

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.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: SB 1582

SPONSOR: Senator Bullard

SUBJECT: Cultural Contributions Tax Credit

DATE: March 11, 2005

REVISED: 03/15/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Fav/1 amendment
2.			GE	
3.			WM	
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill creates a credit in the amount of 50 percent of a contribution to the Cultural Institutions Trust Fund against any tax due for a taxable year under ch. 220, F.S.

This bill creates the following sections of the Florida Statutes: 220.192, F.S.

II. Present Situation:

Chapter 220, F.S., is the Florida Income Tax Code. The stated purpose of the code is “. . . to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners. . . .”¹

The Department of Revenue (DOR)² is the entity responsible for implementing the provisions of the tax code. The DOR is headed by the Governor and Cabinet.

¹ Section 220.02(1), F.S.

² The Department of Revenue is created in s. 20.21, F.S.

The Department of State,³ Division of Cultural Affairs, promotes programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity. The Secretary of State is known as “Florida’s Chief Cultural Officer.” Pursuant to s. 265.2862, F.S., the Division of Cultural Affairs is required to develop and conduct a general support program designed to supplement the financial support of cultural organizations that have a sustained commitment to cultural excellence and to recognize organizations for superior cultural contributions that have regional or statewide impact.

A Cultural Institutions Program is created in the Department of State by s. 265.2861(2), F.S. The Division of Cultural Affairs is required to establish by rule criteria for the award of grants to cultural organizations, including criteria relating to program quality, potential public exposure and benefit, fiscal stability, ability to properly administer grant funds, procedures for peer evaluation, and other matters deemed necessary and appropriate to further cultural institutions in the state.

Additionally, under s. 265.2862, F.S., the Division of Cultural Affairs is required to develop and conduct a general support program designed to supplement the financial support of cultural organizations that have a sustained commitment to cultural excellence and to recognize organizations for superior cultural contributions that have regional or statewide impact. The division is required to adopt by rule criteria for awarding grants to cultural organizations.

Chapter 120, F.S., the Administrative Procedure Act, establishes the process by which agencies adopt rules to implement delegations of statutory authority. Section 120.52(15), F.S., defines “rule” to mean

. . . each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. . . .⁴

Section 120.536, F.S., establishes limits on agency rulemaking power. That section states:

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statutes. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency’s class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the

³ The Department of State is created in s. 20.10, F.S.

⁴ A number of exceptions are also contained in the definition, including internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum; legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with agency actions; and the preparation or modification of agency budgets, among other items.

powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

Further, under s. 120.54, F.S., rulemaking is not a matter of agency discretion. Each agency that meets the definition of a “rule” must be adopted as soon as feasible and practicable. Exceptions are authorized, but generally, pursuant to paragraph (1) (b) of the section, whenever an action requires rulemaking, rules must be drafted and formally proposed within 180 days after the effective date of the act, unless the implementing legislation provides otherwise.

A corporate income tax credit is provided in s. 220.183, F.S., the community contribution tax credit program. Under that program, corporations, insurance companies, and persons who collect or remit sales or use taxes may be able to receive tax credits for making donations to certain low-income housing and community development projects. Available tax credits under the program may be taken against sales or use taxes, corporate income taxes, and insurance premium taxes.⁵ Tax credits are limited to 50 percent of the amount of a “community contribution” or donation to a maximum of \$200,000 annually per donor.⁶ The total amount of community contribution tax credits available per year under the program is \$10 million.⁷ Tax credits against sales or use taxes are granted as a refund against sales and use taxes reported on returns and remitted in the 12 months preceding the application to the Department of Revenue for a refund.⁸ Tax credits against corporate income taxes and insurance premium taxes are claimed against taxes due.⁹

III. Effect of Proposed Changes:

This bill creates a credit in the amount of 50 percent of a contribution to the Cultural Institutions Trust Fund against any tax due for a taxable year under ch. 220, F.S.

If the credit granted is not fully used during one year, the unused amount may not be carried forward to the following year. Further, the bill prohibits a taxpayer from conveying, assigning, or transferring the credit to another entity unless all assets of that taxpaying entity are conveyed in the same transfer.

An application for a tax credit must be submitted to the department on forms established by rule of the department.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵ Sections 212.08(5)(q), 220.183, and 624.5105, F.S.

⁶ Sections 212.08(5)(q)1.a. and c., 220.183(1)(a) and (b), and 624.5105(1)(a) and (b), F.S.

⁷ Sections 212.08(5)(q)1.e., 220.183(1)(c), and 624.5105(1)(c), F.S.

⁸ Section 212.08(5)(q)1.b., F.S.

⁹ Sections 220.183(1)(a) and 624.5105(1)(a), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill provides for a credit in the amount of 50 percent of a contribution to the Cultural Institutions Trust Fund against any tax due for a taxable year. The Cultural Institutions Trust Fund no longer exists.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The bill permits tax credits for corporations that make contributions to the Cultural Institutions Trust Fund. There is no limitation on the total amount of all contributions per year. Further, there is no limitation on the amount of each contribution. The number of corporations that would use this credit and the total amount of contributions is indeterminate.

B. Private Sector Impact:

Those entities that make contributions to the Cultural Institutions Trust Fund will receive a tax credit of 50 percent of the contribution allowed against any tax due for a taxable year under ch. 220, F.S.

C. Government Sector Impact:

The impact of this bill on tax revenues is indeterminate. There is no limitation on the total amount of all contributions per year.

VI. Technical Deficiencies:

The bill provides for a credit in the amount of 50 percent of a contribution to the Cultural Institutions Trust Fund against any tax due for a taxable year. The Cultural Institutions Trust Fund no longer exists. The bill should instead refer to the Fine Arts Trust Fund.

VII. Related Issues:

Senate Bill 630 by Senator Margolis creates tax credit of 50 percent of the amount of a contribution to nonprofit cultural organizations for contributions of \$60,000 or more.

VIII. Summary of Amendments:

Barcode 901136 by Governmental Oversight and Productivity Committee:

The amendment substitutes the “Fine Arts Trust Fund” because the “Cultural Institutions Trust Fund” no longer exists.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
