

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 15 Educational Options
SPONSOR(S): Sullivan
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Innovation Subcommittee		Dehmer	Healy
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The bill expands access to the Gardiner Scholarship Program (GSP) and strengthens accountability by:

- expanding student eligibility;
- expanding the authorized uses of scholarship funds;
- revising the eligibility requirements of private schools participating in the GSP; and
- clarifying a student's eligibility to receive scholarship payments.

The bill expands access to the John M. McKay Scholarship for Students with Disabilities Program by allowing students to be reported in either the October or February Florida Education Finance Program (FEFP) survey, in order to be eligible. The bill also clarifies that the instructional and work experience hours that a transition-to-work student must receive are on a per week basis.

The bill revises the Florida Tax Credit (FTC) Scholarship Program by:

- increasing the base annual scholarship amount, differentiated by grade level, for students enrolled in eligible private schools;
- increasing the amount of a transportation scholarship for a student who chooses a public school outside their district from \$500 to \$750;
- allowing a dependent child of a parent who is a member of the U.S. Armed Forces to apply for a scholarship at any time;
- authorizing an SFO to make scholarship payments on behalf of a parent only if the SFO receives prior approval from the parent each time;
- providing that a private school that has consecutive years of material exceptions listed in their annual financial reports may be ineligible to participate in the FTC;
- requiring the Department of Revenue (DOR) to provide a copy of a denial letter to the SFO specified by the taxpayer seeking the tax credit;
- revising the date that a private school's agreed upon procedures report from a CPA is due to the SFO from September 15, to August 15, of each year; and
- removing obsolete language regarding student eligibility and funding.

The bill appropriates \$200 million for Gardiner scholarship funds and \$6 million for administrative fees for eligible SFO's to administer the GSP.

The bill takes effect July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Gardiner Scholarship

Present Situation

The GSP provides parents of eligible students with disabilities more flexibility to customize their child's education.¹ Funds are distributed to qualified² SFOs to establish accounts for eligible students.³ Parents can use funds from their account to choose from a variety of approved items for their student including, but not limited to: specialized services, curriculum, instructional materials, tuition and contracted services.⁴

A student participating in the GSP must meet the requirements for regular school attendance by enrolling in:

- a parochial, religious or denominational school;
- a private school supported in whole or in part by tuition charges or by endowments or gifts; or
- a home education program.⁵

The parent of a student, who is a resident of this state, may request and receive an account if the student:

- is 3- or 4-years-old or eligible to enroll in kindergarten through 12th grade in a public school in this state;
- has one of the following disabilities: autism spectrum disorder, cerebral palsy, Down syndrome, an intellectual disability, Phelan-McDermid syndrome, Prader-Willi syndrome, spina bifida, muscular dystrophy, is identified as a high-risk child, or Williams syndrome;⁶ and
- has an Individual Education Plan (IEP) written in accordance with rules of the State Board of Education (SBE) or has received a diagnosis of one of the above disabilities from a licensed physician or a licensed psychologist.⁷

The parent of a student with a disability who does not have an IEP or who seeks a reevaluation of an existing IEP may request an IEP meeting and evaluation from the school district in order to obtain or revise a matrix of services.⁸

Parents must apply to an eligible SFO to participate in the program by February 1, before the school year in which the student wishes to participate or an alternative date set by the SFO.⁹ The scholarship is provided on a first-come, first-served basis.¹⁰

¹ Section 1002.385(1), F.S.

² Section 1002.385(2)(e), F.S.

³ Section 1002.385, F.S.

⁴ Section 1002.385(5), F.S.

⁵ Section 1003.01(13)(b)-(d), F.S.

⁶ Section 1002.385(2)(d), F.S.

⁷ Section 1002.385(3)(a), F.S.

⁸ Section 1002.385(7)(a)1., F.S.

⁹ Section 1002.385(3)(b), F.S.

¹⁰ Section 1002.385(12)(b), F.S.

A student is not eligible for the program:

- while enrolled in a public school;
- while enrolled in a Department of Juvenile Justice school commitment program;
- while receiving a scholarship from the FTC or the McKay Scholarship; or
- while receiving any other educational scholarship pursuant to chapter 1002.¹¹

Program funds must be used to meet the individual educational needs of the student. Program funds may be spent for the following purposes:

- Instructional materials and curriculum.
- Specialized services by approved providers, including but not limited to, applied behavior analysis, speech language pathologist, occupational therapy, physical therapy and services provided by listening and spoken language specialists.
- Enrollment in, or tuition and fees for enrollment in a home education program, an eligible private school or postsecondary education institution or a program offered by the institution, a private tutoring program or virtual education programs or courses.
- Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement examinations, industry certification examinations, assessments related to postsecondary education or other assessments.
- Contributions to the Stanley G. Tate Florida Prepaid College Program or the Florida College Savings Program.
- Contracted services provided by a public school or school district, including classes tuition and fees for part-time tutoring services provided by an individual who has a valid Florida educator's certificate, an adjunct teaching certificate or has demonstrated mastery of subject area knowledge.
- Fees for specialized summer or after-school education programs.
- Fees for transition services provided by job coaches.
- Fees for an annual evaluation utilized by home education students.
- Tuition and fees associated with programs offered by Voluntary Pre-Kindergarten education and school readiness providers.¹²

Entities eligible to provide specialized services or educational programs include:

- a provider approved by the Agency for Persons with Disabilities, a health care practitioner or a provider approved by the DOE to offer specialized instructional services for children with disabilities;¹³
- a postsecondary educational institution including a Florida College System institution; a state university; a school district technical center; a school district adult general education center; an independent college or university eligible to participate in the William L. Boyd, IV Florida Resident Access Grant Program; or an accredited, independent postsecondary educational institution which is licensed to operate in this state;¹⁴
- a private school that is located in this state, offers education to students in any grade from kindergarten to grade 12, meets all the requirements of a private school operating in Florida and meets all the requirements of a private school participating in the McKay Scholarship Program or the FTC Program;¹⁵

¹¹ Section 1002.385(4), F.S.

¹² Section 1002.385(5)(m), F.S.

¹³ Section 1002.385(2)(a), F.S. See list of eligible providers at <http://www.fldoe.org/schools/school-choice/k-12-scholarship-programs/gardiner/>.

¹⁴ Section 1002.385(2)(f), F.S.

¹⁵ Section 1002.385(2)(g), F.S.

Eligible providers may not share, refund or rebate any money from a student's GSP account with the parent or participating student.¹⁶

Effect of Proposed Changes

The bill expands access to the GSP by:

- including rare diseases (diseases which affect patient populations of fewer than 200,000 individuals in the United States) anaphylaxis, orthopedically impaired, deaf, visually impaired, hospital or homebound, dual sensory impaired, traumatic brain injured or other health impaired within the definition of disability;
- providing that an IEP used to qualify for a scholarship does not need to be reviewed or revised within the past 12 months;
- removing the requirement that a student be 3 or 4 years of age by September 1, before applying to the GSP;
- allowing those who enter the program with a high-risk disability to remain in the program without being reassessed to document another eligible disability when they turn 6 years old; and
- extending eligibility to any student who has an IEP written in Florida or in another state. A student with an IEP whose sole exceptionality is gifted is not eligible for a GSP.

The bill includes Florida hospitals as approved providers and expands eligible uses of funds to include fees for services provided by:

- members of the Professional Association of Therapeutic Horsemanship International; and
- a therapist certified by the Certification Board of Music Therapists or credentialed by the Art Therapy Credentials Boards.

The bill increases accountability by:

- prohibiting parents, students or a provider of services from billing an insurance company, Medicaid or any other agency for the same services that are paid using GSP funds;
- providing that a private school may not be eligible to participate in the program if its financial reports have consecutive years of material exceptions;
- defining "inactive" to mean that no eligible expenditures have been made from the scholarship account and requiring that payments from the state into the account stop if the account has been inactive for two consecutive fiscal years. When an SFO verifies eligible expenditures have been made from the account, payments may resume based on available funds; and
- providing that a scholarship account be closed and funds revert to the state (becoming available for other eligible students) if the account has been inactive for three consecutive years.

Additionally, the bill clarifies that, beginning with the 2017-2018 fiscal year, for students with a matrix, the GSP scholarship amount must be based on that matrix and revises the date that a private school's agreed upon procedures report is due to the SFO from September 15, to August 15, each year.

John M. McKay Scholarship

Present Situation

The McKay Scholarship Program provides scholarships for eligible students with disabilities to attend a public or private school of their choice. Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory

¹⁶ Section 1002.385(5), F.S.
STORAGE NAME: h0015.PKI
DATE: 3/3/2017

impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay or autism spectrum disorder.¹⁷

The parent of an eligible student with disabilities may choose to:

- Attend another public school within the school district
- Attend an eligible public school in an adjacent school district that has space and provides the services identified in the student's IEP or 504 Accommodation Plan (504 Plan)
- Attend an eligible private school¹⁸

A student with a disability may receive a McKay Scholarship to attend a public or private school if he or she has an IEP or a 504 plan¹⁹ and:

- received specialized instructional services under VPK²⁰ during the previous school year; or
- spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind.²¹

For purposes of scholarship eligibility, the term "prior school year in attendance" means 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, which includes time spent in a Department of Juvenile Justice commitment program if funded under the FEFP;
- the Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12; or
- a school district for funding during the preceding October and February FEFP surveys and the student was at least four years old when enrolled and reported and eligible for services under the school attendance requirements for prekindergarten aged children with disabilities.²²

The student's parent must file a notice of intent with the DOE by completing an online application using DOE's website. If the parent chooses the private school option, the notice must be filed prior to withdrawing the student from public school. Once a completed notice has been filed, the parent will receive immediate online confirmation, which includes a notice of potential eligibility or ineligibility. If a student is deemed ineligible to participate, the reason for the ineligibility and instructions for contacting the school district to address the ineligibility will be provided.²³

A private school may offer a transition-to-work program in which a student must receive 15 hours of academic instruction and work skills training. The student must also participate in 10 hours of work at the student's work experience program. Consequently, the student does not need to have regular and direct contact with the teacher at the private school's physical location.²⁴

¹⁷ Section 1002.39(1), F.S.

¹⁸ Section 1002.39(2) and (8), F.S.

¹⁹ A student's 504 plan must be at least six months in duration in order for the student to be eligible for a scholarship. Rule 6A-6.0970(1)(b)3.a., F.S.

²⁰ A child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK Program and has a current IEP developed by the district school board. Section 1002.66, F.S.; *see also* s. 1002.53, F.S.

²¹ Section 1002.39(2)(a), F.S.

²² Section 1002.39(2)(a)2., F.S. Although not required to attend a public school, children with disabilities who attain the age of three years are eligible for admission to public special education programs and related services. Section 1003.21(1)(e), F.S.

²³ Section 1002.39(1), F.S.; rule 6A-6.0970(1)(a), F.A.C.

²⁴ Section 1002.39(10)(b), F.S.

Effect of Proposed Changes

The bill redefines “prior year” to mean that a student must be enrolled and reported for funding in either the October or February FEFP survey immediately preceding the request to participate, in order to be eligible for the program.

The bill also clarifies that the instructional and work experience hours that a student participating in the transition-to-work program student must receive are on a per week basis.

The Florida Tax Credit Scholarship Program

Present Situation

The FTC Program²⁵ was established to encourage taxpayers to make private, voluntary contributions to SFOs, expand educational opportunities for families that have limited financial resources, and enable Florida’s children to achieve a greater level of excellence in their education.²⁶ The FTC Program is funded with contributions to private nonprofit SFOs from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine and spirits.²⁷ The tax credit is equal to 100 percent of the eligible contributions made.²⁸

SFOs use contributions to award scholarships to eligible low-income students for private school tuition and fees or transportation expenses to a Florida public school located outside of the school district in which the student resides.²⁹ During the 2016-17 school year, 98,457 students were awarded FTC Program scholarships. Of that number, 50,408 students were female students and 48,049 students were male.³⁰

Contingent upon available funds, a student is eligible for a FTC Program scholarship if he or she meets one or more of the following criteria:

- The student is on the direct certification list or the student’s household income level does not exceed 185 percent of the federal poverty level
- The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care
- The student’s household income level is greater than 185 percent of the federal poverty level but does not exceed 260 percent of the federal poverty level³¹

A student who receives a scholarship based upon placement in foster care or out-of-home care remains eligible until he or she graduates from high school or turns 21, whichever occurs first, regardless of his or her household income level. A sibling of a participating student is eligible for a scholarship if he or she resides in the same household as the sibling.³²

²⁵ Section 1002.395, F.S.

²⁶ Section 1002.395(1)(b), F.S.

²⁷ Section 1002.395(1) and (5), F.S.

²⁸ Sections 220.1875 and 1002.395(5), F.S.

²⁹ Section 1002.395(3)(d), F.S. 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. Section 1002.395(2)(e), F.S.

³⁰ Florida Department of Education, *Florida Tax Credit Scholarship Program: February 2017 Quarterly Report*, at 1-3, available at <http://www.fldoe.org/core/fileparse.php/7558/urlt/FTC-Feb-2017-Q-Report.pdf>.

³¹ Section 1002.395(3)(c)1-3., F.S.

³² Section 1002.395(3), F.S. (flush left provision at end of subsection).

Priority is given to students who received a scholarship in the previous year, to new applicants whose household income levels do not exceed 185 percent of poverty, and to students who are in foster care or out-of-home care.³³

The law caps the amount of tax credits that may be made for scholarships and places limits on the per-student scholarship amount.³⁴

Tax Credit Cap

The tax credit cap amount is the amount in the prior state fiscal year unless the actual tax credit amount for the prior state fiscal year is equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, in which case the tax credit cap amount increases by 25 percent.³⁵ The tax credit cap for 2016-17 is \$559,000,000 and the estimated scholarship amount is \$5,886.³⁶

Scholarship Amount

The amount of a scholarship awarded to a student enrolled in an eligible private school is equal to 82 percent of the unweighted FTE funding amount for that state fiscal year and thereafter.³⁷ The scholarship amount is adjusted based on family income, unless the student is receiving a scholarship based upon placement in foster care or out-of-home care.³⁸ Eligible income levels for the 2016-2017 school year are as follows:

FTC Scholarship Income Guidelines ³⁹					
2016-2017 School Year					
Household size	Monthly Maximum Income for a 100% Scholarship	Monthly Maximum Income for an 88% Scholarship	Monthly Maximum Income for a 74% Scholarship	Monthly Maximum Income for a 60% Scholarship	Monthly Maximum Income for a 50% Scholarship
1	\$1,980	\$2,129	\$2,277	\$2,426	\$2,574
2	\$2,670	\$2,871	\$3,071	\$3,271	\$3,471
3	\$3,360	\$3,612	\$3,864	\$4,116	\$4,368
4	\$4,050	\$4,354	\$4,658	\$4,962	\$5,265
5	\$4,740	\$5,096	\$5,451	\$5,807	\$6,162
6	\$5,430	\$5,838	\$6,245	\$6,652	\$7,059
7	\$6,122	\$6,581	\$7,040	\$7,500	\$7,959
8	\$6,815	\$7,327	\$7,838	\$8,349	\$8,860
9	\$7,509	\$8,072	\$8,635	\$9,198	\$9,761
10	\$8,202	\$8,817	\$9,432	\$10,048	\$10,663
11	\$8,895	\$9,563	\$10,230	\$10,897	\$11,564
12	\$9,589	\$10,308	\$11,027	\$11,746	\$12,465
13	\$10,282	\$11,053	\$11,824	\$12,596	\$13,367
	Each additional member, add +693	Each additional member, add +745	Each additional member, add +797	Each additional member, add +849	Each additional member, add +901

³³ Section 1002.395(6)(e), F.S.

³⁴ Section 1002.395(5), F.S.

³⁵ Section 1002.395(5)(a)2., F.S.

³⁶ Step Up For Students, *2015-16 Fact Sheet*, available at, <https://www.stepupforstudents.org/newsroom/basic-program-facts/> (last visited March 1, 2017), Florida Department of Education, *Fact Sheet, Florida Tax Credit Scholarship Program*, available at http://www.fldoe.org/core/fileparse.php/15230/urlt/FTC_Sep_2016.pdf, (last visited February 13, 2017).

³⁷ Section 1002.395(12)(a)1.a., F.S.

³⁸ Section 1002.395(12)(a)3., F.S.

³⁹ Step Up For Students, *FTC Scholarship Income Guidelines*, available at, <https://www.stepupforstudents.org/for-parents/income-based/how-the-scholarship-works/>.

For a scholarship awarded to a student for transportation to a Florida public school that is located outside the district in which the student resides, the limit is \$500.⁴⁰

To participate in the FTC Program, a private school must:

- comply with all of the requirements for private schools participating in state school choice scholarship programs;
- provide the SFO, upon request, all documentation required for student participation, including its fee schedule
- annually provide the parent with a written explanation of the student's progress;
- annually administer or make provisions for students in grades three through 10 to participate in one of the nationally norm-referenced tests identified by DOE or the statewide assessments⁴¹ and report the student's scores to the parent and to the Learning System Institute at Florida State University;
- cooperate with a student whose parent chooses to have the student participate in statewide assessments; and
- require each student receiving a scholarship to have regular and direct contact with his or her teachers at the school's physical location.⁴²

Participating private schools that receive more than \$250,000 in funds from FTC Program scholarships in any state fiscal year must annually contract with an independent certified public accountant to perform agreed-upon procedures⁴³ and produce a report of the results. The procedures must determine whether the private school has been verified as eligible by the DOE; has an adequate accounting system, system of financial controls, and process for deposit and classification of scholarship funds and has properly expended scholarship funds for education-related expenses. The private school must submit the report annually on September 15, to the SFO that awarded the majority of the private school's scholarships and the SFO must monitor a private school's compliance. The SFO must notify the commissioner of a private school's failure to submit its annual report or of any material exceptions set forth in the report.⁴⁴

DOE may remove a private school's eligibility to participate in the FTC program if the school fails to meet any of these requirements.⁴⁵

⁴⁰ Section 1002.395(12)(a)1.b., F.S.

⁴¹ The statewide assessment program for public schools includes statewide, standardized comprehensive assessments and end-of-course (EOC) assessments and the Florida Alternate Assessment for students with disabilities. The statewide, standardized comprehensive assessment tests reading (grades 3-10), mathematics (grades 3-8), science (once in elementary and middle school), and writing (once at the elementary, middle and high school level). EOC assessments for high school students include Algebra I, Biology I, Geometry, and U.S. History. Middle school students must take an EOC assessment if they are enrolled in any of the above listed high school courses and in Civics. Section 1008.22(3), F.S.

⁴² Section 1002.395(8)(a)-(d), F.S.

⁴³ An agreed-upon procedure analysis is not a full financial statement audit. Instead, the certified public accountant is engaged by the client to examine specific financial or operational aspects of its company or organization. The client and the practitioner agree upon the procedures to be performed by the practitioner and the subject matter that they will cover. *See American Institute of Certified Public Accountants, Audit and Attest Standards, Statements on Standards for Attestation Agreements, Agreed-Upon Procedures Engagements*, at AT s. 201.02 (June 1, 2009), available at <http://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/AT-00201.pdf>.

⁴⁴ Section 1002.395(6)(o) and (8)(e), F.S.

⁴⁵ Section 1002.395(8), F.S. (flush-left provision at end of the subsection).

Effect of Proposed Changes

The bill removes obsolete language regarding student eligibility and funding and increases the base annual scholarship limits for students enrolled in eligible private schools from 82 percent of the unweighted FTE to:

- eighty-eight percent of unweighted FTE for grades K-5;
- ninety-two percent of unweighted FTE for grades 6-8;
- ninety-six percent of unweighted FTE for grades 9-12.

The amount of a transportation scholarship for a student, who chooses a public school outside his or her district, also increases from \$500 to \$750.

The bill authorizes an SFO to make scholarship payments to eligible private schools by funds transfer (including debit cards, electronic payment cards, or any other means the DOE deems commercially viable). Payments must be approved by the parent before the funds are deposited and a parent may not designate an entity or individual associated with the participating private school as their attorney to approve a fund transfer.

The bill permits a dependent child of a parent who is a member of the U.S. Armed Forces to apply for a scholarship at any time.

The bill revises the date that a private school's agreed upon procedures report is due to the SFO from September 15, to August 15, each year and provides that a private school may be ineligible to participate if it has consecutive years of material exceptions identified in its report.

The bill requires DOR to provide a copy of the denial or approval letter to the SFO within 10 days after approving or denying any of the following transactions:

- An application for a carryforward tax credit
- The conveyance, transfer, or assignment of a tax credit
- The rescindment of a tax credit
- Acknowledgement of tax credits

Finally, the bill authorizes an SFO to develop a professional development system that includes a master plan for in-service activities under the School Community Professional Development Act. The system and in service plan must be submitted to the commissioner of the SBE for approval.

B. SECTION DIRECTORY:

Section 1. Amends s.1002.385, F.S., relating to the Gardiner Scholarship Program.

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

Section 3. Amends s. 1002.395, F.S., relating to the Florida Tax Credit Scholarship Program.

Section 4. Amends s. 1012.98, F.S., relating to the School Community Professional Development Act.

Section 5. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates \$200 million dollars in recurring funds from the General Revenue Fund to DOE for scholarship awards under the Gardiner Scholarship Program. In addition, the sum of \$6 million dollars in recurring funds from the General Revenue Fund is appropriated to DOE to each SFO for reasonable and necessary administrative expenses to manage and distribute scholarship awards. The amount paid to each SFO may not exceed three percent of the amount of each scholarship award.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.