

## DRAFT SCHOLARSHIP PROGRAM ACCOUNTABILITY LEGISLATION

### A bill to be entitled, an act relating to:

Section 1. Section 220.187, Florida Statutes, is amended to read:

#### **220.187 Credits for contributions to nonprofit scholarship-funding organizations.--**

(2) DEFINITIONS.--As used in this section, the term:

(a) "Department" means the Department of Revenue.

(b) "Eligible contribution" means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible nonprofit scholarship-funding organization. The taxpayer making the contribution may not designate a specific child as the beneficiary of the contribution. The taxpayer may not contribute more than \$5 million to any single eligible nonprofit scholarship-funding organization.

(c) "Eligible ~~private nonpublic~~ school" means a ~~private nonpublic~~ school located in Florida that offers an education to students in any grades K-12 and that meets the requirements in subsection (6) ~~(5)~~.

(d) "Eligible nonprofit scholarship-funding organization" means a charitable organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code, that is registered as a Florida corporation, and that complies with the provisions of subsection (4).

(e) "Owner/Operator" means the owner, president, chairman of the board of directors, superintendent, principal, or person with equivalent decision-making authority who owns or operates an eligible private school or an eligible nonprofit scholarship-funding organization.

~~(f)~~ ~~(e)~~ "Qualified student" means a student who qualifies for free or reduced-price school lunches under the National School Lunch Act and who:

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

Students are not eligible to receive a corporate income tax credit scholarship if they are participating in the Opportunity Scholarship Program created in s. 1002.38 or the McKay Scholarship Program created in s. 1002.39. Students are not eligible to receive a scholarship from more than one eligible nonprofit scholarship-funding organization.

(3) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX CREDITS;  
LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.--

(a) There is allowed a credit of 100 percent of an eligible contribution against any tax due for a taxable year under this chapter. However, such a credit may not exceed 75 percent of the tax due under this chapter for the taxable year, after the application of any other allowable credits by the taxpayer. ~~However, at least 5 percent of the total statewide amount authorized for the tax credit shall be reserved for taxpayers who meet the definition of a small business provided in s. 288.703(1) at the time of application.~~ The credit granted by this section shall be reduced by the difference between the amount of federal corporate income tax taking into account the credit granted by this section and the amount of federal corporate income tax without application of the credit granted by this section.

(b) The total amount of tax credits and carryforward of tax credits which may be granted each state fiscal year under this section is \$88 million. However, at least 5 percent of the total statewide amount authorized for the tax credit shall be reserved for taxpayers who meet the definition of a small business provided in s. 288.703(1) at the time of application.

(c) A taxpayer who files a Florida consolidated return as a member of an affiliated group pursuant to s. 220.131(1) may be allowed the credit on a consolidated return basis; however, the total credit taken by the affiliated group is subject to the limitation established under paragraph (a).

(4) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING  
ORGANIZATIONS--

(a) Obligations.--

1. An eligible nonprofit scholarship-funding organization shall provide scholarships, from eligible contributions, to qualified students for:

a. 1. Tuition or textbook expenses for, or transportation to, an eligible ~~private nonpublic~~ school. At least 75 percent of ~~each the~~ scholarship ~~funding~~ must be used to pay tuition expenses; or

b. 2. Transportation expenses to a Florida public school that is located outside the district in which the student resides or to a lab school as defined in s. 1002.32.

2. (b) An eligible nonprofit scholarship-funding organization shall give priority to qualified students who received a scholarship from an eligible nonprofit scholarship-funding organization during the previous school year.

3. An eligible nonprofit scholarship-funding organization shall not provide a scholarship to a student who is also receiving an Opportunity Scholarship pursuant to s. 1002.38 or a McKay Scholarship pursuant to s. 1002.39. In addition, an eligible nonprofit scholarship-funding organization shall not provide a scholarship to a student who is receiving a corporate income tax credit scholarship from another eligible nonprofit scholarship-funding organization.

4. (e) The amount of a scholarship provided to any child for any single school year by ~~an~~ eligible nonprofit scholarship-funding organizations from eligible contributions shall not exceed the following annual limits:

a. 4. Three thousand five hundred dollars for a scholarship awarded to a student enrolled in an eligible private ~~nonpublic~~ school.

b. 2. Five hundred dollars for a scholarship awarded to a student enrolled in a Florida public school that is located outside the district in which the student resides.

5. (d) The amount of an eligible contribution which may be accepted by an eligible nonprofit scholarship-funding organization is limited to the amount needed to provide scholarships for qualified students which the organization has identified and for which vacancies in eligible private ~~nonpublic~~ schools have been identified.

6. (e) An eligible nonprofit scholarship-funding organization that receives an eligible contribution must expend ~~spend~~ 100 percent of the eligible contribution to provide scholarships in the same state fiscal year in which the contribution was received. No portion of eligible contributions may be used for administrative expenses. All interest accrued from contributions must be used for scholarships.

7. An eligible nonprofit scholarship-funding organization must maintain separate accounts for scholarship funds and operating funds.

8. (f) An eligible nonprofit scholarship-funding organization that receives eligible contributions must provide to the Auditor General and the Department of Education an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant and in accordance with rules adopted by the Auditor General. The audit must be conducted in compliance with generally accepted accounting principles and must include a report on financial statements presented in accordance with the reporting standards set forth in Statement of Financial Accounting Standards No. 117, Financial Statements of Not-for-Profit Organizations and a determination of compliance with the statutory eligibility and expenditure requirements set forth in this section Audits must be provided to the Auditor General and the

Department of Education within 120 days after completion of the nonprofit scholarship-funding organization's fiscal year.

9. (g) An eligible nonprofit scholarship-funding organization shall obtain verification from the private school of a student's continued attendance at the school prior to each scholarship payment. Payment of the scholarship shall be made by the eligible nonprofit scholarship-funding organization on a cycle of no less than a quarterly basis. Payment of the scholarship by the eligible nonprofit scholarship-funding organization shall be by individual warrant or check made payable to the student's parent. If the parent chooses for his or her child to attend an eligible private nonpublic school, the warrant or check must be mailed by the eligible nonprofit scholarship-funding organization to the private nonpublic school of the parent's choice, and the parent shall restrictively endorse the warrant or check to the private nonpublic school. An eligible nonprofit scholarship-funding organization shall ensure that, upon receipt of a scholarship warrant or check, the parent to whom the warrant or check is made restrictively endorses the warrant or check to the private nonpublic school of the parent's choice for deposit into the account of the private nonpublic school.

10. Eligible nonprofit scholarship-funding organizations must prepare and submit quarterly reports to the Department of Education pursuant to subsection (7). In addition, an eligible nonprofit scholarship-funding organization must submit any information requested by the Department of Education relating to the scholarship program in a timely manner.

11 Eligible nonprofit scholarship-funding organizations must verify the income of all applicants participating in the scholarship program each year with independent income documentation.

12. a. Owner/Operators of an eligible scholarship-funding organization shall, within 5 days of assuming ownership, file with the Department of Law Enforcement a complete set of fingerprints for state processing for criminal background check consistent with the requirements of National Child Protection Act, 42 U.S.C.A. § 5119(b).

b. The costs of fingerprinting and the background check shall not be borne by the State. The result of the criminal background check shall be reported as set forth under the National Child Protection Act, 42 U.S.C.A. § 5119(b) and forwarded to the Owner/Operator of the eligible nonprofit scholarship-funding organization and to the Department of Education.

c. A nonprofit scholarship-funding organization that has an Owner/Operator convicted of a crime involving moral turpitude or a crime that bears upon the owner/operator's fitness to have responsibility for the safety and well-being of children shall not be eligible to provide scholarships under this section.

d. A nonprofit scholarship-funding organization that has an Owner/Operator who in the last 7 years has filed for personal bankruptcy or corporate bankruptcy in a corporation in

which the person owned more than 20 percent of the corporation shall not be eligible to provide scholarships under this section.

13. An owner or operator of an eligible nonprofit-scholarship funding organization is prohibited from owning or operating an eligible private school participating in the scholarship program.

14. Eligible nonprofit scholarship-funding organizations shall report to the Department of Education any school that is not compliant with the requirements of the scholarship program. The scholarship-funding organization shall not provide additional scholarship funds to a parent for the student to attend the private school until a determination is made by the Commissioner of Education that the school is in compliance with the requirements of the scholarship program.

15. Eligible nonprofit scholarship-funding organizations shall not discriminate in the provision of scholarships to a qualified student based upon the student's race, color, national origin, sex, or religion.

16. Eligible nonprofit scholarship-funding organizations shall allow a qualified student to attend any eligible private school and shall allow the parent to transfer the scholarship during a school year to any other eligible private school of the parent's choice.

17. Eligible nonprofit scholarship-funding organizations shall not target scholarships to a particular private school or provide scholarships to children of their employees.

(5) PARENT OBLIGATIONS.—

(a) As a condition for scholarship payment pursuant to paragraph (4)(g), if the parent chooses for his or her child to attend an eligible private ~~nonpublic~~ school, the parent must inform the child's school district within 15 days after such decision.

(b) 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.

(c) The parent of each student participating in the scholarship program must comply fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.

(d) Upon receipt of a scholarship warrant or check from the eligible nonprofit scholarship funding organization, the parent to whom the check is made must restrictively endorse the warrant or check to the private school for deposit into the account of the private school. No power of attorney shall be valid for this purpose.

(e) The parent of each student participating in the scholarship program must ensure that the student participates in the required nationally norm-referenced testing requirements in

this section. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement.

(f) A participant who fails to comply with this subsection forfeits the scholarship.

(6) ELIGIBLE PRIVATE NONPUBLIC SCHOOL OBLIGATIONS.--An eligible private nonpublic school must:

(a) Demonstrate fiscal soundness by being in operation for three school years or obtain one school year or provide the Department of Education with a statement by a certified public accountant confirming that the nonpublic school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. In lieu of such a statement, a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter to may be filed with the Department of Education department. The surety bond or letter of credit shall serve to secure expenditures of scholarship funds should such funds be found to have been used for unlawful purposes.

(b) Notify the Department of Education of its intent to participate in the program. The notice must specify the grade levels that the private school has available for students participating in the scholarship program.

(c) ~~(b)~~ Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d as in existence on July 1, 2003.

(d) ~~(e)~~ Meet state and local health and safety laws and codes, including, but not limited to laws pertaining to:

1. Fire safety

2. Building codes

(e) ~~(d)~~ Comply with all state laws relating to general regulation of private nonpublic schools, including, but not limited to laws pertaining to:

1. Annual private school survey as required in s. 1002.42(2)

2. Retention of records required in s. 1002.42(3)

3. Attendance records and reports required in s. 1003.23(2)

4. School-entry health examinations required in s. 1003.22(1) and (2)

5. Immunizations required in s. 1003.22(3)-(11)

6. Attendance requirements prescribed in ss. 1003.01(14) and 1003.21(1)

(f) Employ or contract with teachers who hold baccalaureate degrees 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.

(g) Annually administer or make provisions for scholarship students to take one of the nationally norm-referenced tests identified by the Department of Education. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. The Department of Education shall identify all nationally norm-referenced tests that are comparable to the norm-referenced test portion of the FCAT. Participating private schools must report the students' scores to the parents and to the independent private research organization chosen by the Department of Education pursuant to subsection (7).

(h) 1. Within 60 days of employment, for any employee who has direct student contact, file with the Department of Law Enforcement a complete set of fingerprints for state processing for criminal background check consistent with the requirements of the National Child Protection Act, 42 U.S.C.A. § 5119(b). An individual with "direct student contact" means any individual who:

a. Is employed by a private school (including an individual who is employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel) and who is responsible for the provision of care, treatment, education, training, instruction, supervision or recreation to children;

b. Is the Owner/Operator of the private school;

c. Has unsupervised access to a child for whom the private school is responsible.

2. The costs of fingerprinting and the background check shall not be borne by the State. The result of the criminal background check shall be reported as set forth under the National Child Protection Act, 42 U.S.C.A. § 5119(b). The Owner/Operator of the private school shall immediately report to the Department of Education any violation of this paragraph.

3. Employment of an individual with direct student contact who is convicted of a crime that bears upon the person's fitness to have responsibility for the safety and well-being of children will cause a private school to be ineligible for participation in the scholarship program.

4. Persons holding a valid Florida teaching certificate who have been fingerprinted pursuant to s. 1012.35 shall not be required to comply with the provisions of this section.

(i) Annually comply with the requirements of the Department of Education's sworn compliance form relating to compliance with state laws pursuant to subsection (7).

(j) Notify the department and the nonprofit scholarship-funding organization if any participating student is receiving a warrant or check from more than one nonprofit scholarship-funding organization.

(7) COMMISSIONER OF EDUCATION AND DEPARTMENT OF EDUCATION OBLIGATIONS; RESPONSIBILITIES.—(a) The Department of Education shall:

1. Be responsible for annually submitting, by March 15, to the department a list of eligible nonprofit scholarship-funding organizations that meet the requirements of paragraph (2)(d).

2. Verify the eligibility of nonprofit scholarship-funding organizations that meet the requirements of paragraph (2)(d).

3. Verify the eligibility of private schools that meet the requirements of paragraph (2)(c).

4. Verify the eligibility of expenditures under this section as provided in subsection (4).

5. Establish a toll-free hotline for parents, private schools, and nonprofit scholarship-funding organizations to receive information on participation in the program.

6. Establish a process by which individuals may notify the Department of Education of any private school or nonprofit scholarship-funding organization violation of state laws relating to scholarship program participation.

7. Annually administer and retain records of a sworn compliance form for private schools to certify compliance with state laws.

8. Select an independent private research organization to which participating private schools must report the scores of scholarship students on the nationally norm-referenced test administered by the private school. The independent private research organization shall annually report to the Department of Education on the year-to-year improvements of the scholarship students. The independent private research organization will analyze and report student performance data in a manner that protects the rights of students and parents as mandated in 20 U.S.C.A. § 1232g, and will not disaggregate data to a level that will disclose the academic level of individuals or of individual schools. As far as possible the independent private research organization will accumulate historical performance data on students from the Department of Education and private schools to describe baseline performance and to conduct longitudinal studies.

9. Provide a private school profile on-line on those schools participating in the scholarship program.

10. Notify the nonprofit scholarship-funding organization of any of the organization's identified students who are also receiving a scholarship through the Opportunity Scholarship Program created in s. 1002.38 or the McKay Scholarship Program created in s. 1002.39.

11. Notify the nonprofit scholarship-funding organization of any of the organization's identified students who are also receiving a corporate income tax credit scholarship from another eligible nonprofit scholarship-funding organization.

12. Adopt rules necessary to:

a. Determine eligibility of nonprofit scholarship-funding organizations as defined in paragraph (2)(d) and according to the provisions of subsection (4). These rules must provide for quarterly reports by the nonprofit scholarship-funding organization regarding the number of students participating in the program, the schools at which the students are participating, and other information as determined necessary by the department.

b. Identify qualified students as defined in paragraph (2)(e).

(b) The Commissioner of Education is authorized to suspend or prohibit an eligible nonprofit scholarship-funding organization from participation in the program and to take other action necessary to ensure compliance with the provisions of this section.

(8) (7) ADMINISTRATION; RULES.--

(a) If the credit granted pursuant to this section is not fully used in any one year because of insufficient tax liability on the part of the corporation, the unused amount may not be carried forward for a period not to exceed 3 years; however, any taxpayer that seeks to carry forward an unused amount of tax credit must submit an application for allocation of tax credits or carryforward credits as required in paragraph (d) in the year that the taxpayer intends to use the carryforward. ~~The total amount of tax credits and carryforward of tax credits granted each state fiscal year under this section is \$88 million.~~ This carryforward applies to all approved contributions made after January 1, 2002. A taxpayer may not convey, assign, or transfer the credit authorized by this section to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction.

(b) An application for a tax credit pursuant to this section shall be submitted to the department on forms established by rule of the department.

(c) The department and the Department of Education shall develop a cooperative agreement to assist in the administration of this section. ~~The Department of Education shall be responsible for annually submitting, by March 15, to the department a list of eligible nonprofit scholarship-funding organizations that meet the requirements of paragraph (2)(d) and for monitoring eligibility of nonprofit scholarship-funding organizations that meet the requirements of paragraph (2)(d), eligibility of nonpublic~~

~~schools that meet the requirements of paragraph (2)(c), and eligibility of expenditures under this section as provided in subsection (4).~~

(d) The department shall adopt rules necessary to administer this section, including rules establishing application forms and procedures and governing the allocation of tax credits and carryforward credits under this section on a first-come, first-served basis.

~~(e) The Department of Education shall adopt rules necessary to determine eligibility of nonprofit scholarship-funding organizations as defined in paragraph (2)(d) and according to the provisions of subsection (4) and identify qualified students as defined in paragraph (2)(e).~~

(9) ~~(8)~~ DEPOSITS OF ELIGIBLE CONTRIBUTIONS.--All eligible contributions received by an eligible nonprofit scholarship-funding organization shall be deposited in a manner consistent with s. 18.10(2).

DRAFT

## McKay Scholarship Section Begins Here:

Section 2. New paragraph (g) is added to subsection (e) of section 1002.39, Florida Statutes, and subsections (4) and (5) of said section are amended to read:

### 1002.39 **The John M. McKay Scholarships for Students with Disabilities Program.--**

There is established a program that is separate and distinct from the Opportunity Scholarship Program and is named the John M. McKay Scholarships for Students with Disabilities Program, pursuant to this section.

#### (3) SCHOOL DISTRICT AND DEPARTMENT OF EDUCATION OBLIGATIONS.--

(g) The department shall establish a toll-free hotline for parents and private schools to receive information on participation in the program.

(h) The department shall establish a process by which individuals may notify the Department of Education of any private school violation of state laws relating to scholarship program participation.

(i) The department shall annually administer and retain records of a sworn compliance form for private schools to certify compliance with state laws.

(4) PRIVATE SCHOOL ELIGIBILITY.--To be eligible to participate in the John M. McKay Scholarships for Students with Disabilities Program, a private school must be a Florida private school, may be sectarian or nonsectarian, and must:

(a) Demonstrate fiscal soundness by being in operation for three school years or obtain 1 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 the school for the upcoming year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. In lieu of such a statement, a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter to may be filed with the department. The surety bond or letter of credit shall serve to secure expenditures of scholarship funds should such funds be found to have been used for unlawful purposes.

(b) Notify the Department of Education of its intent to participate in the program under this section. The notice must specify the grade levels and services that the private school has available for students with disabilities who are participating in the scholarship program.

(c) Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d, as in existence on July 1, 2003.

(d) Meet state and local health and safety laws and codes, including, but not limited to laws pertaining to:

1. Fire safety

2. Building codes.

(e) Be academically accountable to the parent for meeting the educational needs of the student by providing a documented explanation of the student's progress to the parent.

(f) 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.

(g) Comply with all state laws relating to general regulation of private schools, including, but not limited to laws pertaining to:

1. Annual private school survey as required in s. 1002.42(2)

2. Retention of records required in s. 1002.42(3)

3. Attendance records and reports required in s. 1003.23(2)

4. School-entry health examinations required in s. 1003.22(1) and (2)

5. Immunizations required in s. 1003.22(3)-(11)

6. Attendance requirements prescribed in ss. 1003.01(14) and 1003.21(1)

(h) Adhere to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

(i) 1. Within 60 days of employment, for any employee who has direct student contact, file with the Department of Law Enforcement a complete set of fingerprints for state processing for criminal background check consistent with the requirements of the National Child Protection Act, 42 U.S.C.A. § 5119(b). An individual with "direct student contact" means any individual who:

a. Is employed by a private school (including an individual who is employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel) and who is responsible for the provision of care, treatment, education, training, instruction, supervision or recreation to children;

b. Is the Owner/Operator of the private school;

c. Has unsupervised access to a child for whom the private school is responsible.

2. The costs of fingerprinting and the background check shall not be borne by the State. The result of the criminal background check shall be reported as set forth under the National Child Protection Act, 42 U.S.C.A. § 5119(b). The Owner/Operator of the private school shall immediately report to the Department of Education any violation of this paragraph.

3. Employment of an individual with direct student contact who has been of a crime that bears upon the person's fitness to have responsibility for the safety and well-being of children will cause a private school to be ineligible for participation in the scholarship program.

4. Persons holding a valid Florida teaching certificate who have been fingerprinted pursuant to s. 1012.35 shall not be required to comply with the provisions of this section.

(j) Annually comply with the requirements of the Department of Education's sworn compliance form relating to compliance with state laws pursuant to subsection (3).

(5) OBLIGATION OF PROGRAM PARTICIPANTS.--

(a) 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. The parent must select the private school and apply for the admission of his or her child.

(b) The parent must have requested the scholarship at least 60 days prior to the date of the first scholarship payment.

(c) 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.

(d) The parent of each student participating in the scholarship program must comply fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.

(e) If the parent requests that the student participating in the scholarship program take all statewide assessments required pursuant to s. 1008.22, the parent is responsible for transporting the student to the assessment site designated by the school district.

(f) Upon receipt of a 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. No power of attorney shall be valid for this purpose.

(g) A participant who fails to comply with this subsection forfeits the scholarship.

Section 3. This act shall take effect upon becoming law.