

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2882

SPONSOR: Appropriations Subcommittee on Education and Education Committee

SUBJECT: Accountability/McKay Scholarships for Students with Disabilities Program

DATE: March 29, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	<u>Armstrong</u>	<u>Newman</u>	<u>AED</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute (CS) makes several changes to improve accountability in the John M. McKay Scholarships for Students with Disabilities Program, including the following:

- Redefining the criteria for students who are eligible to participate in the program.
- Revising the eligibility requirements for participating private schools to include annual registration of schools, a notarized sworn compliance statement, and evidence of criminal background checks of certain employees and officers.
- Requiring the Department of Law Enforcement to retain certain fingerprint records in a database and match the records against arrest fingerprint cards;
- Revising the criteria for forfeiture of a student's scholarship.
- Clarifying the obligations of school districts, private schools, and program participants.
- Providing the Department of Education with additional authority and responsibilities for administering the program, including sanctions for private schools that fail to comply with the requirements in law.
- Providing for the DOE to investigate legally sufficient complaints.
- Requiring audits of the program by the Auditor General.
- Requiring the State Board of Education to adopt specific administrative rules.

The requirements for participating private schools include:

- filing a surety bond with the DOE for 2 years. This requirement ceases after 2 years unless the private school is subsequently subject to an action by the DOE for a violation of s. 1002.39, F.S.; and
- requiring each scholarship student to participate at least annually in a student assessment, as determined by the private school in consultation with the student's parent or guardian, to demonstrate the student's skill level to parents.

The CS also provides an exemption from filing the required surety bond for private schools participating in the program that have had no action taken against them for a violation of s.

1002.39, F.S., as determined by the DOE. These schools may also accept new McKay scholarship students. If, however, these schools are subsequently subject to an action by the DOE for a violation of s. 1002.39, F.S., they must file the surety bond at a specified time and may not accept new scholarship students until they comply with the law and administrative rules, as determined by the DOE.

This CS substantially amends s. 1002.39, F.S.

The effective date of the CS is upon becoming a law.

## II. Present Situation:

### **John M. McKay Scholarships for Students with Disabilities Program**

Current law (s. 1002.39, F.S.) sets forth the requirements for parental placement of a scholarship student in an eligible private school or another public school. The law also establishes requirements for student eligibility for scholarships and for participation by an eligible private school. As well, the law establishes responsibilities for school districts and the Department of Education (DOE). The State Board of Education (SBE) has statutory authority to adopt rules to administer the program.

As of February 9, 2004, there were 673 participating schools and 12,439 scholarship recipients, with a total of \$60,383,612 in scholarship awards.

#### *Eligible and Ineligible Students*

Eligible 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. Students who are enrolled in a school that provides educational services in Department of Juvenile Justice (DJJ) commitment programs are not eligible for a scholarship.<sup>1</sup>

To be eligible for a McKay scholarship to attend a private school, a student with a disability must meet the following requirements:

- have an individual education plan (IEP) written in accordance with SBE rules.<sup>2</sup>
- have spent the prior school year in attendance at a Florida public school, by assigned school attendance area or by special assignment.<sup>3</sup>

As well, the student's parent must have obtained acceptance for the student's admission to an eligible private school and have notified the school district of the scholarship request prior to the date of the first scholarship payment. The parental notification must be through a communication directly to the district or through the DOE to the district in a manner that creates a written or electronic record of the notification and the notification's date of receipt.

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<sup>1</sup> Residential commitment programs include low, moderate, high, and maximum risk Florida DJJ programs. Students temporarily reside in these programs while committed to DJJ.

<sup>2</sup> Rule 6A-6.03028, F.A.C., addresses the development of IEPs and requires school districts to provide a copy of an IEP to parents, upon request. Students whose parents choose the option of attending another public school must also have an IEP.

<sup>3</sup> 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 FEFP surveys in kindergarten through grade 12.

At any time, the student's parent may remove the student from the private school and place the student in another eligible private school or in a public school.

#### *Parent and Student Obligations*

A parent who applies for a John M. McKay Scholarship is exercising his or her parental option to place his or her child in a private school. Parents are responsible for the following:

- requesting the scholarship at least 60 days prior to the first scholarship payment;<sup>4</sup>
- notifying 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.
- selecting the private school and applying for the admission of the student
- complying fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.<sup>4</sup>
- restrictively endorsing the warrant to the private school for deposit into the account of the private school, upon receipt of a scholarship warrant.<sup>4</sup>
- transporting the student to:
  - a public school that is inconsistent with the district school board's choice plan under s. 1002.31, F.S.
  - a public school in an adjacent school district with available space and a program with the services agreed to in the student's IEP already in place.
  - a designated assessment site, if he or she requests that the student take all statewide assessments.<sup>4</sup>

Students participating in the scholarship program must:

- remain in attendance throughout the school year, unless excused by the school for illness or other good cause.<sup>4</sup>
- comply fully with the school's code of conduct.<sup>4</sup>

#### *Term of Scholarship*

For purposes of continuity of educational choice, the scholarship remains in force until the student returns to a public school or graduates from high school. If the parent chooses the public school option, the student may continue attending a public school chosen by the parent until the student graduates from high school.

#### *School District Obligations*

Under current law, school districts must:

- timely notify parents of all options available in s. 1002.39, F.S.
- offer students' parents an opportunity to enroll the student in another public school within the district.
- notify the DOE within 10 days after it receives parental notification of intent to participate in the program.
- complete a matrix of services for any student who is participating in the scholarship program.<sup>5</sup>

<sup>4</sup> A participant who fails to comply with this requirement forfeits the scholarship.

<sup>5</sup> For a student with disabilities who does not have a matrix of services under s. 1011.62(1)(e), F.S., a matrix must be completed that assigns the student to one of the levels of service as they existed prior to the 2000-2001 school year.

- notify the DOE of the student's matrix level within 30 days after receiving parental notification of intent to participate in the scholarship program.
- provide the student's parent with the student's matrix level within 10 school days after its completion.
- notify the student's parent if the matrix has not been completed within 10 school days after receiving parental notification of intent to apply for a McKay Scholarship.
- provide the parent with the date for completion of the matrix.
- accept a student from an adjacent school district whose parent selects a public school in the recipient district, and report the student for purposes of funding under the Florida Education Finance Program (FEFP).
- provide locations and times to take all statewide assessments for a student in the district who participates in the scholarship program and whose parent requests that the student take the statewide assessments under s. 1008.22, F.S.
- provide transportation to the public school selected by the parent, if the parent chooses a public school consistent with the district school board's choice plan under s. 1002.31, F.S.
- report all scholarship students who are attending a private school separately from other students reported for FEFP purposes.

#### *DOE Obligations*

The law tasks the DOE with the following requirements:

- notifying 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.
- disbursing quarterly scholarship payments to parents of scholarship students.<sup>6</sup>
- receiving all required documentation for a student's participation in the program, including the private school and student fee schedules, at least 30 days prior to the first scholarship payment and prior to the student entering the program.
- verifying student admission acceptance by a private school and continued enrollment and attendance.
- reviewing and approving documentation prior to scholarship payments.
- mailing the warrant to the private school of the parent's choice.

The law prohibits the DOE from making any retroactive payments.

#### *Private School Eligibility and Obligations*

To be eligible to participate in the program, a Florida private school must meet the following requirements:

- Demonstrate fiscal soundness by:
  - operating for 1 school year; or
  - providing DOE with a statement by a C.P.A. confirming that the school is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year; or
  - filing with DOE a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter.

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<sup>6</sup> Funds are derived from the school district's total funding entitlement under the FEFP and from authorized categorical amounts.

- Notify DOE of intent to participate in the program, specifying the grade levels and services that the private school has available for students with disabilities who participate in the scholarship program.
- Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.
- Meet state and local health and safety laws and codes.
- Be academically accountable to the parent for meeting the educational needs of the student.
- Employ or contract with teachers who hold baccalaureate or higher degrees, or have at least 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 laws relating to general regulation of private schools.
- Adhere to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

#### *Scholarship Funding and Payment*

The scholarship amount is either a calculated amount or the amount of the private school's tuition and fees, whichever is less. Until the school district completes a matrix, the scholarship calculation is based on the lowest level of service. Payments must be made by individual warrant payable to the student's parent for his or her endorsement and for deposit into the private school's account.

#### *Chief Financial Officer (CFO)/Department of Financial Services' Obligations*

Florida's CFO must make quarterly scholarship payments on specific dates after verification by the DOE of student information on private school acceptance, enrollment, and attendance.

#### **Matrix of Services**

When a parent indicates that he or she intends to place the child in a private school, the child may or may not have a matrix of services. Under current law, only students with exceptional education cost factors for Support Levels IV and V must have a matrix of services that documents the services that each student will receive. Consequently, students who are at support levels I, II, and III will need a matrix of services. There are no specific administrative rules that address matrixes. Rather, various DOE publications address the implementation of matrixes.

Current law, (s. 1011.62, F.S.) relating to determining the annual allocation to each district for operation, requires the General Appropriations Act (GAA) to establish cost factors based on desired relative cost differences between specific programs. The Commissioner of Education must specify a matrix of services and intensity levels to be used by districts in the determination of the two weighted cost factors for exceptional students with the highest levels of need (i.e., levels IV and V). The funding model for exceptional student education programs uses specified FEEP cost factors, including support levels IV and V for exceptional students and a guaranteed allocation for exceptional student education programs. The law also provides that:

- exceptional education cost factors are determined by using a matrix of services to document the services that each exceptional student will receive; and
- the nature and intensity of the services indicated on the matrix must be consistent with the services described in each exceptional student's individual educational plan.

In order to generate funds using one of the two weighted cost factors, a matrix of services must be completed at the time of the student's initial placement into an exceptional student education program and at least once every 3 years by personnel who have received approved training. Nothing listed in the matrix may be construed as limiting the services a school district must provide in order to ensure that exceptional students are provided a free, appropriate public education.

### **State Law and Rules Related to Private Schools**

#### *Private School Notification and Annual Survey*

Current law (s. 1002.42, F.S.) provides for the general regulation of private schools and requires each new institution to notify the department about its existence. The DOE must organize, maintain, and annually update a database of educational institutions within the state. The annual submission of the database survey by a school must not be used by that school to imply approval or accreditation by the Department of Education. DOE is charged with making data on private education in this state accessible to the public. For the purpose of organizing, maintaining, and updating this database, each private school must annually execute and file a database survey form on a date designated by the DOE, including a notarized statement indicating that the owner of the private school has complied with the provisions for criminal background checks and the prohibition against ownership or operation of a private school by a person who has been convicted of a crime involving moral turpitude.

The database must include the name, address, and telephone number of the institution; the type of institution; the names of administrative officers; the enrollment by grade or special group (e.g., career and technical education and exceptional child education); the number of graduates; the number of instructional and administrative personnel; the number of days the school is in session; and such data as may be needed to meet the provisions of this section and s. 1003.23(2), F.S., relating to attendance. Each existing private educational institution must notify the DOE of any change in the name of the institution, the address, or the chief administrative officer.

#### *Criminal Background Checks*

Section 1002.42(2)(c), F.S., sets forth fingerprinting requirements for state but not federal processing and checking for criminal backgrounds of the owners and operators of private schools. The law provides exceptions for certain persons and specifies the individuals who may take fingerprints. The law defines the term "owner" to mean any individual who is the chief administrative officer of a private school. The Florida Department of Law Enforcement (FDLE) must forward the results to the private school owner who must make the results available for public inspection in the private school office. The costs of fingerprinting, criminal records checking, and processing must be borne by the applicant or private school.

An owner of a private school may require school employees to file a complete set of fingerprints with the FDLE for processing and criminal records checking. Findings from the processing and checks must be reported to the owner for use in employment decisions.

#### *Criminal Sanctions*

It is a misdemeanor for an institution to fail to submit the annual database survey form and notarized statement of compliance to the DOE. The authorities of an institution that fail to do so are, upon conviction, subject to a fine not exceeding \$500. Persons who submit data for a nonexistent school or an institution providing no instruction or training in order to defraud the

public commit a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. It is unlawful for a person who has been convicted of a crime involving moral turpitude to own or operate a private school. Persons found to be in violation of this requirement commit a first degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

#### *Other State Laws*

There are other laws and rules governing private schools, including, but not limited to: s.381.006(6), F.S., relating to school sanitation practices, s. 381.0011(4), F.S., relating to communicable disease, s. 381.0072, F.S., relating to food service protection, s. 404.056(1)(d), F.S., related to radon screening, and s. 1003.22 relating to school health entry examinations and scoliosis screening. As well, if a private school is a charitable organization, the school may be subject to the provisions of chapter 496, F.S., relating to the solicitation of funds by these organizations. Private school corporations are governed by chapter 623, F.S.

Section 1003.23, F.S., requires all officials, teachers, and other employees in public, parochial, religious, denominational, and private K-12 schools, including private tutors, to keep all attendance records and to prepare and submit promptly all reports that may be required by law and by SBE rules and district school boards. The records must include a register of enrollment and attendance and the reports must be made as required by the SBE. The enrollment register must show the absence or attendance of each student enrolled for each school day of the year, as prescribed by the SBE, and must open for inspection by the designated school representative or the district school superintendent of the district in which the school is located. Violations of this section are a second-degree misdemeanor, punishable as provided by law.

#### **Senate Interim Project**

The Senate Education Committee interim project (Report 2004-130) noted that the John M. McKay Scholarships for Students with Disabilities Program has grown dramatically and rapidly since its inception in 1999 with two participating students, to its enrollment during the 2002-2003 school year of over 9,000 students. The program suffered during the past year from extensive public criticism of the questionable business practices of certain private schools accepting scholarship students, as well as reports of students receiving long-term scholarships under the program for disabilities that were in fact temporary and short-lived. Findings from the committee interim study suggested numerous potential solutions to the program's problems, including legislative remedies and the implementation of rules, administrative changes, or changes in approach by the Department of Education and the State Board of Education.

#### **Senate Task Force on Accountability**

The Senate President appointed a Task Force of thirteen members, including two Senators, representatives from public and private schools, and parents and grandparents of school age children, to review the program and make recommendations to improve accountability.

Following are the guiding principles for the Task Force:

- Recommendations will assure parents and the public that the program operates in a responsible manner.
- Recommendations will assure parents and the public that participating schools exercise good stewardship of public funds.
- Recommendations will not discourage reputable private schools from participating in the program.

- Recommendations will strengthen and enhance the program and not diminish its scope or strength.
- Recommendations will focus on accountability.

The members met over a ten-month period, reviewed evidence of existing problems, took public testimony, and deliberated options for improving the program. Ultimately, the Task Force determined that improvements were needed in three major areas:

- Imposing additional requirements on participating private schools for fiscal and academic accountability;
- Providing more explicit statutory direction to the Department of Education for administering the program; and
- Establishing controls on scholarship warrants signed by parents.

### **Chief Financial Officer/Department of Financial Services Review of the Program**

In December 2003, the Department of Financial Services released a report on the audit of the McKay Scholarship Program that noted the lack of administrative rules and several instances where students received scholarships in both the McKay and Corporate Tax Credit Programs. The report included recommendations to both the Department of Education and the Legislature to enhance the fiscal integrity and strengthen the management of the program.

### **Recent DOE Action**

Since the release of the Senate interim project report and the Department of Financial Services' review, the DOE has undertaken several initiatives to improve the program's accountability, including establishing a database which verified that some students were receiving scholarships in both the McKay and Corporate Tax Credit Programs. The department has also requested participating private schools to submit a form indicating compliance with specific requirements, subject to withholding of scholarship funds.

## **III. Effect of Proposed Changes:**

**Section 1.** The CS amends s. 1002.39, F.S., to make the following changes:

- **Definition of an eligible student**

Revises the definition of a student with a disability to include K-12 students who are documented as having mental retardation; a speech or language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; a physical impairment; a serious emotional disturbance, including an emotional handicap; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; or autism.

- **Parent Obligations and Prohibitions**

- Revises the parental intent notification provisions to require the parent to notify the DOE rather than the school district. The DOE must notify the district of the parent's intent upon receipt of the parent's notification.
- Prohibits the parent of a student participating in the scholarship program from designating any participating private school as the parent's attorney in fact to sign a scholarship warrant.

- **Term of the scholarship**

Allows the scholarship to remain in force until the scholarship recipient graduates from high school or reaches the age of 22, whichever occurs first. This change permits the student to



remain in private school to the same extent as students with disabilities in Florida public schools. According to the DOE, there are currently 5,479 students with disabilities who are age 19 through 21 and 229 students who are age 22+.<sup>7</sup>

- **Eligibility for the scholarship**

Provides that a student is not eligible to receive a McKay scholarship if he or she:

- Receives a scholarship from a scholarship funding organization under s. 220.187, F.S., or an opportunity scholarship under s. 1002.38, F.S.
- Participates in a home education program, as defined in s. 1002.01(1), F.S.
- Receives instruction from a correspondence school or participates in distance learning courses.
- Does not have regular and direct contact with his or her private school teachers at the school's physical location.

Allows McKay scholarship students to participate in a distance learning course or a course offered by a correspondence school if the tuition and other costs are not paid by McKay scholarship funds.

- **School District Obligations**

- Revises the matrix provisions to require the district to notify the DOE of the student's matrix level within 30 days after receiving notification by DOE of the parent's intent to participate in the program.
- Requires the nature and intensity of the services prescribed by the matrix to be consistent with the student's IEP.
- Allows changes to a matrix only to correct technical, typographical, or calculation errors or to align the matrix with the student's IEP completed by the school district prior to the student enrolling in or attending a private school.
- Clarifies the reporting requirement to DOE for FEFP purposes for students who attend another public school in the district and for all students attending a private school under the program.
- Requires notification to parents of the availability of a reassessment of each scholarship student at least every 3 years.

- **DOE Obligations**

- Requires the DOE to timely notify the parent of each public school student of all options under the program and offer the student's parent an opportunity to enroll the student in another public school within the district.
- Defines timely notification as no later than April 1 of each school year.
- Requires notification to the school district upon receipt of the parent's intent to participate in the program.
- Requires the DOE to:
  - Review for compliance all documentation required for each scholarship student's participation, including without limitation, the private school's schedule and the student's fee schedule;
  - Verify the admission acceptance of each scholarship student to an eligible private school prior to the initial scholarship payment;
  - Verify, prior to each scholarship payment, the enrollment and attendance of each scholarship student at the private school and that the scholarship student is not:
    - Receiving a scholarship under ss. 220.187 or 1002.38, F.S.
    - Participating in a home education program as defined in s. 1002.01(1), F.S.

<sup>7</sup> Florida DOE, March 8, 2004, School Year 2003-2004, Exceptional Student Membership (excluding gifted), Survey 9.

- Participating in instruction delivered by a correspondence school or distance learning courses, except as specifically permitted in subsection (2)(b).
- Receiving education services in a Department of Juvenile Justice commitment program.
- Attending a public school in the state, if the student has a scholarship to attend a private school.
- Administer and prescribe an annual sworn and notarized compliance statement for each participating private school and independently verify the information provided by each participating private school; and
- Review all results of required background checks.
- Determine the eligibility of a private school to accept McKay scholarship students, based upon independent verification that the private school meets all the requirements in s. 1002.39, F.S., and all applicable rules adopted by the SBE.
- Publish a current, on-line list of eligible private schools.
- Include each eligible private school on the on-line list of eligible private schools, within 10 days after the private school is determined as eligible to participate in the McKay scholarship program.
- Remove immediately from the on-line list of eligible private schools any school that is determined by the DOE to be an ineligible private school for failure to meet or comply with the statutory requirements.

DOE may not change a matrix of services completed by a school district, except as specified in the CS.

#### *Noncompliance and Sanctions*

- The DOE must deny or refuse to allow the participation of any private school if it determines that the private school or any of its owners or administrators has failed to meet the requirements for initial application or renewal as provided ins. 1002.39, F.S.
- The DOE must issue a notice of noncompliance pursuant to s. 120.695, F.S., to any participating private school for minor violations of any of the provisions of s. 1002.39, F.S., or the SBE rules. DOE must issue an emergency order revoking the school's registration for the following:
  - Failure to satisfy the requirements specified in the notice within 30 days after its receipt by the school; and
  - Major violations, as defined in s. 120.695, F.S.
- The DOE must revoke the scholarship for a participant who fails to comply with the requirements in subsection (5) or who:
  - Receives a scholarship under ss. 220.187 or 1002.38 F.S.
  - Participates in a home education program as defined in s. 1002.01(1), F.S.
  - Participates in instruction delivered by a correspondence school or distance learning courses, except as specifically exempted in subsection (2)(b).
  - Does not have regular and direct contact with the student's private school teachers at the school's physical location.
  - Enrolls in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs.

#### *Complaints and Investigations*

- DOE must conduct an investigation of any written complaint of violations of s. 1002.39, F.S., if the complaint is signed by the complainant and is legally sufficient, as defined in the CS. To determine legal sufficiency, the DOE may require supporting information or documentation.

- **Private School Obligations**
  - Requires the school to be a private school as defined in s. 1002.01(2), F.S.
  - Eliminates the option of providing evidence of fiscal solvency through number of years in operation, a statement by a certified public accountant, or a letter of credit.
  - Requires evidence of fiscal solvency by filing a surety bond for the amount equal to the scholarship amount for each quarter of the school year.
    - Requires the bond to be filed at the time of the private school's registration and each renewal period thereafter for a total of 2 years.
    - Provides an exception from the surety bond requirements for an eligible private school that participates in the program for a total of 2 years or longer and has had no action taken by the DOE against the school for any violation of s. 1002.39, F.S., during the 2-year period.
      - Requires a private school that was subject to an action taken by the DOE for any violation of s. 1002.39, F.S., to file a surety bond following the date on which the action was taken, but prior to the next quarterly scholarship payment and for 2 years thereafter.
  - Requires annual registration with the DOE.
  - Requires the private school owner or administrator to provide specific information, including the following:
    - legal business and trade name, mailing address, and business location of the private school.
    - full name, address, and telephone number of each owner or administrator.
  - Participating private schools must:
    - Comply with all state laws relating to the general regulation of private schools, including, but not limited to, s. 1002.42, F.S.
    - Publish and adhere to the tenets of their adopted disciplinary procedures;
    - Provide DOE with all documentation for each scholarship student's participation in the program, including, but not limited to the following:
      - the private school's fee schedule, including, but not limited to, fees for services, tuition, and instructional materials, each scholarship student's schedule of fees and charges at least 30 days prior to the first quarterly scholarship payment;
      - the enrollment and attendance information, including an on-line attendance verification form, for each scholarship student, prior to payment; and
  - Maintain at the private school quarterly documentation for the on-line attendance form, consisting of a notarized statement that is signed by the private school and the parents of each McKay scholarship student;
  - Make the documentation available to the DOE, upon request;
  - Maintain a physical location in Florida where a scholarship student regularly attends classes;
  - Advertise or notify potential McKay scholarship students and parents of the specific types of disabilities served by the private school;
    - Provide this information to DOE.
  - Review with the parent the student's IEP.
  - Require each scholarship student to participate at least annually in a student assessment, determined by the private school in consultation with the student's parent or guardian, to demonstrate the student's skill level to the parent.

- Notify the parent about the student's skill level on the student assessment, at least on an annual basis;
- Notify the DOE of any change in the school's registered name or location prior to any change;
- Notify the DOE within 15 days after any other change in the registration information provided to the DOE;
- Notify each local health department within 15 days after establishing operations at a physical location or address and within 3 days after discovering any ongoing health code violation that has not been remedied in full;

The CS requires certain individuals at a private school, upon employment and every five years thereafter, to undergo and meet level two criminal background-screening standards as provided in s. 435.02, F.S. The CS defines those individuals subject to the criminal background check as the private school owner, president, chairperson of the board of directors, superintendent, principal, or person with equivalent decision-making authority who owns, operates or administers a private school. In addition, any individual at a private school that has access to scholarship funds is also subject to a criminal background check. These individuals must file a complete set of fingerprints, taken by an authorized law enforcement agency or an employee of the private school trained to take fingerprints, with DOE. DOE shall file the fingerprints with the Department of Law Enforcement (FDLE) for state processing, which shall in turn file the fingerprints with the Federal Bureau of Investigation for federal processing. Individuals found to have committed a crime involving moral turpitude or failing to meet level two screening requirements may not be employed, contracted with, or engaged to provide services. The private school or the private school personnel being checked must absorb the cost of the background check.

The CS requires FDLE to retain fingerprint records beginning July 1, 2004, and to match the retained fingerprints, beginning December 15, 2004, with any arrest fingerprint records. FDLE shall report any match of an arrest record with a retained fingerprint record to DOE. The private school must report any change in status of an employee, contractor, or volunteer to FDLE. FDLE shall adopt a rule establishing a fee, which shall be borne by the private school, the employee, contractor, volunteer, or the owner. This provision is necessary to ensure that an individual with a prior criminal record does not have direct contact with students.

The CS defines the term "closed-enrollment" to mean that the private school is no longer accepting new scholarship students. A private school may request that the school be listed by the DOE with a closed-enrollment status in the program if the school is no longer accepting new students with McKay scholarships. The school must make a written request to the DOE and is subject to all the requirements in s. 1002.42, F.S., and all applicable State Board of Education rules if the school is serving a McKay scholarship student. The DOE may only grant this status for one school year.

- **Private School Prohibitions**

Private schools may not:

- Act as attorney in fact for parents of a scholarship student under the authority of a power of attorney executed by the parents, or under any other authority, to endorse scholarship warrants on behalf of parents.
- Send or direct McKay scholarship funds to parents of a scholarship student who receives instruction at home.
- Be a correspondence school or distance learning school.

- Accept a McKay scholarship student until the sworn and notarized compliance statement has been completed, submitted to, and independently verified by the DOE.
- **Auditor General (AG) Obligations**
  - Requires the AG to include in the operational audit of the Department of Education the McKay scholarship program, including a review of a sample of the warrants used to pay for the scholarships, as well as random site visits to participating private schools in order to verify student enrollment and other information reported by the private schools.
- **State Board of Education Rules**
  - Requires administrative rules to be adopted to:
    - establish procedures for schools to request closed-enrollment and active status and forms for changes to a matrix by a school district and the DOE;
    - implement the requirement that private schools timely notify the DOE of material changes to registration information;
    - establish attendance verification procedures and forms and procedures for determining student eligibility and approving scholarships; and
    - administer the annual sworn and notarized compliance statement to all participating private schools.

The rules must establish deadlines for the receipt of sworn and notarized compliance statements and must enumerate the items for initial and subsequent statements.

**Section 2.** The CS requires the SBE to initiate the adoption of rules required by the act 10 days after its effective date and to report to the presiding officers of the Legislature by December 1, 2004, on the status of the rulemaking process.

**Section 3.** The CS exempts private schools from filing the surety bond if they meet the following requirements on June 1, 2004:

- the school is participating in the McKay scholarship program; and
- the school is in compliance with s. 1002.39, F.S., as determined by the DOE.

These private schools may accept new McKay scholarship students prior to completing the sworn and notarized compliance statement required in s. 1002.39(4)(b)4., F.S. If these schools become (after June 1, 2004) subject to an action taken by the DOE for a violation of s. 1002.39, F.S., they must file a surety bond after the date on which the action was taken, but prior to the next quarterly payment. The schools are prohibited from accepting new McKay scholarship students until they comply with all requirements of s. 1002.39, F.S., and all applicable SBE rules, as determined by the DOE.

**Section 4.** The CS takes effect upon becoming a law.

#### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Fees for fingerprinting and background screening of private school employees will increase and the cost will be paid by either the private school or the employee to the Florida Department of Law Enforcement.

B. Private Sector Impact:

Additional efforts for participating private schools to comply with the requirements in the CS suggest that there will be increased costs for the schools.

With regard to the surety bond, according to a representative of the Florida Surety Association, the surety company will require a school to demonstrate its financial standing and may require a review of assets, financial statements, cash flow and bank use history, or an audit or quality review. Generally, the bond amount will be based on the number of scholarship students and the dollar value of the scholarships for a period of time (e.g., a \$25,000 bond for 10 students at \$2,500 per scholarship for a school year). While most participating private schools previously demonstrated fiscal soundness via the number of years in operation option, a few schools used a surety bond.<sup>8</sup>

The costs associated with fingerprints must be borne by the private school employee, the private school contractor, or the private school. Current law (s. 1002.42(2)(c)) already contains fingerprinting requirements for state processing and checking for criminal backgrounds of the owners and operators of private schools. However, the fingerprint and background screening requirements of the bill are more stringent than the current statutory requirements and will increase the cost to either the employee or the school.

C. Government Sector Impact:

The CS does not require an appropriation.

Additional efforts for the Department of Education to administer the program and monitor the participating schools as required by the CS suggest that there will be increased cost for the department. However, it is anticipated that the department will manage the program within existing agency resources.

The Auditor General has indicated that the additional audits will be funded from existing funds and will not require an appropriation.

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<sup>8</sup> Florida Department of Education, Response to Senate Education Committee interim project questionnaire, October 16, 2003. Fiscal soundness was demonstrated via surety bond for 2% of the private schools in 2001-2002. No private schools used a surety bond in 2002-2003 and only one school (or less than 1%) used a surety bond in 2003-2004 (as of October 16, 2003) to demonstrate fiscal solvency.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The CS requires school districts to notify parents of private school scholarship students of the availability of reassessment of the student every 3 years. Current law (s. 1002.39, F.S.) is silent on the issue of reevaluations of McKay scholarship students who are placed by their parents in private schools and there are no administrative rules for the program. The DOE advised participating private schools and school district exceptional student education administrators that school districts are required to notify parents of McKay Scholarship students when it is time for their child's three-year reevaluation. As well, districts were informed that parental consent is not required before reviewing existing data as a part of a reevaluation, but must be obtained prior to conducting formal testing. If the parent declines to give consent for a reevaluation, the district should document the parent's intent that no formal reevaluation testing occur.<sup>9</sup>

Federal law requires school districts to ensure that a reevaluation of each child with a disability is conducted if conditions warrant or if the child's parent or teacher requests a reevaluation, but at least once every three years. However, parental consent is required prior to any reevaluation. There is, however, an exception to the parental consent requirement if the school district can demonstrate that it has taken reasonable measures to obtain consent and the parent has failed to respond.<sup>10</sup> Current Florida administrative rule 6A-6.0331(1)(c), F.A.C., requires school districts to provide a reevaluation of each student with a disability at least every three years, in accordance with the requirements prescribed in rule, or more frequently if conditions warrant or if required by other administrative rules.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>9</sup> Florida DOE, *McKay Scholarships: Services by Public Schools: Questions and Answers*, May 2, 2003.

<sup>10</sup> See (20 U.S.C. s. 1414(a)(2) and 34 C.F.R. s. 300.536.