide the DOE a method of determining the fiscal soundness of schools that have been in operation in excess of three years. (Recommended by CFO).



- Require a private that has been in operating for 3 or more years to obtain a surety bond if the DOE has taken action against the school for violating the provisions of the statute relating to the CITC program. The private school will be required to post the surety bond for two years following the date on which action was taken against the school.
- Require private schools to notify the DOE of their intent to participate in the scholarship program and include in the notice specific information on what grade levels the school has available for scholarship participants.
- Require private schools participating in the program to comply with local and state health and safety laws and codes including but not limited to those covering fire safety and building codes. This provision clarifies the participating private schools' responsibilities to comply with health and safety laws and codes.
- Requires participating private schools to comply with all state laws relating to private schools including participation in the annual private school survey, the requirements for retention of records, the keeping of attendance records and reports, the laws covering health examinations and immunizations, and the state's attendance requirements. This provision clarifies the participating private schools' responsibilities to comply with specific state laws relating to private schools as a condition of participation.
- Require participating private schools to employ teachers who hold baccalaureate degrees, have at least three years of teaching experience, or have special skills or knowledge that qualify them to provide instruction in a subject.
- Require participating private schools to administer annually or make provision for scholarship students to take one of the nationally norm-referenced tests identified by the DOE, and to report the results of those tests to the parents and to the independent private research organization selected by the DOE to analyze scholarship student performance. The bill exempts from the testing requirement any student with a disability that renders such testing inappropriate. This provision formalizes the nationally norm-referenced testing program requirements for scholarship participants.
- Require that all personnel hired, contracted, or engaged to provide services with direct contact with students, and all owners of a participating private school that has direct student contact must submit a complete set of fingerprints for a level 2 background check. The bill provides for annual FDLE checks of the state arrest data-base, and FBI checks every 5 years. The cost of background checks shall not be borne by the state and shall be paid by the private school, the employee, the contracted person, the person engaged to provide services, or the owner. (Recommended by CFO). *No such requirement exists in current law for anyone other than the school owner/operator.*
- Provide that personnel hired, contracted, or engaged to provide services with direct contact with students, and all owners of the private school shall report immediately to the private school any individual convicted of a disqualifying offense. Specifies what actions a participating private school is to take if it receives a negative background check on a covered employee. (Recommended by CFO).
- Require all participating private schools to complete the DOE's sworn compliance form that certifies a school's adherence to state laws. This provision codifies the requirement for submission of sworn compliance forms that was instituted by order of Commissioner Horne during the summer of 2003. (Recommended by CFO).

- Require a participating private school to notify the DOE and the affected SFO of any student who receives scholarship payments from more than one SFO. This procedural change is in line with the recommendations of the CFO relating to one student receiving more than one scholarship. However, the wording of this paragraph will only include students receiving scholarships from more than one SFO and not those receiving more than one type of scholarship. *No such requirement exists in current law.*
- Require private schools to comply with all state agency rules relating to private schools.
- Prohibits home education programs, correspondence schools, and private tutoring programs from participating in the program.
- Prohibit any private school from participating in the scholarship program in they fail to meet the requirements of the statutes.

### **Department of Education Oversight**

The bill amends the statute governing the Department of Education to:

- Require the DOE to annually verify the eligibility of nonprofit SFOs and private schools. The DOE will be required to annually submit a list of eligible nonprofit SFOs to the DOR and verify the eligibility of expenditures contained in statute.
- Require DOE to establish a toll-free hotline providing information on participation in the scholarship program. This is a codification of current practice.
- Require DOE to establish a process that allows individuals to notify the DOE of any alleged violations of state law governing the scholarship program. This process has been established by the DOE. The bill also requires the DOE to investigate certain complaints submitted in writing.
- Require the annual submission of the sworn compliance forms by every participating private school to DOE and requires the DOE to retain such forms. This provision requires DOE to ensure that the participating private schools submit their sworn compliance forms each year. This is a codification of the sworn compliance form process instituted by Commissioner Horne during the summer of 2003. (Recommended by CFO).
- Require DOE to identify all nationally norm-referenced tests that are comparable to the norm-referenced test portions of the FCAT. This provision implements part of the nationally norm-referenced testing program for scholarship recipients found elsewhere in the bill in that it requires DOE to proactively identify which standardized tests will fulfill the requirement for testing.
- Require DOE to select an independent private research organization to analyze and report annually on the year-to-year improvement of participating students. The bill requires that the scores from the nationally norm-referenced tests be forwarded to the independent research organization and that the research organization in the course of its analysis must not disaggregate the data in such a way as to identify the academic level of individuals or individual schools. The bill requires that the independent private research organization accumulate historical performance data and conduct longitudinal studies. This provision provides a mechanism for annually and longitudinally monitoring academic performance of the scholarship program. However, since the data will not be provided to the DOE in its entirety, the DOE will not be able to identify individual schools or students with poor academic performance from the study results.

- Require DOE to provide an on-line resource that provides profiles of all participating private schools. The provision codifies an initiative being undertaken by DOE.
- Require DOE to notify any SFO if one of its recipients is also receiving scholarship monies from the McKay Scholarship Program, the Opportunity Scholarship Program, or from another SFO. This provision compliments the provisions elsewhere in the bill that require SFO's and participating private schools to provide notification of any instances of student enrollment in more than one program by imposing a like requirement on the DOE. (Recommended by CFO).
- Require that the DOE receive from each SFO a quarterly report regarding the number of participating students and the participating private schools as well as any other information the DOE deems necessary. This provision requires quarterly reports from all SFOs showing their activity. This provision will codify current operational practice.
- Require the DOE to regularly crosscheck the list of scholarship recipients to verify that they are not also enrolled in public schools. *The CFO found instances of students receiving scholarships and being counted as public school students.*
- Authorize the Commissioner of Education to suspend, or prohibit from participation in the program any SFO to ensure compliance with law. Specifically authorizes the Commissioner of Education to suspend any SFO that is not in compliance with the provisions of statute. (Recommended by CFO).
- Require the State Board of Education (SBE) to adopt rules to implement the provisions of statute relating to the CITC Program. This provision clarifies the SBE's rulemaking authority.
- Require the Department of Financial Services to randomly review scholarship checks for proper endorsement.

#### B. The John M. McKay Scholarships for Students With Disabilities Program

The bill amends s. 1002.39, F.S. as follows:

##### **Department of Education Oversight**

- Changes the definition of student with disabilities to reflect more modern terminology and remove hospitalized or homebound students from the definition.
- Add a maximum age to the receipt of the McKay Scholarship.
- Require DOE to establish a toll-free hotline providing information on participation in the scholarship program. This provision requires that DOE maintain an on-line information center on participation in the McKay Program. *The provision will codify current practice.*
- Require DOE to establish a process that allows individuals to notify it of any alleged violations of state law governing the scholarship program. The bill also requires the DOE to investigate certain complaints submitted in writing. *This provision codifies current operational practice.*
- Require DOE to receive annually a sworn compliance form from every participating private school, and requires the DOE to retain such forms. This provision requires DOE to ensure that the participating private schools submit their sworn compliance forms each year. This is a

codification of the sworn compliance form process instituted by Commissioner Horne during the summer of 2003. (Recommended by CFO).

- Require the DOE to regularly crosscheck the list of scholarship recipients to verify that they are not also enrolled in public schools. *The CFO found instances of students receiving scholarships and being counted as public school students.*

## Private School Obligations

The bill requires private schools to:

- Demonstrate fiscal soundness by having been in operation for at least 3 school years or by obtaining a surety bond or letter of credit for an amount equal to the amount of scholarship money it receives during any quarter. The surety bond or letter of credit is to serve to secure the scholarship monies paid to the school should it be found that the funds were used for unlawful purposes. This provision increases the number of years a school must have been in operation to prove fiscal soundness and specifies the means by which scholarship monies are to be secured against unlawful uses when a school has been in operation less than three years. However, this provision does not provide DOE a method of determining the fiscal soundness of schools that have been in operation in excess of three years.
- Require a private that has been in operating for 3 or more years to obtain a surety bond if the DOE has taken action against the school for violating the provisions of the statute relating to the McKay Scholarship program. The private school will be required to post the surety bond for two years following the date on which action was taken against the school.
- Comply with local and state health and safety laws and codes including but not limited to those covering fire safety and building codes. This provision clarifies the participating private schools' responsibilities to comply with health and safety laws and codes.
- Be academically accountable to parents by providing them with a written explanation of their child's progress. This provision imposes a specific academic accountability process on the participating private schools. *Currently no such state requirement exists.*
- Comply with all state laws relating to private schools including but not limited to participating in the annual private school survey, the requirements for retention of records, the keeping of attendance records and reports, the laws covering health examinations and immunizations, and the state's attendance requirements. This provision clarifies the participating private schools' responsibilities to comply with specific state laws relating to private schools as a condition of participation.
- Require that all personnel hired, contracted, or engaged to provide services with direct contact with students, and all owners of a participating private school that has direct student contact must submit a complete set of fingerprints for a level 2 background check. The bill provides for annual FDLE checks of the state arrest data-base, and FBI checks every 5 years. The cost of background checks shall not be borne by the state and shall be paid by the private school, the employee, the contracted person, the person engaged to provide services, or the owner. (Recommended by CFO). *No such requirement exists in current law for anyone other than the school owner/operator.*
- Provide that personnel hired, contracted, or engaged to provide services with direct contact with students, and all owners of the private school shall report immediately to the private school any individual convicted of a disqualifying offense. Specifies what actions a participating private

school is to take if it receives a negative background check on a covered employee.  
(Recommended by CFO).

- Complete the DOE's sworn compliance form that certifies a school's adherence to state laws. This provision codifies the requirement for submission of sworn compliance forms that was instituted by order of Commissioner Horne during the summer of 2003. (Recommended by CFO).
- Require private schools to comply with all state agency rules relating to private schools.
- Prohibits home education programs, correspondence schools, and private tutoring programs from participating in the program.
- Require participating private schools to have a physical location where the student regularly attends classes.
- Require the private school to have the parent of each student personally endorse the scholarship check and restricts the school from using a power of attorney to sign the check, from returning scholarship funds to the parents, from being a correspondence or distance learning school, or accepting a student prior to submitting the DOE sworn compliance form.
- Prohibit any private school from participating in the scholarship program in they fail to meet the requirements of the statutes.

### **Program Participant Obligations**

- The bill provides that parents, upon receiving a scholarship check, shall restrictively endorse the check to the private school, and that no power of attorney shall be valid for the purpose of endorsement. (Recommended by CFO).
- Require the Department of Financial Services to randomly review scholarship checks for proper endorsement.
- Grants the Commissioner of Education the authority to suspend or prohibit participation in the scholarship program and take other action necessary to ensure compliance with the provisions of statute.

### **C. SECTION DIRECTORY:**

Section 1. Amends s. 220.187, F.S., relating to the Corporate Tax Credit Scholarship Program.

Section 2. Amends s. 1002.39, F.S., relating to the John M. McKay Scholarship for Students with Disabilities Program.

Section 3. Provides an effective date.

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

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

1. Revenues:

The bill provides that the FDLE shall receive fees for the processing of background checks. No fiscal analysis has been presented by the FDLE. However, the FDLE estimated the cost of background checks to be \$25 for the state level check, \$23 for the FBI check, and \$6 for the annual maintenance and state arrest check for each person for which fingerprints are submitted and maintained. The total cost of the procedure and revenue collected in relation to the service are variable relative to the number of persons submitting fingerprints for processing and could not be determined at this time.

2. Expenditures:

The bill requires DOE to identify nationally norm-referenced tests that are comparable to the norm-referenced test portions of the Florida Comprehensive Assessment Test (FCAT) and to contract with an independent private research organization to receive and analyze the results of the nationally norm-referenced tests taken by the CITC Scholarship recipients.

The DOE reports that it would be required to pay an estimated \$20 per student to the private research organization for the purchase and score of the norm-referenced tests. The DOE further estimates that it will cost an additional \$200,000 to analyze and evaluate the data from the tests and issue a report.

The DOE's estimate of total cost ranges from \$426,000 to \$702,840, representing the range of possibilities from the current enrollment level to the maximum potential enrollment level.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not impact local government revenues.

2. Expenditures:

The bill does not impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an impact on the private sector associated with fingerprinting requirements, the requirement for audits conducted by Certified Public Accountants and other reporting requirements.

D. FISCAL COMMENTS: None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives the SBE rulemaking authority for implementing the provisions of the bill relating to the CITC Program and also directs the DOE to establish a process for notification of a violation of law by a

private school and to require completion of a sworn compliance form by private schools participating in the McKay Program. These requirements will likely need to be met through formal rulemaking pursuant to ss. 120.536(1) and 120.54, F.S.

The bill requires the FDLE to determine the cost of providing back ground checks.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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