

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 Education Pre-K - 12 Committee

BILL: CS/SB 1440

INTRODUCER: Education Pre-K-12 Committee and Senator Gaetz

SUBJECT: Corporate Income Tax Credit Scholarship Program

DATE: March 20, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	_____	_____	FT	_____
3.	_____	_____	EA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill makes the following changes to the provisions of the Corporate Income Tax Credit (CTC) Scholarship Program:

- Revises scholarship eligibility criteria to allow the participation of the sibling of a scholarship student;
- Increases the \$88 million maximum tax credit by \$30 million annually for five years to \$238 million, beginning in 2012 and thereafter;
- Eliminates the current reserve of at least one percent of the maximum tax credit for small businesses;
- Requires an SFO to annually expend at least 75 percent (rather than obligate 100 percent) of the eligible contributions received in that fiscal year;
- Authorizes SFOs to retain up to three percent of contributions for administrative expenses, beginning in the 2009-2010 state fiscal year;
- Requires SFOs to verify each scholarship student's attendance at a private school for each period covered by a scholarship payment, rather than obtaining verification prior to each payment;

- Retains the current maximum scholarship award amount of \$3,750 for FY 2008-2009;
- Provides for annually adjusting the scholarship amount by 60 percent of the unweighted Florida Education Finance Program (FEFP) student funding, beginning in the 2009-2010 state fiscal year;
- Caps future year scholarship increases at \$200 each year;
- Provides for an annual premium of \$200 to be paid to a scholarship student who takes the FCAT, if the student attends a private school where 95 percent of the eligible scholarship students take the FCAT;
- Delays implementation of the premium payment until FY 2009-2010;
- Revises the allowable uses of scholarship funds, to include tuition and fees, but eliminates the requirement that at least 75 percent of a scholarship be used for tuition; and
- Preserves the tax credits earned by a taxpayer for monetary contributions paid to an SFO if the authority to grant scholarships is found by a court to be unconstitutional or invalid.

This bill substantially amends 220.187 of the Florida Statutes.

II. Present Situation:

Corporate Income Tax Credit Scholarship Program (CTC program)

Under the CTC program, tax credit scholarships were created to encourage private, voluntary contributions from corporate donors to nonprofit scholarship-funding organizations.¹ A corporation can receive a dollar for dollar tax credit toward up to 75 percent of its state income tax liability for donations to private nonprofit scholarship-funding organizations (SFOs).

Eligible Private Schools and Students

Private schools participating in the CTC program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.²

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act³ and who:

- 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; or
- Received a scholarship under the CTC program or from the state the previous school year.

¹ s. 220.187(1), F.S.

² s. 220.187(8), F.S.

³ s. 220.187(3), F.S. The eligibility guidelines for 2007-2008 are published in the Federal Register, February 27, 2007, Vol. 72, No. 38. See

<http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs07-08.pdf>

Contingent upon available funds, a student would 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 200 percent of the federal poverty guidelines.⁴ The amount of the scholarship provided to any child for any single school year by any eligible SFO may not exceed the following limits:

- \$3,750 for a scholarship awarded to a student for tuition, textbooks, or transportation to attend an eligible private school, 75 percent of which must be used for tuition; 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.

Student Assessment

For the CTC program, scholarship students must take one of the nationally norm-referenced tests identified by the DOE, with the exception of students with disabilities for whom the test is inappropriate.⁵ The DOE approved the following norm-referenced tests for participating private schools to administer to scholarship students:⁶

- Basic Achievement Skills Inventory (BASI™)—Comprehensive Version;
- Florida Comprehensive Assessment Test (FCAT)—Norm Referenced Test (NRT) Reading and Mathematics;
- Iowa Tests of Basic Skills® (ITBS®), Forms A and B—Core Battery;
- Metropolitan Achievement Tests®, Eighth Edition (METROPOLITAN8)—Short Form;
- Stanford Achievement Test, Tenth Edition (Stanford 10)—Basic Battery;
- TerraNova (CTBS/5)—Basic Battery; and
- TerraNova, Second Edition (CAT/6)—Basic Battery.

For the 2007-2008 school year, the DOE approved the following tests:⁷

- Stanford Achievement Test, Ninth Edition (Stanford 9);
- Comprehensive Testing Program 4 (CTP 4);
- Iowa Tests of Educational Development® (ITED®), Forms A and B;
- Educational Development Series (EDSERIES), Forms G and H;
- PLAN®;
- EXPLORE®;
- Kaufman Test of Educational Achievement—Second Edition, Comprehensive Form (KTEA-II);
- Woodcock-Johnson III Tests of Achievement, Extended Battery;
- PSAT/NMSQT®; and
- Stanford Achievement Test, Tenth Edition (Stanford 10)-Abbreviated Battery.

⁴ *Id.*

⁵ s. 220.187(8)(c)2. and (9)(i)(j), F.S.

⁶ Rule 6A-6.0960, F.A.C.

⁷ DOE, Technical Assistance Paper No: 2007-01. *See*

http://www.floridaschoolchoice.org/information/ctc/files/norm_CTC.pdf. Current law (s. 220.187(9)(i), F.S.) permits the DOE to approve the use of an additional assessment if it meets industry standards of quality and compatibility. Rule 6A-6.0960, F.A.C., specifies the criteria.

Participating private schools are tasked with annually administering or making provisions for scholarship students to take one of the nationally norm-referenced tests identified by the DOE. Additionally, the law requires the test scores to be reported to an independent research organization for evaluation. This entity must report to the DOE the year-to-year improvement of participating students.⁸ However, student performance data cannot disclose the academic performance of individual students or of individual schools.

In September 2007, the DOE entered into a 2-year contract with the University of Florida to evaluate CTC scholarship student performance, to compare student learning gains for program participants to otherwise similar non-participants, study differential family satisfaction between program participants and non-participants, and measure the degree to which the CTC program affects public school performance.⁹ Baseline data from the 2006-2007 school year will be compared to data from the 2007-2008 school year to measure learning gains.¹⁰

For the 2006-2007 school year, 833 private schools participating in the CTC program had scholarship students enrolled in grades 3-10, the relevant testing grades.¹¹ Eighteen schools withdrew from program participation and did not submit test scores. Of the remaining 815 schools, 100 percent submitted evidence of test administration.¹² During the same school year, there were 9,721 CTC scholarship students in grades 3-10 and 7,764 (79.87 percent) of these students were eligible and enrolled in a participating private school at the time of testing. Valid and legible test scores were received for 7,067 (72.7 percent of the total number of participating students). For these students, 65.8 percent took the Stanford Achievement Test, 22.7 percent took the Iowa Test of Basic Skills (ITBS®), 4.7 percent took the FCAT, 3.3 percent took the TerraNova, and 3.6 percent took other tests.¹³

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 and may not use any portion of the taxpayer's contribution for administrative expenses. Scholarships must be provided for eligible students on a first-come, first-served basis, unless the student qualifies for priority consideration. 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. The Legislature initially capped the CTC program at \$50 million in tax credits per state fiscal year, but subsequently expanded the cap to \$88 million in 2003.¹⁴

⁸ s. 220.187(9)(j), F.S.

⁹ Memorandum from Dr. David Figlio, Department of Economics, University of Florida, to Private School Administrators. The university entered into a data-sharing agreement with two SFOs (Children First Florida and Florida P.R.I.D.E.) to ensure the confidentiality of student records and reporting test scores.

See http://www.floridaschoolchoice.org/information/ctc/figlio_letter.asp

¹⁰ *Corporate Tax Credit Scholarship Program Research Report Briefing and Evaluation of Florida's Corporate Tax Credit Scholarship Program, Baseline Report-Compliance and Test Scores in 2006-2007*, Dr. David Figlio, Department of Economics, University of Florida, and National Bureau of Economic Research, March 6, 2008.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ s. 9, ch. 2003-391, L.O.F.

The following summarizes information related to the tax credits approved by the Department of Revenue (DOR):¹⁵

Tax Year	Number of Approved Tax Credit Applications	Number of Taxpayers	Total Amount of Tax Credits Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credits	Total Amount of Tax Credits Approved for Small Businesses ¹⁶
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 ¹⁷	103	61	\$85,470,000	0	\$0
2008-09	8	4	\$12,750,000	0	\$0

The following reflects the credit allocations per SFO for 2007-2008 and 2008-2009:

Credit Allocations per SFO 2007-2008¹⁸	
SFO	TOTAL
Academy Prep Foundation, Inc.	\$0
Children First Central Florida ¹⁹	\$38,037,742
Florida School Choice Fund ²⁰ (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	\$85,470,000

Credit Allocations per SFO 2008-2009²¹	
SFO	TOTAL
The Children’s Cause, Inc. ²²	\$0
Children First Florida	\$3,550,000
Florida P.R.I.D.E.	\$4,200,000
The Carrie Meek Foundation, Inc.	\$0
Credit Carry Forward	\$5,000,000
Total Allocations	\$12,750,000

¹⁵ DOR, March 13, 2008.

¹⁶ 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 and is codified in s. 220.187(5)(b), F.S.

¹⁷ Section 220.187(5)(d), F.S., permits all or part of a taxpayer’s allocated tax credit, effective for the tax years beginning January 1, 2006, to be given to another eligible taxpayer, as approved by the DOR, provided that certain conditions are met. The DOR has recently received and approved a rescindment of credit application. The combination of the rescindment (\$3 million in February 2008) and an allocation of part of the rescinded amount to another taxpayer resulted in a net decrease in the amount of scholarship credit allocated for the 2007-2008 state fiscal year of \$1,650,000. According to the DOR, this amount is still available to be allocated to a taxpayer if its tax years began during calendar year 2007.

¹⁸ DOR, March 13, 2008, for tax years beginning in 2007. The allocation began January 1, 2007, for tax years beginning in calendar year 2007.

¹⁹ Children First Central Florida is now known as Children First Florida.

²⁰ Florida School Choice Fund is now known as Florida P.R.I.D.E.

²¹ DOR, March 13, 2008, for tax years beginning in 2008. The allocation began January 1, 2008, for tax years beginning in calendar year 2008.

²² The Children’s Cause was approved by the DOE for 2008-2009.

Currently, there are 910 participating private schools and 20,076 students receiving scholarships from three SFOs: Florida P.R.I.D.E., Children First Florida, and the Carrie Meek Foundation, Inc.²³ Following are the number of students receiving CTC scholarships, by SFO, for the current year: Florida P.R.I.D.E., 8,858 students; Children First Florida, 10,220 students; and the Carrie Meek Foundation, Inc., 998 students. Four SFOs no longer participate in the program: Faith Based Scholarship Foundation of Florida; FloridaChild; Silver Archer; and Academy Prep Foundation, Inc.

III. Effect of Proposed Changes:

Student Eligibility

The bill expands the eligibility criteria to include a sibling of a scholarship student who continues to participate in the program and resides in the same household as the student. The sibling is considered to be a first-time CTC scholarship recipient, as long as the student's and the sibling's household income level does not exceed 200 percent of the federal poverty level. The bill does not require the sibling to meet the eligibility criteria required for other first-time scholarship students, i.e., qualifying for free or reduced-price lunch under the National School Lunch Act.

Scholarships

The bill revises the following SFO requirements related to scholarships:

- Allows the scholarship to cover fees to private schools; and
- Eliminates the current requirement that 75 percent of the scholarship funds be used for tuition.

Beginning in the 2009-2010 state fiscal year, an annual premium of \$200 must be paid to a scholarship student who takes the FCAT. The premium is only paid if the student attends a private school where 95 percent of the eligible scholarship students take the FCAT. The premium may be used for statewide assessment-related costs, including preparation costs, transportation,²⁴ and other school fees. Under the DOE's current policy, private schools must notify the department if the parent wants the student to take the FCAT.²⁵ The bill does not, however, provide for how or when a premium payment must be made. The bill provides for payment of the premium to the student. The premium payment is separate from the scholarship payment. Current law provides a procedure for a parent to restrictively endorse a warrant for a scholarship payment for deposit into the private school's account.²⁶ This procedure serves as a tool to prevent fraud. The bill does not provide a similar procedure for payment of the premium.

²³ *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, February 2008. Of the participating private schools, 81.6 percent are religious schools and 18.4 percent are non-religious schools. See http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ctc_report_feb2008.pdf

²⁴ If 95 percent of the scholarship students at the private school do not take the FCAT, the parents are responsible for transportation of students to the test site.

²⁵ DOE, Technical Assistance Paper No: 2007-01.

²⁶ s. 220.187(7)(f) and (11)(b), F.S.

Scholarship funds may no longer be used for textbooks. Beginning in the 2009-2010 state fiscal year, funds may no longer be used for transportation to a private school. It is unclear how the reference to 'other school fees' on line 132 is different from the reference to fees on line 118. The State Board of Education, through administrative rule, is tasked with annually adjusting the maximum scholarship award by 60 percent of the unweighted Florida Education Finance Program (FEFP) student funding in the General Appropriations Act for the next fiscal year. The bill requires the adjustment to be rounded downward to the nearest dollar amount. The increase in the scholarship amount may not exceed \$200 each year and is effective for the following school year. The bill delays the implementation of this provision until FY 2009-2010. The delegation of responsibility for making this adjustment may be considered as binding a future Legislature.

Taxpayer Contributions

Under the bill, the current cap on tax credits remains at \$88 million through June 30, 2008. The bill increases the total amount of tax credits and carryforward of tax credits by \$30 million each state fiscal year through June 30, 2012.²⁷ Beginning July 1, 2012, the cap is set at \$238 million. The required tax credits for small businesses (one percent of the total statewide amount) are eliminated.

The bill preserves the tax credits earned by a taxpayer for monetary contributions paid to an SFO prior to the date that the authority to grant scholarships is found by a court to be unconstitutional or invalid. However, the preserved tax credit may not result in more than one dollar of credit for each dollar paid to an SFO.

SFO Responsibilities

An SFO must expend on annual or partial-year scholarships at least 75 percent of the eligible contributions received during the fiscal year in which they were collected. Current law requires that all funds be obligated for annual or partial year scholarships and prohibits the use of funds for administrative expenses.²⁸ All of the contribution must be obligated in the same fiscal year in which it was received. The bill does not change the amount of funds (25 percent) that may be carried forward; however, the bill explicitly provides that these funds may only be used for scholarships in the following fiscal year. Additionally, the bill permits up to three percent of eligible collected contributions to be used for administrative expenses incurred by the SFO. This provision is effective beginning in the 2009-2010 state fiscal year.

Under the bill, an SFO must verify student attendance for each scholarship payment period rather than prior to each scholarship payment.

Department of Education (DOE) Responsibilities

The DOE is tasked with providing private schools that participate in the CTC program with all preparation and instructional materials relating to preparing for the statewide assessments. The bill also requires the DOE to determine if 95 percent of the private school's scholarship students are participating in statewide assessments. Under current DOE policy, private schools that planned to select the FCAT NRT were required to notify the DOE by September 14, 2007, for

²⁷ The allocation process for the 2008-2009 state fiscal year was initiated by the DOR on January 1, 2008.

²⁸ s. 220.187(6)(i), F.S. Under this provision, all interest accrued from contributions must be used for scholarships.

their scholarship students to take the test this spring. School districts determine the date, time, and testing facilities.²⁹ Transportation to the test site is the responsibility of the parent.³⁰

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:

Under current law, a corporation may receive a dollar for dollar tax credit toward up to 75 percent of its state income tax liability for donations to private scholarship funding organizations. The amount of the tax credits authorized under the CTC program would increase by \$30 million annually (\$118 million for FY 2008-2009, \$148 million for FY 2009-2010, \$178 million for FY 2010-2011, \$208 million for FY 2011-2012, and \$238 million for FY 2012-2013 and thereafter), resulting in a reduction in General Revenue. The number of taxpayers that will take advantage of the corporate income tax credit each year is unknown.

Several factors may result in a delayed phase-in of public education expenditure savings compared to tax revenue reductions. Tax credits are granted on a state tax year basis, while the cap on tax credits is increased each fiscal year. Further fiscal timing issues arise because each business may designate its own tax year which may not directly correspond to the state fiscal year or the state tax year. Consequently, there could be a delay in an SFO's ability to collect the entire increase in eligible contributions in the same fiscal year. Additionally, current law allows unused credits to be carried forward for up to 3 years when a taxpayer has insufficient tax liability to use the entire credit during a tax year.³¹

Three provisions of the bill increase the expenditure requirements related to the CTC program starting in the 2009-2010 fiscal year: the maximum scholarship is increased, a new FCAT premium payment is authorized, and the SFO is authorized to retain an administrative charge. Cumulatively, the amount of the \$30 million increase that would

²⁹ DOE, Technical Assistance Paper No: 2007-01.

³⁰ s. 220.187(7)(e), F.S.

³¹ s. 220.187(12), F.S. This carryforward applies to all approved contributions made after January 1, 2002.

be used to cover these new or increased expenditures is unknown at this time and would affect the amount of funds available for the addition of new students to the program. The Revenue Estimating Conference is scheduled to review the fiscal impact of the bill at its March 21 meeting.

B. Private Sector Impact:

A sibling of a scholarship student who continues in the program is eligible for a scholarship if he or she resides in the same household and the household income level does not exceed 200 percent of the federal poverty level. Current CTC scholarship students may continue to participate in the program, if parental income does not exceed this threshold. The number of students who will benefit from this provision is unknown. The current federal poverty level for a household of four individuals is \$20,650.³² For a student to be eligible for reduced price meals under the National School Lunch Program, the annual household income may not exceed \$38,203 (185 percent of the federal poverty level). For a student to be eligible for free meals, the annual household income may not exceed \$26,845 (130 percent of the federal poverty level). Under the provisions of the bill, a student from a family of four could continue to participate in the CTC program if the annual household income does not exceed \$41,300 (200 percent of the federal poverty level).

Beginning in the 2009-2010 state fiscal year, SFOs will be permitted to use up to three percent of the contributions collected for administrative expenses. The bill eliminates the required tax credits for small businesses.

Under the bill, the scholarship amounts will be adjusted each year by 60 percent of the unweighted FEFP student funding up to a maximum of \$200. The number of eligible students who will avail themselves of a scholarship each year is unknown.

C. Government Sector Impact:

The DOE must provide private schools that participate in the CTC program with all preparation and instructional materials relating to preparing for the statewide assessments. According to the DOE, sample FCAT materials are currently available online.³³ Consequently, the DOE's costs for these materials are expected to be minimal.

The DOR reports that this bill has an insignificant impact on the operations of the department.

There may be increased costs for district test administration, including space for administering the assessments and staff to serve as proctors.³⁴ Additional part-time employees may be needed for districts to make arrangements with the private schools for

³² Federal Register, February 27, 2007, Vol. 72, No. 38.

³³ See <http://fcat.fldoe.org/>

³⁴ DOE, February 28, 2008. The DOE contacted a sample of school districts for information regarding the requirement to administer the FCAT to an increased number of CTC scholarship students.

students to take the statewide assessments.³⁵ According to the 2008 administration manual for FCAT Sunshine State Standards for reading, math, and science (FCAT SSS), the recommended ratios for testing are: one test administrator for 30 students; one test administrator and one proctor for 31-60 students; and one test administrator and two proctors for 61-90 students.³⁶ Currently, if a parent wants the scholarship student to take the FCAT, the student must take the FCAT NRT in reading and math.³⁷ He or she is not required to take the FCAT SSS, since the private school curriculum may not be based on the Sunshine State Standards.

VI. Technical Deficiencies:

None.

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.)

The committee substitute provides for the following:

- Delays implementation of the increase in the amount of the scholarship award until FY 2009-2010;
 - Reduces future increases, beginning with FY 2009-2010, in the scholarship award from 62 percent to 60 percent of the unweighted FEFP student funding amount; and
 - Caps future year increases beginning with FY 2009-2010 at \$200 annually;
- Delays implementation of the premium payment until FY 2009-2010;
- Delays implementation of the authorization for administrative expenses until FY 2009-2010; and
- Provides that when a private school does not have 95 percent of the students at the school who take the FCAT, the parent remains responsible for transporting the student to the FCAT administration site.

B. **Amendments:**

None.

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

³⁵ *Id.*

³⁶ *Id.*

³⁷ DOE, Technical Assistance Paper No: 2007-01.