

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/CS/SB 908

INTRODUCER: Finance and Tax Committee; Children, Families, and Elder Affairs; and Senator Rodrigues

SUBJECT: Strong Families Tax Credit

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Babin</u>	<u>FT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 908 creates the Strong Families Tax Credit. The tax credit is available to businesses that make monetary donations to certain eligible charitable organizations that provide services focused on child welfare and well-being, specifically:

- Preventing child abuse, neglect, abandonment, or exploitation;
- Assisting fathers in learning and improving parenting skills or to engage absent fathers in being more engaged in their children's lives;
- Providing books to the homes of children eligible for a free or reduced-price meal program or those testing below grade level in kindergarten through fifth grade;
- Assisting families who have children with a chronic illness or a physical, intellectual, developmental, or emotional disability; or
- Providing workforce development services to families of children eligible for a free or reduced-price meal program.

The tax credits are a dollar-for-dollar credit against severance taxes on oil and gas production; the self-accrued sales tax liability of direct pay permit holders; corporate income taxes; alcoholic beverage taxes; or the insurance premium tax. The total credits allowed are capped at \$5 million each state fiscal year, beginning in Fiscal Year 2021-2022.

The bill specifies requirements and procedures for, and limitations on, receiving the tax credits.

The bill also directs the Florida Institute for Child Welfare, an entity that performs research on child welfare initiatives contributing to a more effective child welfare system, to perform an

analysis of the tax credit and the use of the funds and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 31, 2025.

The bill appropriates \$208,000 in non-recurring general revenue funds to the Department of Revenue to implement the bill.

The Revenue Estimating Conference has not yet reviewed the bill. Staff estimates that the bill has a significant but indeterminate negative impact to state revenues; however, the impact to state revenues is a maximum reduction of \$5 million per fiscal year, beginning in Fiscal Year 2021-2022.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Department of Children and Families

The Department of Children and Families' (DCF) mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.¹ The DCF must develop a strategic plan to fulfill its mission and establish measureable goals, objectives, performance standards, and quality assurance requirements to ensure DCF is accountable to taxpayers.²

Under s. 20.19(4), F.S., the DCF is required to provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

The DCF must develop a strategic plan for fulfilling its mission and establish a set of measurable goals, objectives, performance standards, and quality assurance requirements to ensure it is accountable. The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.³ These private providers include managing entities delivering behavioral health services and community-based care lead agencies to deliver child welfare services.

¹ Section 20.19(1), F.S.

² *Id.*

³ *Id.*

Florida's Child Welfare System

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).⁴ A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,⁵ abandonment,⁶ or neglect.⁷ A child protective investigator investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.⁸

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home.⁹ However, the DCF's practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her environment. The DCF contracts for case management, out-of-home services, and related services with community-based care lead agencies (CBCs).¹⁰

The DCF outsources foster care and related services to service agencies with an increased *local community ownership* of providing services.¹¹ CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.¹²

⁴ Section 39.201(1)(a), F.S.

⁵ Section 39.01(2), F.S. The term "abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

⁶ Section 39.01(1), F.S. The term "abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

⁷ Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

⁸ Section 39.201(5), F.S.

⁹ Section 39.401, F.S.

¹⁰ Section 409.987, F.S.

¹¹ The Florida Department of Children and Families (DCF), *Community-Based Care*, available at <https://www.myflfamilies.com/service-programs/community-based-care/overview.shtml> (last visited March 28, 2021).

¹² The DCF, *Community-Based Care Lead Agency Map*, available at <https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml> (last visited March 28, 2021).

The DCF remains responsible for a number of child welfare functions, including operating the hotline, performing child protective investigations, and providing children's legal services. Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.¹³

Florida Institute for Child Welfare

In 2014, the Legislature established the Florida Institute for Child Welfare (FICW) at the Florida State University College of Social Work.¹⁴ The Legislature created the FICW to provide research and evaluation that contributes to a more sustainable, accountable, and effective child welfare system. The purpose of the FICW is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development.¹⁵ Current law requires the FICW to establish an affiliate network of public and private universities with accredited degrees in social work. In 2017, the FICW expanded its affiliate network to include research affiliates, and there are now over 50 research faculty affiliates.¹⁶

Select State Revenue Sources

The following describes select taxes imposed by Florida, which the bill provides credits against.

Severance Taxes on Oil and Gas Production

Oil and gas production severance taxes are imposed on persons who sever oil or gas in Florida for sale, transport, storage, profit, or commercial use.¹⁷ The rates are based on the value of the oil produced and saved or sold and the volume of gas produced and sold or used.¹⁸ These taxes are collected by the Department of Revenue (DOR) and distributed to the Oil and Gas Tax Trust Fund where, after paying refunds for overpayments, proceeds are distributed according to a statutory formula.¹⁹ The majority of proceeds are distributed to the General Revenue Fund, with a minority to the general revenue fund of the board of county commissioners of the county where produced and the Minerals Trust Fund. Receipts from the severance taxes on oil and gas in Fiscal Year 2019-2020 were \$1.8 million.²⁰

¹³ Office of Program Policy Analysis & Government Accountability, *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care, Report 06-50*, p. 2, June 2006, available at <https://oppaga.fl.gov/Documents/Reports/06-50.pdf> (last visited March 28, 2021).

¹⁴ Chapter 2014-224, Laws of Fla.

¹⁵ Section 1004.615, F.S.

¹⁶ See the Florida Institute for Child Welfare, available at <https://ficw.fsu.edu/> (last visited March 28, 2021).

¹⁷ Sections 211.02(1) and 211.025, F.S.

¹⁸ *Id.*

¹⁹ Section 211.06, F.S.

²⁰ Revenue Estimating Conference, *General Revenue Consensus Estimating Conference Comparison Report* (December 21, 2020), 38, available at <http://www.edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf> (last visited March 28, 2021).

Sales Taxes Paid by Direct Pay Permit Holders

Florida levies a 6 percent sales and use tax (sales tax) on the sale or rental of most tangible personal property, admissions,²¹ transient rentals,²² and a limited number of services, and a 5.5 percent sales and use tax on commercial real estate rentals.²³ Chapter 212, F.S., authorizes the levy and collection of Florida's sales tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances, including a sale for resale.²⁴ Florida requires a dealer to add the tax to the sales price of the taxable good or service and collect it from the purchaser at the time of sale.²⁵ Total sales tax collections in Fiscal Year 2019-2020 were estimated at \$29.3 billion.²⁶

States typically grant direct pay permits to large businesses with large numbers of transactions.²⁷ Direct pay permits allow all purchases by the holder to be tax exempt, but require the holder to file sales tax returns and pay tax on those purchases that were not for resale.²⁸

Section 212.183, F.S., authorizes the DOR to establish a process for the self-accrual of sales taxes and the issuance of a direct pay permit to a taxpayer, who then pays the taxes directly to the DOR.²⁹ The implementing DOR rule authorizes issuing direct pay permits for the following purposes:³⁰

- The apportionment of sales tax by eligible air carriers.
- Certain partial exemptions for railroad rolling stock and parts used to transport persons or property for hire in interstate or foreign commerce and for fuel used in railroad locomotives.
- A certain partial exemption for motor vehicles and parts used to transport persons or property for hire in interstate or foreign commerce.
- Certain partial exemptions for vessels and parts used to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes and for fuel used in such vessels.
- The purchase of tangible personal property by dealers who annually purchase in excess of \$10 million of taxable tangible personal property in any county for the dealer's own use.
- The purchase of tangible personal property by dealers who annually purchase at least \$100,000 of taxable tangible personal property, including maintenance and repairs for the dealer's own use, and the taxable status of the property will be known only when the dealer uses the property.
- The purchase of certain promotional materials by dealers who are unable to determine at the time of purchase whether the promotional materials used to promote subscriptions to publications will be used in Florida or exported from Florida.

²¹ Section 212.04, F.S.

²² Section 212.03, F.S.

²³ Section 212.031, F.S.

²⁴ Section 212.02(14)(a), F.S.

²⁵ See ss. 212.07(2) and 212.06(3)(a), F.S.

²⁶ Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 159 (2020), available at <http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 28, 2021).

²⁷ Charles W. Swenson, et al. *State and Local Taxation*, Third Edition., 130, J. Ross Publishing (2020).

²⁸ *Id.*

²⁹ Section 212.183, F.S.

³⁰ Fla. Admin. Code R. 12A-1.0911(2) (2016).

- The lease or license to use real property subject to commercial rent tax from independent owners or lessors of real property by dealers who are required to remit sales tax electronically.
- The lease of or license to use real property subject to commercial rent tax by a dealer who leases or obtains licenses to use real property from a number of independent property owners who, except for the lease or license to the dealer, would not be required to register as dealers engaged in the business of leasing real property.
- The lease or license to use real property subject to commercial rent tax by operators of amusement machines or vending machines who lease or obtain licenses to use real property from property owners or lessors for the purpose of placing and operating an amusement or vending machine.

Corporate Income Tax and Alternative Minimum Tax

Florida imposes a tax on the taxable income of certain corporations and financial institutions doing business in Florida.³¹ The current rate is 4.458 percent³² of a taxpayer's net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).³³

The calculation of Florida corporate income tax starts with a corporation's federal taxable income.³⁴ Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll, and 50 percent on sales.³⁵ Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt, effective with taxable years beginning January 1, 2013.³⁶

Corporate income tax net collections in Fiscal Year 2019-2020 were \$1.7 billion.³⁷

Generally, an alternative minimum tax (AMT) applies to taxpayers with high economic income by setting a limit on certain tax benefits that significantly reduce the taxpayer's regular tax amount.³⁸ However, the federal corporate AMT for C corporations was repealed by the federal Tax Cuts and Jobs Act of 2017.³⁹ To calculate AMT, a taxpayer's liability is calculated twice, once under the rules for regular income tax and once under AMT rules, and the taxpayer is required to pay the higher amount.⁴⁰ Florida AMT must be computed if federal AMT was paid

³¹ Chapter 220, F.S.

³² The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate is scheduled to return to 5.5 percent for taxable years beginning on or after January 1, 2022.

³³ Sections 220.11(2) and 220.63(2), F.S.

³⁴ Section 220.12, F.S.

³⁵ Section 220.15, F.S.

³⁶ Section 220.14, F.S.

³⁷ *Supra* note 20, at 27.

³⁸ Internal Revenue Service, *Topic No. 556 Alternative Minimum Tax*, available at <https://www.irs.gov/taxtopics/tc556> (last visited March 28, 2021).

³⁹ Pub. L. No. 115-97, s. 12001, 131 Stat. 2054 (2017).

⁴⁰ Congressional Research Service, *Tax Reform: The Alternative Minimum Tax* (Dec. 4, 2017), available at <https://crsreports.congress.gov/product/pdf/IF/IF10705> (last visited March 28, 2021).

for the same tax year.⁴¹ Florida alternative minimum taxable income is multiplied by 3.3 percent to determine Florida AMT.⁴² The tax due is the higher of the regular Florida corporate income tax or the Florida AMT.⁴³ A taxpayer required to pay the AMT rather than the regular corporate income tax may take a credit in subsequent taxable years, in an amount equal to AMT paid minus the amount of the regular corporate income tax that would have been due without the application of the AMT.⁴⁴

Alcoholic Beverage Taxes

Florida imposes excise taxes on alcoholic beverages, at a rate of \$0.48 per gallon of beer⁴⁵, \$2.25 to \$3.50 per gallon of wine and \$0.89 per gallon of cider⁴⁶, and \$2.25 to \$9.53 per gallon of spirits⁴⁷, with wine and spirits rates varying with the alcoholic content and type of wine. The taxes are due from manufacturers, distributors and vendors of beer, and from manufacturers and distributors of wine, liquor, and other specified alcoholic beverages. Taxes are remitted to the Division of Alcoholic Beverages and Tobacco (Division) of the Department of Business and Professional Regulation (DBPR).⁴⁸

Of the monthly collections of the excise taxes on alcoholic beverages, 2 percent are deposited into the Alcoholic Beverage and Tobacco Trust Fund to meet the Division's appropriation for the state fiscal year, with the remainder credited to the General Revenue Fund.⁴⁹ Beverage wholesale tax collections for Fiscal Year 2019-2020 were \$744.2 million.⁵⁰

Insurance Premium Tax

Florida imposes on insurers a tax on insurance premiums. For the tax imposed by s. 624.509(1), F.S., tax is due on:

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

The general tax rate is 1.75 percent of gross receipts on account of life and health insurance policies covering Florida residents and on account of all other types of policies and contracts covering property, subjects, or risks located, resident, or to be performed in Florida, minus reinsurance and return premiums.⁵¹ Annuity policies or contracts held in Florida are taxed at

⁴¹ Section 220.13(2)(k), F.S.; Florida Department of Revenue, *Corporate Income Tax*, 2, available at https://floridarevenue.com/Forms_library/current/gt800017.pdf (last visited March 28, 2021).

⁴² Section 220.11(3), F.S..

⁴³ *Id.*

⁴⁴ Section 220.186, F.S.

⁴⁵ Section 563.05, F.S.

⁴⁶ Section 564.06, F.S.

⁴⁷ Section 565.12, F.S.

⁴⁸ Section 561.02, F.S. The Division is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.

⁴⁹ Section 561.121, F.S.

⁵⁰ *Supra* note 20, at 31.

⁵¹ Section 624.509(1), F.S.

1 percent of gross receipts, and direct written premiums for bail bonds are taxed at 1.75 percent, excluding any amounts retained by licensed bail bond agents or appointed managing general agents.⁵² The insurance premium tax is collected by the Department of Revenue and distributed to the General Revenue Fund.⁵³ Total insurance premium tax collections in Fiscal Year 2019-2020 were \$893.7 million.⁵⁴

Currently, there are no statutory provisions for a tax credit program for eligible contributions made to eligible organizations that work to promote the welfare of children.

Background Screening

Background Screening Process

Level 1 and Level 2 Criminal History Record Checks are terms used under Florida law to convey the method of the criminal history record check and the extent of the data searched. Level 1 and Level 2 are terms that pertain only to Florida and are not used by the Federal Bureau of Investigation (FBI) or other states:

- Level 1: a state-only name-based check.
- Level 2: a state and national fingerprint-based check and consideration of disqualifying offenses, applicable to employees and volunteers designated by law as holding positions of responsibility or trust and those required to be fingerprinted pursuant to ch. 435, F.S.⁵⁵

Public Law (Pub. L.) 92-544 authorizes the Federal Bureau of Investigation (FBI) to exchange criminal history record information (CHRI) with state and local governmental agencies' officials for licensing and employment purposes. Criteria established under Pub. L. 92-544 requires state statutes to designate an authorized governmental agency to be responsible for receiving and screening the results of the CHRI to then determine an applicant's suitability for employment or licensing. For level 2 screening, the Florida Department of Law Enforcement (FDLE) is this state's authorized governmental agency given the responsibility to perform a criminal history record check of its records and request that the FBI perform a national criminal history record check of its records for each employee for whom the request is made.⁵⁶

Under current law, designated eligible charitable organizations are not considered authorized governmental agencies to conduct background screenings and, therefore, are unable to request or obtain national records pursuant to s. 435.04, F.S. However, the FDLE's Volunteer and Employee Criminal History System (VECHS) allows certain non-governmental organizations to obtain national criminal history results through the FDLE.

Once the FDLE receives fingerprints and payment for criminal history record requests, with the assistance of the FBI, the FDLE will provide the organization:⁵⁷

⁵² *Id.*

⁵³ Section 624.509(3), F.S.

⁵⁴ *Supra* note 20, at 34.

⁵⁵ Section 435.05, F.S.

⁵⁶ Section 435.05(1)(c), F.S.

⁵⁷ The FDLE, *VECHS Program-Process and Forms*, <https://www.fdle.state.fl.us/Background-Checks/VECHS-Process-and-Forms> (last visited March 28, 2021) (hereinafter cited as "VECHS Program")

- Either an indication that the person has no criminal history or the criminal history record that shows arrests and convictions for Florida and other states, if any; and
- Notification of any warrants or domestic violence injunctions that the person may have.

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 offenses enumerated in s. 435.04(2), F.S., or similar law of another jurisdiction.⁵⁸

III. Effect of Proposed Changes:

Strong Families Tax Credit

Tax Credits for Contributions to Eligible Charitable Organizations

The bill creates s. 402.62, F.S., the Strong Families Tax Credit. The tax credit is available for businesses that make monetary donations to certain eligible charitable organizations that provide services focused on child welfare and well-being. The tax credit is a dollar-for-dollar credit against the business's liability for the state taxes described in Section II, including:

- Severance taxes on oil and gas production;
- The self-accrued sales tax liability of direct pay permit holders;
- The corporate income tax;
- Alcoholic beverage taxes; or
- The insurance premium tax.

New sections are created in each of the applicable tax chapters to create the credit authorized in s. 402.62, F.S., as discussed further below.

The annual tax credit cap for all credits under this program is \$5 million per state fiscal year, beginning in Fiscal Year 2021-2022.

Certification and Responsibilities of Eligible Charitable Organizations

To qualify for the program, an eligible charitable organization must be exempt as a s. 501(c)(3) organization under the Internal Revenue Code, must be a Florida entity with its principal office in Florida, and must provide services to:

- Prevent child abuse, neglect, abandonment, or exploitation;
- Assist fathers in learning and improving parenting skills or to engage absent fathers in being more engaged in their children's lives;
- Provide books to the homes of children eligible for a free or reduced-price meal program or those testing below grade level in kindergarten through fifth grade;
- Assist families who have children with a chronic illness or a physical, intellectual, developmental, or emotional disability; or

⁵⁸ See s. 435.04(2), F.S., for a full list.

- Provide workforce development services to families of children eligible for a free or reduced-price meal program.

An eligible charitable organization cannot:

- Provide, pay for, or provide coverage for abortions or financially support any other entity that provides, pays for or provides coverage for abortions, or
- Receive more than 50 percent of its total annual revenue from the DCF, either directly or indirectly in the prior fiscal year.

Additionally, to participate in the program, the organization must:

- Apply to the DCF for designation as an eligible charitable organization;
- Provide one-time and ongoing information as requested by the DCF;
- Spend 100 percent of received funds on direct services for Florida residents for an approved purpose under the Strong Families Tax Credit;
- Apply for admittance into the FDLE's VECHS program and, if accepted, conduct level 2 background screening and perform a check of the Dru Sjodin National Sex Offender Public Website for all volunteers and staff working directly with children in any program funded under the bill;
- Annually provide a copy of its most recent IRS Return of Organization Exempt from Income Tax form (Form 990); and
- Annually submit to the DCF, within 180 days after the completion of its fiscal year, an audit by an independent certified public accountant, including a report on financial statements, in accordance with generally accepted accounting principles, government standards and rules adopted by the Auditor General;
- Notify the DCF within 5 days if the charitable organization ceases to meet eligibility requirements or fails to comply with requirements under the section; and
- Provide the taxpayer that made the contribution with a certificate of contribution upon receipt of the contribution.⁵⁹

Responsibilities of the Department of Children and Families

The DCF must annually redesignate eligible charitable organizations and remove organizations that fail to meet the specified criteria. A charitable organization that has its designation removed is able to apply for redesignation. The DCF must redesignate the organization if it meets the criteria and the application demonstrates that the factors leading to its removal have been sufficiently addressed. The DCF is also responsible for creating and maintaining a section of its website dedicated to this tax credit program and providing information on the process for becoming an eligible charitable organization, a list of current eligible charitable organizations, and the process for a taxpayer to select an eligible charitable organization as the recipient of funding through the tax credit program. Finally, the DCF must compel the return of funds received by a charitable organization that fails to comply with the requirements of s. 402.62, F.S. If an organization is subject to such return of funds, it is ineligible to receive funding under the section for a period of 10 years after final agency action to compel the return.

⁵⁹ A certificate of contribution must include the taxpayer's name, the federal employer identification number, amount contributed, date of contribution, and the name of the eligible charitable organization.

Application and Approval of Tax Credits by the DOR

Businesses that wish to participate in the program by making a donation to an eligible charitable organization must apply to the DOR beginning October 1, 2021, for an allocation of tax credit. The taxpayer must specify in the application each tax for which the taxpayer requests a credit, the applicable taxable year for a credit under s. 220.1876, F.S., or s. 624.51056, F.S., relating to the corporate income and insurance premium tax credits, and the applicable state fiscal year for a credit under ss. 211.0252, F.S., 212.1833, F.S., or 561.1212, F.S., relating to oil and gas production, direct pay permit sales, and alcoholic beverage tax credits, respectively. For purposes of s. 220.1876, F.S., a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return for that year pursuant to s. 220.222, F.S. For purposes of s. 624.51056, F.S., a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return for that year pursuant to s. 624.509, F.S., or s. 624.5092, F.S. The DOR is required to approve the tax credits on a first-come, first-served basis and must obtain the approval of the Division prior to approving an alcoholic beverage tax credit under s. 561.1212, F.S.

The DOR must provide a copy of a letter approving or denying an application within 10 days after a decision is made.

Any unused credit may be carried forward up to ten years. The bill generally does not allow a taxpayer to convey, transfer, or assign the credit to another entity unless all of the assets of the taxpayer are conveyed, transferred, or assigned in the same transaction. Upon approval of the DOR, transfers may be made between members of an affiliated group of corporations if the credit transferred will be taken against the same type of tax and the taxpayer notifies the DOR of its intent to convey, transfer, or assign the credit to another member.

For purposes of calculating underpayment of estimated corporate income taxes and insurance premium tax installments, the final amount due is the amount after credits earned for contributions to eligible charitable organizations are deducted. Provisions are made for determining whether penalties or interest will be imposed.

The bill provides for the preservation of credits if any provision of the tax credit program is held unconstitutional or invalid.

Rescinding Tax Credits

A taxpayer may rescind all or part of an approved tax credit in any state fiscal year, and such amount will become available for that state fiscal year to another eligible taxpayer as approved by the DOR if the taxpayer received notice that the rescindment has been accepted. The DOR must obtain the Division's approval before accepting the rescindment under s. 561.1212. Any rescindment amount available for other eligible taxpayers must become available on a first-come, first-served basis based on tax credit applications received after the date of rescindment is accepted by the DOR.

Revenue Sources

Severance Taxes on Oil and Gas Production

The bill creates s. 211.0252, F.S., which, beginning July 1, 2022, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against the oil or gas production severance tax. The credit, combined with credits taken under the Florida Tax Credit Scholarship Program, may not exceed 50 percent of the tax due on the return the credit is taken. If the combined credit exceeds 50 percent, the Florida Tax Credit Scholarship Program credit must be taken first. The bill directs the DOR to disregard tax credits under this section for purposes of the distributions of oil and gas tax revenue, so that only amounts distributed to the General Revenue Fund are reduced.

Sales Taxes Paid by Direct Pay Permit Holders

The bill creates s. 212.1833, F.S., which, beginning July 1, 2022, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against any state sales tax due from a direct pay permit holder as a result of the direct pay permit held pursuant to s. 212.183, F.S. The bill requires DOR to include eligible contributions in certain tax calculations. The bill directs the DOR to disregard tax credits under this section for purposes of the distributions of sales tax revenue, so that only amounts distributed to the General Revenue Fund are reduced. The bill requires a dealer who claims the credit to file and pay sales taxes electronically.

Corporate Income Tax

The bill creates s. 220.1876, F.S., which, beginning January 1, 2022, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against the state corporate income tax after any other allowable credits by the taxpayer. An eligible contribution must be made on or before the date the taxpayer is required to file a return. A taxpayer who files a Florida consolidated return is eligible for the credit.

Section 402.62 applies to the credit created under s. 220.1876, F.S. If an extension to file a return is requested, the credit does not reduce the amount of tentative tax due. A taxpayer's noncompliance with the requirement to pay tentative taxes must result in the revocation and rescindment of any such credit, and the taxpayer will be assessed for any taxes, penalties, or interest due from such noncompliance.

The bill amends three additional provisions that are solely related to corporate income tax related to the ordering and administration of tax credits, to:

- Specify the order that credits for contributions to eligible charitable organizations are to be claimed relative to other credits authorized under ch. 220, F.S.;
- Require adding tax credit amounts claimed under s. 220.1876, F.S., back to taxable income, which prevents a taxpayer from claiming the amount as both a credit and a deduction, and to specify an exception under which a taxpayer would not add back the amount in the current taxable year; and
- Specify that the Strong Families Tax Credit is not included in the calculation of the Florida AMT credit.

Alcoholic Beverage Taxes

The bill creates s. 561.1212, F.S., to authorize a credit of 100 percent of an eligible contribution to an eligible charitable organization against the excise tax on alcoholic beverages, except for taxes imposed on domestic wine production, beginning January 1, 2022. Further, the credit is limited to 90 percent of the tax due on the return the credit is taken. The Division is directed to disregard tax credits under this section for purposes of the distributions of tax revenue under ss. 561.121 and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced.

Insurance Premium Tax

The bill creates s. 624.51056, F.S., which, beginning January 1, 2022, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against the insurance premium tax due under s. 624.509(1), F.S., after deducting from such tax deductions for assessments made pursuant to s. 440.51, F.S., and credits for taxes paid under ss. 175.01, F.S., 185.08, F.S., ch. 220, F.S., or s. 624.509, F.S. The contribution must be made on or before the date the taxpayer is required to file a return. The credit is not limited by retaliatory tax provisions, and no additional retaliatory tax may be levied under s. 624.5091, F.S. Section 402.62, F.S., applies to the credit authorized under s. 624.51056, F.S.

The bill provides rulemaking authority to the DOR, DCF, Auditor General, and the DBPR. In addition, the DOR is granted emergency rulemaking authority for purposes of implementing the act.

Specific Appropriation

An appropriation of \$208,000 nonrecurring funds from General Revenue is provided to the DOR for implementation costs.

Florida Institute of Child Welfare Study

The bill directs the FICW to perform an analysis of the use of funding provided by the tax credit and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 31, 2025.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. Staff estimates that the bill has a significant but indeterminate negative impact to state revenues; however, the impact to state revenues is a maximum reduction of \$5 million per fiscal year, beginning in Fiscal Year 2021-2022.

Under current law:⁶⁰

- The revenue for the state portion of an employee's state and national criminal history record check will be \$24 per name submitted; and
- The revenue for the state portion of a volunteer's state and national criminal history record check will be \$18 per volunteer name submitted;

These funds are also subject to a general revenue service charge of 8 percent pursuant to ch. 215, FS.⁶¹

B. Private Sector Impact:

Eligible charitable organizations under the Strong Families Tax Credit will benefit from the dollar-for-dollar credit against certain tax liabilities, up to a cap of \$5 million per fiscal year.

Charitable organizations will be required to obtain an audit from an independent certified public accountant in order to participate.⁶²

⁶⁰ Section 943.053, F.S.; The Florida Department of Law Enforcement, *Agency Analysis of CS/SB 908*, 4-5, March 23, 2021 (on file with the Committee on Finance and Tax).

⁶¹ *Id.* at 4-5.

⁶² *Id.*

For state and national criminal history checks, VECHS approved organizations will pay:

- \$37.25 for each employee electronic submission; and
- \$29.25 for each volunteer electronic submission.⁶³

C. Government Sector Impact:

The DOR estimates that it requires \$203,903 in Fiscal Year 2021-2022 to administer the bill.⁶⁴ The bill appropriates \$208,000 in non-recurring general revenue funds to the DOR to implement its provisions.

The DCF will incur administrative costs to implement the bill.⁶⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.02, 220.13, and 220.186.

This bill creates the following sections of the Florida Statutes: 211.0252, 212.1833, 220.1876, 402.62, 561.1212, and 624.51056.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on March 31, 2021:

The committee substitute:

- Removes a requirement for the corporate income tax credit under the bill to be reduced by the difference between the amount of federal corporate income tax applying the credit and the amount of federal corporate income tax without application of the credit, and makes a conforming change.
- Specifies Fiscal Year 2021-2022 as the year when the tax credit cap amount begins.
- Corrects a cross-reference

⁶³ VECHS Program.

⁶⁴ Florida Dep't of Revenue, *Agency Analysis of House Bill 897*, 9, March 3, 2021, (on file with the Senate Committee on Finance and Tax).

⁶⁵ Florida Dep't of Children and Families, *Agency Analysis of SB 908*, 4, (Feb. 5, 2021) (on file with the Senate Committee on Finance and Tax).

CS by Children, Families, and Elder Affairs on March 23, 2021.

The committee substitute requires an eligible charitable organization to apply for admittance into FDLE's Volunteer and Employee Criminal History System and, if accepted, conduct level 2 background screening and perform a check of the Dru Sjodin National Sex Offender Public Website for all volunteers and staff working directly with children in any program funded under the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
