

# 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/SB 598

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Smith

SUBJECT: Tax Rebates and Credits

DATE: April 14, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	CM	Favorable/CS
2.	_____	_____	FT	_____
3.	_____	_____	ATD	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 598 authorizes a tax refund program under which a business that employs 50 or fewer employees may apply, subject to legislative appropriation, for a tax refund of \$1,000 for each employee who is covered by a health benefit plan of the business, which plan meets the minimum coverage of a standard health benefit plan under the Employee Health Care Access Act. The tax refund amount is equal to \$1,500 if the business is located in an enterprise zone or a rural area of critical economic concern.

The committee substitute also authorizes a corporate income tax credit program under which a business may receive a tax credit equal to 100 percent of the value of an eligible contribution made to a public school or to a specific program within a public school. The total amount of credits that may be granted under the program annually is \$88 million, and 5 percent of this annual cap must be reserved for certain small businesses as defined under s. 288.703(1), F.S.

This committee substitute amends sections 220.02 and 220.13, Florida Statutes; and creates section 220.1875, Florida Statutes, as well as an unnumbered section of the Florida Statutes.

**II. Present Situation:**

**Floridians Without Health Insurance**

By Executive Order No. 03-160, dated August 25, 2003, Governor Bush created the Governor’s Task Force on Access to Affordable Health Insurance as an advisory committee to identify impediments to access to health insurance and to provide recommendations to improve access to health insurance. Among the findings in the order are the following:

WHEREAS, more than 2.8 million Floridians have no health insurance; and

\*\*\*

WHEREAS, an increasing number of employers are opting to cease providing insurance coverage to their employees due to the high cost; and

\*\*\*

WHEREAS, an increasing number of employers who continue providing coverage are forced to shift more premium cost to their employees, thus diminishing the value of employee wage increases . . . .

The duties of the task force were to culminate with a report providing its recommendations to the Governor and Legislature by February 15, 2004. The task force completed a draft of its report on January 15, 2004.<sup>1</sup>

According to the draft report, smaller firms are less likely to provide insurance coverage to their workers than larger firms.<sup>2</sup> According to the Kaiser Family Foundation, 44.7 percent of firms in Florida with fewer than 50 employees offer health insurance.<sup>3</sup> For Florida firms with 50 or more employees, 96.7 percent of the employers offer health insurance.<sup>4</sup>

#### **Minimum Coverage Mandated by Chapter 627, F.S.**

Section 627.6699, F.S., contains the Employee Health Care Access Act (act). The act was created to promote the availability of insurance to employers with 50 or fewer employees. The act mandates that every small employer carrier must offer a standard health benefit plan, a basic health benefit plan, and a limited benefit policy or contract.<sup>5</sup> Although s. 627.6699, F.S., does not precisely specify minimum coverage that must be offered to small employers, some guidelines are provided.

#### ***Standard Health Benefit Plans and Basic Health Benefit Plans***

Standard health benefit plans and basic health benefit plans are health insurance policies offered to small employers that contain an exclusion for services that are not medically necessary or that are not covered preventative health services; and a procedure for preauthorization by the small employer carrier, or its designees.<sup>6</sup> Certain managed care provisions may also be included in the standard and basic health benefit plans to control costs.<sup>7</sup>

<sup>1</sup> *Governor's Task Force on Access to Affordable Health Insurance: Draft Interim Report*, January 15, 2004, available at [http://www.fdhc.state.fl.us/affordable\\_health\\_insurance/index.shtml](http://www.fdhc.state.fl.us/affordable_health_insurance/index.shtml), last visited January 29, 2004.

<sup>2</sup> *Id.* at 59.

<sup>3</sup> Kaiser Family Foundation, *State Health Facts Online*, at <http://www.statehealthfacts.kff.org/cgi-bin/healthfacts.cgi?action=profile&area=Florida>, last visited January 29, 2004.

<sup>4</sup> *Id.*

<sup>5</sup> Section 627.6699(5), F.S.

<sup>6</sup> Section 627.6699(12)(b)2., F.S.

<sup>7</sup> Section 627.6699(12)(b)3., F.S.

The standard and basic health benefit plans must provide coverage for the following:

- inpatient hospitalization;
- outpatient services;
- newborn children;
- child care supervision services;
- adopted children upon placement in the residence;
- mammograms;
- handicapped children;
- emergency or urgent care out of the geographic service area; and
- services provided by a hospice in cases where such coverage would be the most appropriate and the most cost effective method for treating a covered illness.<sup>8</sup>

The standard and basic plans may include a schedule of benefit limitations for specified services and procedures.<sup>9</sup> A basic health benefit plan will contain additional restrictions on the benefits and utilization and may contain additional cost containment measures.<sup>10</sup>

#### ***Limited Benefit Policy or Contract***

A limited benefit policy or contract is defined as:

a policy or contract that provides coverage for each person insured under the policy for a specifically named disease or diseases, a specifically named accident, or a specifically named limited market that fulfills an experimental or reasonable need, such as the small group market.<sup>11</sup>

A limited benefit policy or contract may only be offered to a small employer after the employer rejects, in writing, the standard or basic benefit health plans.<sup>12</sup>

#### **Enterprise Zones & Rural Areas of Critical Economic Concern**

The Florida Enterprise Zone Act of 1994 (act), codified in ss. 290.001-290.016, F.S., was created:

to provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas.

(Section 290.003, F.S.)

---

<sup>8</sup> Section 627.6699(12)(b)4. and 6., F.S.

<sup>9</sup> Section 627.6699(12)(b)5., F.S.

<sup>10</sup> Section 627.6699(12)(b)6., F.S.

<sup>11</sup> Section 627.6699(3)(m), F.S.

<sup>12</sup> Section 627.6699(12)(c), F.S.

Under the act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones.<sup>13</sup> The act established a process for the nomination and designation of a maximum of 20 enterprise zones (ss. 290.0055 and 290.0065, F.S.). Subsequent to the 1994 act, however, the Legislature has authorized additional zones. The Office of Tourism, Trade, and Economic Development (OTTED) reports that today there are 51 enterprise zones.<sup>14</sup> Certain state and local incentives are authorized to induce private businesses to invest in these enterprise zones.

Section 288.0656(7), F.S., authorized the Governor to designate three rural areas of critical economic concern by executive order. The areas eligible for designation were limited to:

a rural community, or a region composed of such, that has been adversely affected by an extraordinary economic event or a natural disaster or that presents a unique economic development opportunity of regional impact that will create more than 1,000 jobs over a 5-year period.<sup>15</sup>

In accordance with this authorization, the Governor made the following designations:

The Counties of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty and Washington are designated as a Rural Area of Critical Economic Concern.<sup>16</sup>

The area within the boundaries of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties; the area within the city limits of Pahokee, Belle Glade, and South Bay; and the area around Immokalee included within the Round II Federal Rural Enterprise Community is designated as a Rural Area of Critical Economic Concern.<sup>17</sup>

The area within the boundaries of the Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties is designated as a Rural Area of Critical Economic Concern.<sup>18</sup>

### **Corporate Income Tax & Credits**

Chapter 220, F.S., is Florida's Corporate Income Tax Code. Under s. 220.11, F.S., the state imposes a tax equal to 5.5 percent of a taxpayer's net income for the taxable year.

---

<sup>13</sup> Florida's enterprise zone program dates back to 1982. The 1994 legislation significantly revised the program, provided for the expiration in December 1994 of all then-existing zones, and established a process for the designation of up to 20 new zones during the summer of 1995.

<sup>14</sup> Office of Tourism, Trade, and Economic Development, *Florida Enterprise Zone Program Annual Report October 1, 2002-September 30, 2003*, 1, March 1, 2004.

<sup>15</sup> Section 288.0656(7), F.S.

<sup>16</sup> Exec. Order No. 99-275, s. 1 (Nov. 8, 1999).

<sup>17</sup> Exec. Order No. 01-26, s. 1 (Jan. 26, 2001).

<sup>18</sup> Exec. Order No. 03-74, s. 1 (Apr. 23, 2003).

“Net income” equals the taxpayer’s adjusted federal income for the year, plus nonbusiness income allocated to this state, less the exemption provided under s. 220.14, F.S.<sup>19</sup> A taxpayer is any corporation subject to the tax imposed under the code.<sup>20</sup>

Florida currently provides a number of credits against the corporate income tax. Some examples include:

- Credit based on job creation within an enterprise zone (s. 220.181, F.S.);
- Credit equal to 35 percent of the costs of voluntary cleanup activity that is integral to certain contaminated site rehabilitation (s. 220.1845);
- Credit equal to 50 percent of the value of a contribution made to an eligible project under the Community Contribution Tax Credit Program (s. 220.183, F.S.);
- Credit for creating jobs in certain rural areas and urban high-crime areas (s. 220.1895, F.S.); and
- Credit equal to 100 percent of an eligible contribution made to a nonprofit scholarship-funding organization (s. 220.187, F.S.).

The tax credit for contributions to nonprofit scholarship-funding organizations under s. 220.187, F.S., also known as the Corporate Tax Credit (CTC) Scholarship Program, specifies that a credit under the program may not exceed 75 percent of the tax due for the taxable year. In addition, it provides that 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), F.S. The total amount of tax credits and carryforward of tax credits which may be granted each state fiscal year under this CTC program is \$88 million.<sup>21</sup>

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

Committee Substitute for Senate Bill 598 creates two tax incentive programs – one providing tax refunds to a small business whose employees are covered by a health benefit plan of the business, and one providing a corporate income tax credit for a business making a contribution to a public school or a specific program in a public school.

#### **Health Insurance Tax Refund Program**

The committee substitute creates a program under which a business that employs 50 or fewer employees may apply, subject to an appropriation by the Legislature, for a tax refund for each employee covered by a health benefit plan of the business. The refund is equal to \$1,000 for each employee who is covered by a health benefit plan that provides coverage equivalent to the minimum coverage of a standard health benefit plan under the Employee Health Care Access Act (s. 627.6699, F.S.). If the business is located in an enterprise zone or a rural area of critical economic concern, the refund is \$1,500.

---

<sup>19</sup> Section 220.12, F.S.

<sup>20</sup> Section 220.03(1)(aa), F.S.

<sup>21</sup> Section 220.187(3), F.S.

***Eligibility***

To serve as a basis for a tax refund under the program, the employee must have worked for the business for at least 9 months of the 12-month period immediately preceding the date the business applies for the tax refund. The business must employ 50 or fewer employees.

***Refund Limitations***

The following taxes paid by the business may be refunded under the program:

- Corporate income taxes;
- Sales and use taxes;
- Insurance premium taxes;
- Intangible personal property taxes;
- Emergency excise taxes;
- Excise tax on documents; and
- Ad valorem taxes.

However, the total refund amount may not exceed the amount paid by the business in the prior fiscal year under the particular tax category that is the basis for the refund. In addition, a business may not receive a refund for any amount of tax credit, refund, or exemption granted to the business for the taxes covered by the program.

***Administration, Application, and Approval***

For any fiscal year in which the Legislature appropriates moneys for the tax refund program, an eligible business may apply for a refund, starting August 1, to the Department of Financial Services. The department shall work with the Department of Revenue and the Agency for Workforce Innovation to review the refund claim application and verify the information contained in the application. The department must issue an order, within 60 days after receipt of the application, approving or disapproving the tax refund claim.

Refunds are to be paid on a first-come, first-serve basis. Refunds, however, are subject to legislative appropriation. If the Legislature does not appropriate sufficient funds to satisfy all claims in a given fiscal year, and funds are no longer available when a business is approved for a refund, the business must forego its refund submitted for payment in that fiscal year. The total amount of refunds approved for payment in a fiscal year may not exceed the total amount appropriated by the Legislature for refunds for that same fiscal year.

The committee substitute authorizes the Department of Financial Services to adopt rules to administer the tax refund program. The measure also requires the department annually, by January 1, to submit an estimate to the Legislature of the amount necessary to satisfy anticipated claims in the following fiscal year.

***Penalties***

The committee substitute provides that it is a third-degree felony for a business to fraudulently claim a tax refund under this program. In addition, a business that makes a fraudulent claim is liable for repayment of the amount of the refund, plus a penalty equal to 200 percent of the tax refund.

***Program Expiration***

The committee substitute specifies that the tax refund program expires on June 30, 2010.

***Appropriation***

The tax refunds under this program are subject to a legislative appropriation for that purpose. The committee substitute provides for an appropriation of an unspecified amount from the General Revenue Fund for the payment of tax refunds under the program during fiscal year 2004-2005.

**Public Education Partners Tax Credit Program**

The committee substitute also creates a corporate income tax credit program, under which a business may receive a tax credit equal to 100 percent of the value of a contribution made to a public school or a specific program within a public school. One of the purposes of the program, as stated in the committee substitute, is to encourage private, voluntary contributions to public schools to enhance opportunities for students. An eligible contribution under the program is a monetary contribution from a taxpayer to a public school.

***Credit Limitations/Annual Program Cap***

Although the credit is equal to 100 percent of an eligible contribution, a credit may not exceed 75 percent of the business's corporate income tax due for the taxable year. In addition, a business may not contribute more than \$5 million to any single public school under the program.

The total amount of tax credits and carryforward of tax credits which may be granted in each fiscal year under the program is \$88 million. Five percent of this amount shall be reserved each year for taxpayers who employ 200 or fewer employees and have a net worth of not more than \$5 million. (See s. 288.703(1), F.S.).<sup>22</sup>

***Use of Contributions***

A public school that receives a contribution under this program must spend 100 percent of the funds for the purposes specified by the contributor. In addition, the school must maintain a

---

<sup>22</sup> These provisions in the committee substitute appear to be modeled upon the existing tax credit for contributions to nonprofit scholarship-funding organizations under s. 220,187, F.S., also known as the Corporate Tax Credit (CTC) Scholarship Program.

separate account for the contribution and provide the district school board and the Department of Education with an annual accounting on the use of the contribution.

The committee substitute specifies that contributions under this program are supplemental to and do not replace funding provided by the state to public school districts under ch. 1011, F.S.

### ***Carryforward/Administration***

The committee substitute authorizes unused corporate income tax credits to be carried forward for no more than 3 years. The taxpayer is prohibited from transferring the credits to another entity, unless the transfer is part of a transfer of all of the business's assets. The committee substitute authorizes the Department of Revenue and the State Board of Education to adopt rules to administer the program.

### ***Conforming Changes***

The committee substitute makes conforming changes to s. 220.02, F.S. (governing the order in which corporate income tax credits should be applied), and s. 220.13, F.S. (relating to the calculation of adjusted federal income), to account for the creation of this new tax credit program.

### **Effective Date**

The committee substitute provides an effective date of July 1, 2004.

## **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:**

This committee substitute authorizes corporate income tax credits equal to 100 percent of the value of a contribution to a public school. The total amount of tax credits and carryforward of tax credits that may be granted each fiscal year is \$88 million.



The committee substitute also authorizes a refund of previously paid taxes equal to \$1,000 for each employee covered by the health benefit plan of business with 50 or fewer employees (\$1,500 if the business is located in an enterprise zone or a rural area of critical economic concern). The tax refund, however, is subject to legislative appropriation.

**B. Private Sector Impact:**

A business would be eligible for a corporate income tax credit equal to 100 percent of the value of an eligible contribution made to a public school.

A business with 50 or fewer employees would be eligible, subject to legislative appropriation, for a tax refund of up to \$1,500 for each employee covered by the business's health benefit plan, if the health benefit plan meets the minimum coverage of a standard health benefit plan under the Employee Health Care Access Act

**C. Government Sector Impact:**

The tax refunds to be provided under the program for businesses with employees covered by a health benefit plan are subject to a legislative appropriation for that purpose. The committee substitute provides for an appropriation of an unspecified amount from the General Revenue Fund to the Department of Financial Services for the payment of tax refunds under the program during fiscal year 2004-2005.

The Department of Financial Services and the Department of Revenue are likely to experience costs related to the review of applications for tax refunds and tax credits authorized under this committee substitute. The precise impact has not been determined.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.