

**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.)

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Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

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BILL: SB 962

INTRODUCER: Senator Benacquisto

SUBJECT: Florida Tax Credit Scholarship Program

DATE: January 5, 2012

REVISED: 1/6/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	deMarsh-Mathues	ED	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

For the Florida Tax Credit Scholarship Program, the bill increases the \$ 218,750,000 maximum tax credit by \$ 31,250,000 to \$250 million beginning with FY 2012-2013. In fiscal year 2012-2013 and thereafter, the cap will increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount for that year.

This bill substantially amends section 1002.395 of the Florida Statutes.

**II. Present Situation:**

**Florida Tax Credit Scholarship Program (FTC program)**

Under the FTC program, tax credit scholarships were created to encourage private, voluntary contributions from corporate donors to nonprofit scholarship-funding organizations.<sup>1</sup> A corporation can receive a dollar for dollar tax credit against its state corporate income tax, insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders, and alcoholic beverage tax on beer, wine, and spirits for donations to private nonprofit scholarship-funding organizations.

**Eligible Private Schools and Students**

Private schools participating in the FTC program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private

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<sup>1</sup> Sections 1002.395(1) and 1002.421, F.S. In 2010, the program was transferred from s. 220.187, F.S., to s. 1002.395, F.S., by ch. 2010-24, L.O.F.

schools.<sup>2</sup> To be eligible for participation in the FTC program, a private school must demonstrate fiscal soundness and accountability.<sup>3</sup>

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act<sup>4</sup> or who qualifies for the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance to Needy Families Program (TANF), or the Food Distribution Program on Indian Reservations (FDPIR)<sup>5</sup> and:

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is eligible to enter kindergarten or the first grade;
- Received a scholarship under the FTC program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed, in foster care.

A student does not lose his or her scholarship due to a change in the economic status of the student's parents unless the parent's economic status exceeds 230 percent of the federal poverty guidelines.<sup>6</sup> A sibling of a scholarship student who continues to participate in the program and resides in the same household as the student is considered to be a first-time FTC scholarship recipient, as long as the student's and the sibling's household income level does not exceed 230 percent of the federal poverty level.<sup>7</sup>

Eligibility is contingent upon available funds.<sup>8</sup> The amount of the scholarship provided to any child for any single school year by any eligible SFO may not exceed the following limits:<sup>9</sup>

- For FY 2011-2012, the maximum scholarship amount is 64 percent of the Florida Education Finance Program (FEFP) unweighted full-time equivalent (FTE) amount for the fiscal year, for a scholarship awarded to a student for tuition and fees;<sup>10</sup> or
- \$500 for a scholarship awarded to a student for transportation to a Florida public school that is located outside the district in which the student resides.

<sup>2</sup> Sections 1002.395(8) and 1002.421, F.S.

<sup>3</sup> Section 1002.421, F.S.

<sup>4</sup> Section 1002.395(3)(b), F.S. The eligibility guidelines are available at:

<http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs10-11.htm>.

<sup>5</sup> Children from households that receive benefits under SNAP (formerly the Food Stamp Program), TANF, or the FDPIR, are deemed "categorically eligible" for free school meals, thereby eliminating the need for households to submit an application for meal benefits. *Direct Certification in the National School Lunch Program: State Progress in Implementation, Report to Congress – Summary*, U.S. Department of Agriculture (USDA), October 2011, available at:

<http://www.fns.usda.gov/ora/menu/published/CNP/FILES/DirectCert2011.pdf>.

<sup>6</sup> Section 1002.395(3)(b)2., F.S.

<sup>7</sup> Section 1002.395(3)(b)3., F.S. The student must also meet one or more of the eligibility criteria.

<sup>8</sup> Section 1002.395(3)(b), F.S.

<sup>9</sup> Section 1002.395(12)(a), F.S. Beginning in FY 2011-2012, the percentage used to determine the maximum scholarship award increases by four percent in any fiscal year when the tax credit cap also increases, until it reaches a maximum of 80 percent. In that fiscal year and thereafter, the scholarship limit will be equal to 80 percent of the per FTE funding amount.

<sup>10</sup> Section 1002.395(12)(a)1.a.III, F.S. E-mail, DOE, January 6, 2012, on file with the Senate Committee on Education Pre-K – 12.

### Scholarship Funding Organizations

An SFO must be a charitable organization exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code.<sup>11</sup> Scholarships must be provided for eligible students on a first-come, first-served basis, unless the student qualifies for priority consideration.<sup>12</sup> An SFO may not restrict or reserve scholarships for use at a particular private school or for the child of an operator or owner of a private school or SFO. A taxpayer making the contribution may not designate a specific child or group of children as the beneficiaries of the scholarship.<sup>13</sup> If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may retain up to three percent of the taxpayer's contributions for reasonable and necessary administrative expenses.<sup>14</sup>

The Legislature initially capped the scholarship program at \$50 million in tax credits per state fiscal year,<sup>15</sup> but subsequently expanded the cap to \$88 million in 2003.<sup>16</sup> Beginning with FY 2008-2009, the cap was increased by \$30 million to \$118 million.<sup>17</sup> Until 2009, tax credits under the scholarship program were only available against the state's corporate income tax.

In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed for donations to an SFO to include the premium tax under s. 624.509, F.S., which is imposed on insurance premiums written in Florida and paid by insurance companies to the Department of Revenue (DOR).<sup>18</sup>

In 2010, the Legislature added three new revenue sources by allowing taxpayers to receive credits for eligible contributions against: severance taxes on oil and gas production;<sup>19</sup> self-accrued sales tax liabilities of direct pay permit holders;<sup>20</sup> and alcoholic beverage taxes on beer, wine, and spirits.<sup>21</sup> The 2010-2011 fiscal year cap on tax credits authorized under the FTC program is \$140 million.<sup>22</sup> In fiscal year 2011-2012 and thereafter, the cap will increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90

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<sup>11</sup> Section 1002.395(2)(f), F.S.

<sup>12</sup> Sections 1002.395(6)(e) and (f), F.S.

<sup>13</sup> Section 1002.395(2)(e), F.S.

<sup>14</sup> Section 1002.395(6)(i), F.S.

<sup>15</sup> Chapter 2001-225, L.O.F.

<sup>16</sup> Section 9, ch. 2003-391, L.O.F.

<sup>17</sup> Chapter 2008-241, L.O.F.

<sup>18</sup> Section 624.51055, F.S., allows insurance companies to receive a credit of 100 percent of an eligible contribution to an eligible SFO against any tax due for a taxable year under the provisions of the insurance premium tax. However, the credit may not exceed 75 percent of the tax due.

<sup>19</sup> Section 211.0251, F.S., authorizes a credit of 100 percent of an eligible contribution to an SFO against any tax due under ss. 211.02 or 211.025, F.S., for oil or gas production. However, the credit may not exceed 50 percent of the tax due on the return the credit is taken.

<sup>20</sup> Section 212.1831, F.S., authorizes a credit of 100 percent of an eligible contribution against any state sales tax due from a direct pay permit holder (e.g., dealers who annually make purchases in excess of \$10 million per year in any county and dealers who purchase promotional materials whose ultimate use is unknown at purchase) as a result of the direct pay permit held. See s. 212.183, F.S., and Rule 12A-1.0911, F.A.C.

<sup>21</sup> Section 561.1211, F.S., authorizes a credit of 100 percent of an eligible contribution to an SFO against tax due under ss. 563.05, 564.06, or 565.12, F.S., except for taxes imposed on domestic wine production. Further, the credit is limited to 90 percent of the tax due on the return on which the credit is taken.

<sup>22</sup> Section 1, ch. 2010-24, L.O.F., codified in s. 1002.395(5), F.S.

percent of the tax credit cap amount for that year. The tax credit cap amount is \$175 million for the 2011-2012 state fiscal year and \$218,750,000 for the 2012-2013 state fiscal year.<sup>23</sup>

The following summarizes information related to the tax credits approved by the DOR:<sup>24</sup>

<b>Tax Year</b>	<b>Number of Approved Tax Credit Allocation Applications</b>	<b>Number of Taxpayers</b>	<b>Total Amount of Tax Credit Allocations Approved for All Taxpayers</b>	<b>Number of Small Businesses Approved for Tax Credit Allocations</b>	<b>Total Amount of Tax Credit Allocations Approved for Small Businesses<sup>25</sup></b>
2002-03	77	48	\$47,686,000	4	\$186,000
2003-04	114	56	\$47,579,000	3	\$79,000
2004-05	102	58	\$47,560,000	2	\$60,000
2005-06	126	79	\$80,323,071	2	\$4,000
2006-07	94	65	\$87,123,000	1	\$3,000
2007-08 <sup>26</sup>	106	62	\$85,611,140	0	\$0
2008-09	125	75	\$97,415,847	0	\$0
2009-10	121	83	\$111,773,617 <sup>27</sup>	0	\$0
2010-11	128	100	\$136,321,200	0	\$0
2011-12	124	110	\$173,757,000	0	\$0

The credit allocation process for the 2012-2013 fiscal year does not begin until January 1, 2012.<sup>28</sup>

<sup>23</sup> E-mail, DOR, December 12 and December 27, 2011, on file with the Senate Committee on Education Pre-K - 12. *Taxpayer Information Publication 11ADM-03*. See [https://taxlaw.state.fl.us/wordfiles/CIT\\_TIP\\_11ADM-03.pdf](https://taxlaw.state.fl.us/wordfiles/CIT_TIP_11ADM-03.pdf).

<sup>24</sup> E-mail, DOR, March 28, 2011, on file with the Senate Committee on Education Pre-K - 12.

<sup>25</sup> Until 2006, s. 220.187(3)(a), F.S., provided that five percent of the tax credit was reserved for small businesses as defined under s. 288.703(1), F.S. Chapter 2006-75, L.O.F., reduced the small business cap to one percent. The cap was subsequently repealed by ch. 2008-241, L.O.F.

<sup>26</sup> Effective for tax years beginning January 1, 2006, s. 220.187(5)(d), F.S., (currently s. 1002.395(5)(e), F.S.) permits a taxpayer to rescind all or part of its previously allocated tax credit. When approved, the rescinded allocation can be allocated to another taxpayer.

<sup>27</sup> Of the total amount of the allocation of tax credits, \$15,130,000 was allocated to insurance companies based on 18 approved applications.

<sup>28</sup> E-mail, DOR, December 12, 2011, on file with the Senate Committee on Education Pre-K - 12.

The following reflects the credit allocations per SFO for 2007-2008, 2008-2009, 2009-2010, 2010-2011,<sup>29</sup> 2011-2012, and 2012-2013:

<b>Credit Allocations per SFO 2007-2008<sup>30</sup></b>	
<b>SFO</b>	<b>TOTAL</b>
Academy Prep Foundation, Inc.	\$0
Children First Central Florida <sup>31</sup>	\$38,178,882
Florida School Choice Fund <sup>32</sup> (Florida P.R.I.D.E.)	\$41,663,140
The Carrie Meek Foundation, Inc.	\$1,875,000
Credit Carry Forward	\$3,894,118
Total Allocations	\$85,611,140
<b>Credit Allocations per SFO 2008-2009<sup>33</sup></b>	
<b>SFO</b>	<b>TOTAL</b>
The Children’s Cause, Inc. <sup>34</sup>	\$0
Children First Florida (Children First Central Florida)	\$42,317,008
Florida P.R.I.D.E.	\$35,930,000
The Carrie Meek Foundation, Inc.	\$3,010,000
Step Up for Students <sup>35</sup>	\$7,001,750
Credit Carry Forward	\$9,157,089
Total Allocations	\$97,415,847
<b>Credit Allocations per SFO 2009-2010<sup>36</sup></b>	
<b>SFO</b>	<b>TOTAL</b>
Children First Florida <sup>37</sup>	\$14,406,666
Florida P.R.I.D.E. <sup>38</sup>	\$7,431,666
The Carrie Meek Foundation, Inc.	\$2,734,318
Step Up for Students	\$64,909,850
Credit Carry Forward	\$22,291,117
Total Allocations	\$111,773,617
<b>Credit Allocations per SFO 2011-2012<sup>39</sup></b>	
<b>SFO</b>	<b>TOTAL</b>
Step Up for Students	\$173,757,000
Total Allocations	\$173,757,000

<sup>29</sup> Data for applications for credit allocations current through February, 2010. The 2008-09 and 2009-10 applications are still open as of that date.

<sup>30</sup> E-mail, DOR, March 28, 2011, on file with the Senate Committee on Education Pre-K – 12, for tax years beginning in 2007. The allocation began January 1, 2007, for tax years beginning in calendar year 2007. The allocation is closed.

<sup>31</sup> Children First Central Florida was subsequently known as Children First Florida.

<sup>32</sup> Florida School Choice Fund was subsequently known as Florida P.R.I.D.E.

<sup>33</sup> DOR, March 1, 2010, for tax years beginning in 2008. The allocation began January 1, 2008, for tax years beginning in calendar year 2008. This allocation is closed.

<sup>34</sup> The Children’s Cause was approved by the DOE for 2008-2009.

<sup>35</sup> The Florida School Choice Fund, Inc., d/b/a Step Up for Students, was approved effective July 1, 2009. The assets of Florida PRIDE and Children First Florida were transferred to Florida School Choice Fund, Inc.

<sup>36</sup> E-mail, DOR, March 28, 2011, on file with the Committee on Education Pre-K – 12, for tax years beginning in 2009. The allocation began January 1, 2009, for tax years beginning in calendar year 2009. This allocation is closed.

<sup>37</sup> Children First Florida ceased to exist on July 1, 2009. The assets of Children First Florida were transferred to Step Up for Students.

<sup>38</sup> Florida PRIDE ceased to exist on July 1, 2009. The assets of Florida Pride have been transferred to Step Up for Students.

<sup>39</sup> E-mail, DOR, December 12 and December 27, 2011, on file with the Committee on Education Pre-K – 12, for tax years beginning in 2011. The allocation began January 1, 2011, for tax years beginning in calendar year 2011. The allocation is open.

Currently, there are 1,181 participating private schools and 37,578 students receiving scholarships.<sup>40</sup> Step Up for Students is the only approved SFO for 2011-2012.<sup>41</sup>

### III. Effect of Proposed Changes:

For the Florida Tax Credit Scholarship Program, the bill increases the \$ 218,750,000 maximum tax credit by \$ 31,250,000 to \$250 million beginning with FY 2012-2013. In fiscal year 2012-2013 and thereafter, the cap will increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount for that year.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet adopted an official estimate of the revenue impacts expected under the bill.

#### B. Private Sector Impact:

The bill increases the maximum tax credit available to taxpayers under the FTC program.

#### C. Government Sector Impact:

The impact on General Revenue receipts of the authorized additional tax credits and the projected FEFP cost savings to the state are unknown. The Revenue Estimating Conference has not yet adopted an official estimate of the revenue impacts expected under the bill.

The DOR notes that there is an insignificant fiscal impact on the department's operations.

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<sup>40</sup> *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, November 2011. Of the participating private schools, 77 percent are religious schools and 23 percent are non-religious schools. See [https://www.floridaschoolchoice.org/Information/CTC/quarterly\\_reports/ftc\\_report\\_nov2011.pdf](https://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2011.pdf).

<sup>41</sup> E-mail, DOE, December 22, 2011, on file with the Senate Committee on Education Pre-K – 12.

**VI. Technical Deficiencies:**

On lines 13-14 of the bill, the tax credit cap for 2012-2013 is \$250 million. However, lines 15-17 establish a credit cap for 2012-2013 that is based on the tax credit cap in the prior state fiscal year. On line 15, the date should be changed to refer to the 2013-2014 state fiscal year.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.