

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: HB 805

SPONSOR: Representative Baker

SUBJECT: Support of Military Bases

DATE: April 3, 2003

REVISED: 4/7/03

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Krasovsky	Krasovsky	MS	Fav/3 amendments
2.			ED	
3.			CM	
4.			FT	
5.				
6.				

I. Summary:

This bill creates a scholarship program that provides corporate income tax credits for monetary donations to a nonprofit scholarship funding organization (SFO) to expand education opportunities for dependents of U.S. Armed Forces veterans, active duty and reserve personnel, and members of the Florida National Guard. The proposed program is similar to the corporate income tax scholarship for children of limited financial resources passed two years ago by the Legislature, except for the qualifications to be a student eligible to participate in the program and other, more minor changes (see 220.187 F.S.).

This bill creates s. 220.1875, Florida Statutes.

II. Present Situation:

There are no state programs that provide scholarships, generally, to dependents of Armed Forces veterans, active duty and reserve personnel, or members of the Florida National Guard. There are several state programs that do provide educational opportunities for children of military service members who have died or were disabled in certain military operations. The programs provide for tuition, registration fees, board, room rent, books and supplies (see s. 295.02, F.S.). Some of the individuals eligible for such benefits are children of deceased or disabled veterans (s. 295.01, F.S.), children of prisoners of war or persons missing in action (s. 295.015, F.S.), children of service members who died or were disabled in the Lebanon and Grenada military arenas (s. 295.017, F.S.), and children of deceased or disabled military personnel who died or became injured in the Middle East Persian Gulf military arena during hostilities with Iraq or in the military action in Panama known as Operation Just Cause (s. 295.0195, F.S.).

The Legislature, two years ago, passed a scholarship program for children of limited resources (see s. 220.187, F.S.). That program provides for corporate income tax credits for monetary donations to a nonprofit scholarship funding organization (SFO) to expand educational opportunities for children of limited financial resources.

Under that program, a student may receive a scholarship if he or she qualifies for federal free or reduced-price lunches under the National School Lunch Act and: was counted as a full time equivalent student during the previous school year; or received a scholarship from an eligible SFO during the previous school year; or is eligible to enter kindergarten or first grade. Under the program, donors may not designate a specific child or group of children as the beneficiaries of the contribution.

The program provides that SFOs must meet specific obligations, and all eligible contributions must be used for scholarships in the year in which the contribution is made. Also, the bill provides for a credit equal to 100% of an eligible contribution made by a taxpayer against any tax due for the taxable year, not to exceed 75 percent of a taxpayer's total liability after all other credits are taken. Credit is also allowed on a consolidated return basis. There is a cap on the annual scholarship amount of \$3500 for a student in an eligible nonpublic school. The total amount of tax credit that may be granted in any fiscal year is \$50 million.

III. Effect of Proposed Changes:

This bill creates a scholarship program that provides corporate income tax credits for monetary donations to a nonprofit scholarship funding organization (SFO) to expand education opportunities for dependents of U.S. Armed Forces veterans, active duty and reserve personnel, and members of the Florida National Guard. The proposed program is similar to the corporate income tax scholarship for children of limited financial resources passed two years ago by the Legislature (see 220.187 F.S.)

The major provisions of the bill provide:

- The amount of the scholarship awarded to any child for any single school year shall not exceed \$3500 for a student to be enrolled in an eligible nonpublic school or \$500 for transportation expenses to a Florida public school that is located outside the district in which the student resides.
- The tax payer may not designate a specific child as the beneficiary of the contribution, nor may the tax payer contribute more than \$5 million to any single eligible nonprofit scholarship funding organization.
- A credit of 100 percent of an eligible contribution against any tax due for the taxable year under chapter 220 F.S. is provided with a limitation of 75 percent of any tax actually due under the chapter. The total amount of tax credit which may be granted in any fiscal year under this program is \$10 million.

- After providing scholarships to all qualified military dependents, a nonprofit scholarship funding organization may use eligible contributions for scholarships to children who qualify under the existing program established two years ago, and
- “Eligible nonpublic school” means a private school in Florida that offers an education to students in any grades K-12 and does not discriminate on the basis of race, color, religion, or national origin.
- “Eligible nonprofit scholarship-funding organization” means an organization that is exempt from federal income tax pursuant to s. 501 (c) (3) of the IRS code and provides scholarships consistent with the requirements of this legislation.

A significant difference between the proposed scholarships for dependents and the existing program for children of limited resources is the definition of qualified student. The current program requires, in addition to participating in the National School Lunch Act, that the student;

- was not counted as a full-time equivalent student during the previous fiscal year for purposes of state per-student funding;
- received a scholarship from an eligible nonprofit scholarship funding organization during the previous school year; or
- is eligible to enter kindergarten or first grade.

The proposed scholarship for military dependents contains none of the above requirements.

Credit

The bill provides for a credit equal to 100 percent of an eligible contribution made by a taxpayer against any tax due for the taxable year under chapter 220, F.S. Also, the bill limits individual credits to 75 percent of any tax due under ch. 220, F.S., for the taxable year after the application of any other allowable tax credits by the taxpayer. The total amount of tax credit is capped at \$10 million annually. The bill allows for credit on a consolidated return basis for a taxpayer who files a consolidated return as a member of an affiliated group under s. 220.131(1), F.S. The bill prohibits carrying forward any unused credit to a future tax year. Conveying, assigning, or transferring credit to another entity is prohibited unless all of the taxpayer’s assets are conveyed, assigned or transferred in the same transaction.

Administration

The bill provides requirements for applications for credit. Applications must be submitted to the Department of Revenue (DOR) on forms established by rule. The bill requires a cooperative agreement between DOR and the Department of Education for administering the provisions of the bill and requires the Department of Education to annually submit a list of eligible scholarship-funding organizations to DOR. The Department of Education is responsible for monitoring the eligibility of the organizations and nonpublic schools and their expenditures. The

bill provides DOR with authority to make rules, including rules for allocating tax credits on a first-come, first-served basis. The Department of Education must adopt rules for determining the eligibility of SFOs and identifying qualified students.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Establishment Clause of the First Amendment to the U.S. Constitution provides that “*Congress shall make no law respecting an establishment of religion.*” Three standards have emerged as a test of establishment clause validity and are frequently referred to as the *Lemon*¹ test which ask whether a statute:

1. has a secular purpose;
2. has a primary effect of advancing or inhibiting religion; or
3. creates an excessive entanglement between government and religion.

In 1997, the Arizona Legislature enacted legislation to allow individual state income tax credit of up to \$500 for donations to school tuition organizations (STOs), effective for taxable years beginning from and after December 31, 1997.² The law defined an STO as a charitable organization in the state exempt from federal income taxation under s. 501(c) (3) of the Internal Revenue Code and that allocates at least 90% of its annual revenue for educational scholarships or tuition grants to children to allow them to attend any qualified private school of their parent’s choice³. To qualify as an STO, the organization was required to provide scholarships or tuition grants to students without limiting availability to only students of one school.

¹ *Lemon v. Kurtzman*, (U.S. Pa. 1971) 403 U.S. 602, 91 S.Ct. 2105. The U.S. Supreme Court discussed recent changes to the *Lemon* test in *Mitchell v. Helms* 120 S.Ct. 2530 (U.S. La. 2000)

² Current law (A.R.S. s. 43-1089) provides up to \$625 of annual credit for a couple filing a joint return. The law was amended in 2000 to add preschools for handicapped children to the definition of an eligible school.

³ The law defined a qualified school as a nongovernmental primary or secondary school that does not discriminate on the basis of race, color, handicap, familial status, or national origin and satisfies the statutory requirements for private schools in Arizona as of January 1, 1997.

As a result of a challenge, the Arizona Supreme Court held that: (1) the tax credit did not violate the Establishment Clause; (2) the tax credit was not an "appropriation" of "public money" to establish religion or aid sectarian schools, for purposes of the State Constitution; and (3) the tax credit did not violate the anti-gift clause of the State Constitution. The U.S. Supreme Court declined to review this decision.⁴

Florida's Constitution regarding religious freedom reads as follows:

"There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

Since being adopted in 2001, no legal challenges have been filed to the existing corporate income tax credit scholarship program. The Arizona Supreme Court opinion is not binding in Florida.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill allows up to \$10 million in credits against the corporate income tax for eligible contributions to eligible scholarship funding organizations. It is impossible to predict the number, locations and characteristics of eligible students who will take advantage of this program; therefore, its impact on state revenue is indeterminate. However, since there is no requirement that the student was in the public school system the year before, any loss in revenue would not necessarily be offset by a reduction in public school funding in the same fiscal year.

B. Private Sector Impact:

Corporate taxpayers who wish to donate to a scholarship funding organization will be able to take advantage of a 100 percent tax credit for eligible contributions, up to 75 percent of any tax due under ch. 220, F.S., after all other credits are taken.

The bill provides for scholarships of up to \$3500 to parents who wish to send their children to a private school. Eligible military dependents will benefit, to the extent that they are awarded an SFO scholarship that is accepted by a private school. In the 1999-2000 school year, there were 1,645 known private schools: 16 were specific exceptionality schools; 912 were elementary schools reporting student enrollment in one or more of the grades K-8; 124 were secondary schools reporting student enrollment only

⁴ 193 Ariz. 273, 972 P.2d 606 and 120 S.Ct. 283, *Kotterman v. Killian*, (U.S. Ariz. 1999).

in one or more of the grades 9-12; and 593 were K-12 schools (elementary and secondary).

C. Government Sector Impact:

To the extent that eligible scholarship funding organizations can shift qualified students wishing to receive scholarships to qualified nonpublic schools, the level of state resources needed to fund public schools may be reduced, offsetting any revenue loss due to the corporate income tax credit. However, since there is no requirement that the students be in a public school the year before, there may be no reduction in the level of resources needed to fund the public school system. Students who are already enrolled in nonpublic schools would be eligible to receive the scholarship, with no corresponding reduction in the number of students attending public schools. In such case, the corporation would receive the tax credit, the student would receive the scholarship to attend private school and there would be no reduction in the funding level needed for public schools.

Since it is impossible to predict the number, locations, and characteristics of eligible students who would take advantage of this program, its impact on state spending can not be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Military and Veterans' Affairs, Base Protection, and Spaceports:

This amendment provides a definition of "qualified student" in that a military dependent would be eligible to receive a scholarship if that student:

- had not attended private school in that district in the current or past school year; or
- was eligible to enter kindergarten or first grade; or
- received the scholarship the previous school year.

#2 by Military and Veterans' Affairs, Base Protection, and Spaceports:

Requires that the names of scholarship recipients be made available to school districts.

#3 by Military and Veterans' Affairs, Base Protection, and Spaceports:

This amendment allows a corporation to carry forward the corporate tax credit received by donating the scholarship money for a three year period.