

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 453

Tax Credits for Contributions to Nonprofit Scholarship-funding

Organizations

SPONSOR(S): Weatherford and others

TIED BILLS:

IDEN./SIM. BILLS: SB 1310

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	PreK-12 Policy Committee	9 Y, 4 N, As CS	Duncan	Ahearn
2)	Education Policy Council	(ref. removed)		
3)	Finance & Tax Council		Shaw	Langston
4)				
5)				

SUMMARY ANALYSIS

The Corporate Income Tax Credit Scholarship Program provides an income tax credit for corporations making eligible contributions to eligible nonprofit scholarship-funding organizations that award scholarships to children from low-income families. Through this source of funding, children in grades K-12 are provided an opportunity to attend private schools that meet the state’s eligibility requirements.

The bill renames the Corporate Income Tax Scholarship Program the Florida Tax Credit Scholarship Program to reflect the expansion of the program to include insurance premium tax credits as eligible contributions to the scholarship program. The bill allows insurance companies to receive a credit of 100% of an eligible contribution to an eligible scholarship-funding organization against any net tax due for a taxable year under the provisions of the state’s insurance code. However, the credit may not exceed 75% of the net tax due.

The maximum amount of tax credits that may be granted each fiscal year pursuant to the scholarship program remains at the \$118 million cap. The Revenue Estimating Conference concluded that under the provisions of this bill, credits against the insurance premium tax for contributions to SFOs would increase and credits against the state corporate income tax would fall by an equivalent amount. Consequently, the net impact on state revenues is expected to be \$0. The Corporate Income Tax Credit Program produces a net savings to the state. The Office of Program and Policy Analysis and Government Accountability estimated that during the 2007-2008 fiscal year, taxpayers saved \$1.49 in state education funding for every dollar loss in corporate income tax revenue due to credits for scholarship contributions.

Children on the direct certification list are eligible to receive a scholarship under the Florida Tax Credit Scholarship Program. The bill defines “direct certification list” to mean a certified list of children who qualify for the Food Stamp Program, the Temporary Assistance for Needy Families Program, or the Food Distribution Program on Indian Reservations. The Department of Education must provide a process to match the direct certification list with the scholarship application data provided by the eligible scholarship-funding organization.

Certain scholarship-funding organizations are permitted to request that school districts inform all households participating in the National School Lunch Program of their eligibility to apply for a tax credit scholarship. In addition, once a year, a scholarship-funding organization may request a special communication to be issued to such households; however, the scholarship-funding organization must reimburse the school district for the cost of postage.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Corporate Income Tax Credit Program

The Corporate Income Tax Credit Scholarship Program (CITC Program), a Florida school choice program created in 2001,¹ was established to encourage taxpayers to make private, voluntary contributions to nonprofit scholarship-funding organizations (SFOs) that award scholarships to children from low-income families.² Through this source of funding, children in grades K-12 are provided an opportunity to attend sectarian or non-sectarian private schools that meet the state's eligibility requirements.³ A corporation is allowed a corporate income tax credit of 100% of its contribution; however, the credit may not exceed 75% of taxes owed during the year of the contribution after the application of any other allowable credits. Currently, the maximum amount of tax credits that may be granted per state fiscal year under the CITC Program is \$118 million.⁴

SFOs are responsible for the receipt and distribution of the program funds. The funds are used to pay for the cost of tuition and fees for an eligible private school, or for transportation to a public school outside the district in which the student lives or to a developmental research (lab) school. An eligible scholarship-funding organization (SFO) that has operated under the program for at least three years without any negative financial findings in its most recent audit is authorized to use up to 3% of the eligible contributions for administrative expenses incurred for the operation of the program, of which no more than 1/3rd may be spent to recruit contributions from corporations.⁵

SFOs must *expend* at least 75% of the net eligible contributions remaining after administrative expenses on annual or partial-year scholarships during the fiscal year in which the contributions are collected. Up to 25% of net eligible contributions may be carried forward by an SFO to the succeeding fiscal year. Contributions carried forward must be expended for annual or partial-year scholarships.

¹ Ch. 2001-225, s. 5, L.O.F.

² s. 220.187(2) and (5), F.S.

³ s. 220.187(2), F.S.

⁴ s. 220.187(5), F.S.

⁵ s. 220.187(6)(i), F.S.

Any net contributions that are in excess of the 25% carryforward must be returned to the State Treasury for deposit in the General Revenue Fund.⁶

When the program began in 2002, \$50 million was the maximum amount of tax credits that could be granted each fiscal year and tax credits were not permitted to be carried forward.⁷ Approximately \$47.6 million of tax credits were granted.⁸

Beginning July 1, 2003, the maximum amount of tax credits and carryforward tax credits (tax credits) that could be granted each fiscal year was increased to \$88 million.⁹ In 2003, approximately \$47.5 million of tax credits were granted; in 2004, approximately \$47.5 million of tax credits were granted; in 2005, approximately \$80.3 million of tax credits were granted; in 2006, approximately \$87.1 million of tax credits were granted; and in 2007, approximately \$85.4 million of tax credits were granted.¹⁰

Effective July 1, 2008, the maximum amount of tax credits that could be granted each fiscal year was increased to \$118 million.¹¹ As of February 2009, approximately \$88.4 million of tax credits have been granted.¹²

Student Eligibility

A student is eligible for a first-time CITC Program scholarship if he or she qualifies for free or reduced-price school lunches under the National School Lunch Program,¹³ and:

- Was counted as a full-time student during the previous state fiscal year for purposes of state per-student funding;
- Received a scholarship from an eligible SFO or the State of Florida during the previous school year;
- Is eligible to enter kindergarten or first grade; or
- Is currently placed, or during the previous Fiscal Year was placed, in foster care.¹⁴

The SFO must document each scholarship student's eligibility before granting a scholarship for an academic year.¹⁵ In subsequent years, a scholarship recipient may be eligible for a renewal scholarship, contingent upon available funds, if the student's parents document that their household income does not exceed 200% of the Federal Poverty Level.¹⁶

⁶ s. 220.187(6)(i)2., F.S.

⁷ Ch. 2001-225, s. 5, L.O.F.

⁸ Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

⁹ s. 220.187, F.S. was amended to permit a corporation to, for no more than 3 years, carry forward an unused amount of tax credit because of insufficient tax liability on the part of the corporation. The carryforward provision applied to all approved contributions made after January 1, 2002. See Ch. 2003-391, s. 9, L.O.F.

¹⁰ Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

¹¹ Ch. 2008-241, s.1, L.O.F.

¹² Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

¹³ <http://www.fns.usda.gov/cnd/lunch/default.htm> Program Fact Sheet, U.S. Department of Agriculture, Food and Nutrition Service, July 2008. The National School Lunch Program is administered by the Food and Nutrition Service within the U.S. Department of Agriculture.

¹⁴ s. 220.187(3), F.S.

¹⁵ s. 220.187(6)(i)3., F.S.

¹⁶ s. 220.187(3), F.S.

Scholarships

During the 2007-2008 school year, \$73.5 million in scholarships was awarded to more than 21,493 students.¹⁷ As of February 2009, 23,259 scholarship recipients are enrolled in 988 participating private schools. Eighty-one percent of participating private schools are religious, and 19% are non-religious.¹⁸

Scholarship award amounts provided to a student in any single school year by an eligible SFO must not exceed:

- \$3,950 for a scholarship awarded to a student enrolled in an eligible private school beginning in the 2008-2009 state fiscal year and each year thereafter.
- \$500 for a scholarship for transportation awarded to a student enrolled in a Florida public school that is located outside the district in which the student resides or in a developmental research (lab) school.¹⁹

Florida School Meals Program

Florida's School Lunch and School Breakfast Programs are administered by the Food and Nutrition Management Division in the Florida Department of Education (DOE).²⁰ In the 2007-2008 school year, approximately 1.2 million PreK-12 students were eligible²¹ for free or reduced-price lunch.²²

The Food Stamp Program, Temporary Assistance for Needy Families, and the Food Distribution Program on Indian Reservations

Food Stamp Program

Administered by the Florida Department of Children and Family Services (DCF), the Food Stamp Program helps low-income households purchase nutritious foods. Households must have monthly gross income less than or equal to 130% of the federal poverty level and net income less than or equal to 100% of the federal poverty level.²³ Households containing individuals age 60 or older or disabled must only meet the net monthly income limit.²⁴

Temporary Assistance for Needy Families

The Temporary Assistance for Needy Families (TANF) block grant provides federal funding to states for a wide range of benefits and services. The DCF, the Department of Health, and the Agency for Workforce Innovation are the three state agencies in Florida responsible for administering the TANF State Plan.²⁵

¹⁷ <http://www.floridaschoolchoice.org/Information/ctc/> Florida Department of Education, August 2008.

¹⁸ http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports.asp, Florida Department of Education, February 2009.
¹⁹ s. 220.187(11)(a), F.S.

²⁰ <http://www.fldoe.org/FNM/natschoollunch/descriptions.asp>, Program Description and Requirements, Florida Department of Education, Food and Nutrition Management.

²¹ Children from families with incomes at or below 130% of the poverty level are eligible for free meals. Those with incomes between 130% and 185% of the poverty level are eligible for reduced-price meals for which students can be charged no more than 40 cents. For the period July 1, 2008 through June 30, 2009, 130 % of the poverty level is \$27,560 for a family of four; 185% is \$39,220. Children from families with incomes over 185% of poverty pay a full price, but their meals are still subsidized.
<http://www.fns.usda.gov/cnd/lunch/> National School Lunch Program Fact Sheet, U.S. Department of Agriculture, July 2008.

²² <http://www.fldoe.org/eias/eiaspubs/> Free/Reduced Price Lunch Eligibility, Florida Department of Education, Series 2009-03F, August 2008.

²³ See *supra* note 14.

²⁴ <http://www.dcf.state.fl.us/ess/foodstamps.shtml>

²⁵ http://www.dcf.state.fl.us/ess/tanf_moe_resources.shtml Temporary Assistance to Needy Families, An Overview of Program Requirements, Florida Department of Children and Families, October 2006.

The DCF is the recipient of the TANF block grant and is responsible for determining eligibility for TANF and Temporary Cash Assistance (TCA). Eligibility for TANF-funded services for families who are not receiving cash assistance is generally set at 200% of the poverty level.²⁶ Individuals eligible to receive TCA are defined as needy by having an income below 185% of the federal poverty level. Specific categories of people, such as victims of domestic violence, families at risk of welfare dependency, and families with children at risk of abuse or neglect, with an income below 200% of the federal poverty level are eligible for TANF-funded benefits.²⁷

Food Distribution Program on Indian Reservations

The Food Distribution Program on Indian Reservations (FDPIR) provides foods to low-income households living on Indian reservations, and to American Indian households residing in approved areas near reservations or in Oklahoma. The program is administered by the Food and Nutrition Service, an agency of the U.S. Department of Agriculture. Households are certified based on income and resource standards set by the Federal government, and must be recertified at least every 12 months. Households may not participate in the FDPIR and the Food Stamp Program in the same month.²⁸ For Federal Fiscal Years 2004 – 2008, no American Indians in Florida have participated in the program.²⁹

Direct Certification

In general, an adult is required to complete an application for a child to receive a free or reduced-price school meal. However, if a child is a member of a household participating in the Food Stamp Program, the TANF Program, or the FDPIR, then the agency administering such program is authorized to certify the household's participation in lieu of an application. This process of authorization is referred to as direct certification.³⁰

As stated earlier, the DCF administers the Food Stamp Program and TANF Program. Three times a year, the DCF transmits a computer file containing eligibility information and documentation for those households participating in either program to the DOE. DOE acts as a clearinghouse and only retains the information until a local school district downloads the information as part of the direct certification process. The DCF and the DOE have entered into a Memorandum of Understanding to carry out this function.³¹

Insurance Premium Taxes

The insurance premium tax is imposed on insurance premiums written in Florida and paid by insurance companies to the DOR.³² Under certain circumstances, out of state insurance companies are required to pay retaliatory taxes to the state.³³ Retaliatory taxes help ensure a level playing field by preventing companies from choosing to locate in one state in order to lower their insurance premium taxes.³⁴ Insurance companies are permitted to receive a corporate income tax credit against insurance premium

²⁶ *Id.*

²⁷ http://www.myflorida.com/cf_web/TemporaryAssistanceforNeedyFamiliesStatePlanRenewalOctober1,2005-September30,2008, Florida Department of Children and Families.

²⁸ <http://www.fns.usda.gov/fdd/programs/fdpiir/ProgramFactSheet>, U.S. Department of Agriculture, Food and Nutrition Service, Food Distribution Fact Sheet, July 2008.

²⁹ <http://www.fns.usda.gov/pd/21irpart.htm> Food Distribution Program on Indian Reservations: Persons Participating, U.S. Department of Agriculture, Food and Nutrition Service, Food Distribution Program on Indian Reservations, January 28, 2009.

³⁰ 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

³¹ Telephone conferences with DCF and DOE staff on February 19, 2009.

³² s. 624.509, F.S.

³³ s. 624.5091, F.S.

³⁴ <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

taxes.³⁵ In addition, a credit is allowed against the net insurance premium tax equal to 15% of the amount of salaries paid by insurance companies to employees located or based in Florida.³⁶ The total of the combined credit for corporate income tax and salaries granted for the taxes paid by the insurer cannot exceed 65% of the insurance premiums due.³⁷

OPPAGA Report on the Corporate Income Tax Credit Scholarship Program and the Use of Credits for the Insurance Premium Taxes

In 2008, the Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor and Legislature by December 1, 2008, addressing, in part, the use of credits for insurance premium taxes under chapter 624, F.S.,³⁸ as an additional source of funding for the scholarship program.

OPPAGA reported the following:

- Allowing insurance premium tax credits to be included in the scholarship program would broaden the base of companies likely to participate and increase the chance that higher caps set by the Legislature would be met.
- Insurance companies must have a net corporate income tax liability greater than 65% of their insurance premium tax liability in order to reduce their tax liability by contributing to the scholarship program. Companies that do not have such a corporate income tax liability may contribute to the program, but would not receive a reduction in tax liability for doing so.
- Allowing insurance companies the flexibility of receiving tax credits against either their corporate income taxes or their insurance premium taxes would maximize the number of companies that would make contributions to scholarship-funding organizations.
- Out-of-state insurance companies could face increased retaliatory taxes if they lowered their Florida insurance premium tax liability by taking credits for scholarship contributions. Establishing a provision that exempts these insurance companies from additional retaliatory taxes in Florida would help ensure that they have an incentive to participate in the program.
- Allowing the insurance premium tax credit for scholarship contributions to exceed the 65% credit limitation would provide more opportunity for companies to receive tax benefits than if it were included in the 65% credit limitation. However, including the scholarship credit in the 65% credit limitation would limit the tax revenue loss to the state.
- The Capital Investment Program and the Community Contribution Tax Credit Program permit insurance companies to claim an insurance premium tax credit for certain activities. While the participating insurance companies may take tax credits, they are not assessed additional retaliatory taxes. Both the Capital Investment and Community Contribution tax credits are authorized to exceed the 65% credit limitation.³⁹

Effect of Proposed Changes

Program Administration

The bill renames the program the Florida Tax Credit Scholarship Program to reflect the expansion of the program to include insurance premium tax credits as eligible contributions. The bill allows insurance companies to receive a credit of 100% of an eligible contribution to an eligible scholarship-funding organization (SFO) against any net tax due for a taxable year under the provisions of the insurance premium tax. However, the credit may not exceed 75% of the net tax due. In addition, the

³⁵ s. 624.509(4), F.S.

³⁶ s. 624.509(5), F.S.

³⁷ s. 624.409(6), F.S.

³⁸ Chapter 624, F.S., relates to Florida's Insurance Code.

³⁹ <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

insurance premium tax credit may be taken after the insurer has paid the required excise (premium) taxes to the firefighters' pension trust fund and the police officers' retirement trust fund.⁴⁰ The bill further provides that an insurer claiming a credit against premium tax liability is not required to pay any additional retaliatory tax and insurance companies are not eligible to receive a credit against the corporate income tax credit authorized under the Florida Tax Credit Scholarship Program.

The bill clarifies that the \$118 million cap on tax credits authorized under the Florida Tax Credit Scholarship Program is the total amount of corporate income tax credits and insurance premium tax credits that may be granted each state fiscal year.

Children on the direct certification list are eligible to receive a scholarship under the Florida Tax Credit Scholarship Program. The bill defines "direct certification list" to mean a certified list of children who qualify for the Food Stamp Program, the Temporary Assistance for Needy Families Program, or the Food Distribution Program on Indian Reservations. The Department of Education must provide a process to match the direct certification list with the scholarship application data provided by the eligible SFO. Currently, any child on the direct certification list is eligible to participate in the National School Lunch Program.

The bill authorizes scholarship-funding organizations eligible to receive the 3% administrative allowance,⁴¹ to request school districts to inform all households participating in the National School Lunch Program that they are eligible to apply for a tax credit scholarship. An SFO making the request will determine the notice's form and the school district must include the form in any normal correspondence with eligible households. Once a year an SFO may request a special communication to be issued to such households; however, the SFO must reimburse the school district for the cost of postage.

B. SECTION DIRECTORY:

Section 1: Amends s. 220.186, F.S., changing the calculation of the alternative minimum tax.

Section 2: Amends s. 220.187, F.S., defining the term "direct certification"; renaming the scholarship program the Florida Tax Credit Scholarship Program; expanding the Florida Tax Credit Scholarship Program to include insurance premium tax credits; revising credits for contributions to nonprofit scholarship-funding organizations; providing that a taxpayer eligible to receive a credit against the insurance premium tax is not eligible to receive a credit against the corporate income tax; requiring the Department of Education to provide a process for matching the direct certification list with the scholarship application data; specifying school district notification requirements; and conforming cross-references.

Section 3: Creates s. 624.51055, F.S., authorizing an insurance premium tax credit to eligible scholarship-funding organizations participating in the scholarship program.

Section 4: Amends s. 1002.20, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include insurance premium tax credits.

Section 5: Amends s. 1002.23, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include insurance premium tax credits.

Section 6: Amends s. 1002.39, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include insurance premium tax credits.

⁴⁰ Firefighter and police pension plan funding comes from a number of sources, including the net proceeds from an excise tax levied upon property and casualty insurance companies. See s. 175.101, F.S., and s. 185.08, F.S.

⁴¹ See *supra* note 5 and accompanying text.

Section 7: Amends s. 1002.421, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include insurance premium tax credits.

Section 8: Provides a severability clause.

Section 9: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The maximum amount of tax credits that may be granted each fiscal year pursuant to the scholarship program remains at the \$118 million cap. The Revenue Estimating Conference concluded that under the provisions of this bill, credits against the insurance premium tax for contributions to SFOs would increase and credits against the state corporate income tax would fall by an equivalent amount. Consequently, the net impact on state revenues is expected to be \$0.

2. Expenditures:

The DOR estimated that implementing the provisions of the original bill would cost \$36,000 for modifications to its SUNTAX computer system. Implementing the provisions of the Committee Substitute may have a lower cost.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill appears to have no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance companies will have an opportunity to receive a credit against insurance premium taxes and provide children from low-income families an opportunity to receive a scholarship to attend a private school.

D. FISCAL COMMENTS:

The CITC Program produces a net savings to the state. The Office of Program and Policy Analysis and Government Accountability estimated that during the 2007-2008 fiscal year, taxpayers saved \$1.49 in state education funding for every dollar loss in corporate income tax revenue due to credits for scholarship contributions.⁴²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁴² <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As written, Section 3 of the bill allows an insurer a credit of 100 percent of an eligible contribution to an SFO to be taken against "any net tax due for a taxable year under s. 624.509(1)." The bill limits the credit to 75% of the "net tax due under s. 624.509(1)" after taking into account deductions for local option police and firefighters premium taxes and workers compensation insurance assessments. However, as written, the bill does not address whether the 75% limitation applies to tax due after credits for corporate taxes paid and after credits for salaries paid to Florida employees authorized in s. 624.509(5), F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2009, the PreK-12 Policy committee adopted one amendment and reported the bill favorably as a committee substitute.

- HB 453 allowed a credit against sales tax owed for contributions made to an eligible nonprofit scholarship-funding organization (SFO) that funds student scholarships. The CS removes all provisions authorizing a sales tax credit and all references to a sales tax credit.
- HB 453 capped the tax credit scholarship program at \$118 million for the corporate income tax, sales tax, and insurance premium tax credits. The CS clarifies that the \$118 million cap on tax credits is a total cap for corporate income tax and insurance premium tax credits, together.
- HB 453 required the Department of Education, upon request of an SFO, to include in its normal correspondence with households receiving free or reduced-price meals a form provided by the SFO regarding scholarship eligibility. Also, if an SFO requests a special communication to be sent by the department, then the SFO will provide the cost of postage. A special request is limited to once a year. The CS requires the school district to include the SFO form in its normal correspondence and to send out a special communication once a year.
- HB 453 required that the "direct certification list" sent from the Department of Children & Family Services to DOE, be provided to the SFO. The direct certification list contains information on households qualifying for Food Stamps and Temporary Assistance to Needy Families. The CS requires the Department of Education to establish a process to match the direct certification list with scholarship applicant data.
- The CS clarifies that insurers receiving an insurance premium tax credit are not eligible to receive a corporate income tax credit. HB 453 did not address this issue.
- HB 453 modified the calculation for the alternative minimum tax in a section of law that is unrelated to this provision. The CS changes the calculation of the alternative minimum tax in the correct section of law
- HB 453 did not contain a severability clause. The CS contains a severability clause.