

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 653 Corporate Income Tax Credit Scholarship Program
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation & Career Preparation</u>	<u></u>	<u>Beagle</u>	<u>White</u>
2) <u>Schools & Learning Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Corporate Income Tax Credit Scholarship Program (CITC Program) provides an income tax credit for corporations making eligible contributions to nonprofit scholarship funding organizations (SFO). SFOs award scholarships to students from families with limited financial resources. House Bill 653 revises the CITC Program by:

- Providing legislative findings and revises the program's purpose.
- Providing first-time scholarship eligibility for the sibling of a renewing student who meets specified criteria.
- Increasing the \$88 million maximum tax credit by \$30 million annually beginning on July 1, 2009, until the maximum tax credit reaches \$238 million on July 1, 2012.
- Deleting provisions that reserve at least one percent of the maximum tax credit for small businesses.
- Requiring a SFO to annually expend at least 75%, rather than obligate 100%, of the eligible contributions made in that fiscal year for scholarships.
- Authorizing SFOs to retain up to three percent of collected contributions for administrative expenses incurred.
- Requiring 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.
- Increasing the maximum scholarship award amount from \$3,750 to \$4,500 for the 2008-2009 school year.
- Requiring the State Board of Education (SBE) for the 2009-2010 school year and thereafter to annually adjust the maximum scholarship award amount to reflect 62% of the unweighted Florida Education Finance Program (FEFP) per student funding amount.
- Revising the allowable uses of scholarship funds from "tuition or textbook expenses" to "tuition and fees" and deleting the requirement that at least 75% of scholarship funding to be used for tuition.
- Establishing a \$200 premium payment for scholarship students who take the Florida Comprehensive Assessment Test (FCAT) and attend a private school where 95% of scholarship students take the FCAT.
- Deleting provisions placing responsibility on parents for transportation to FCAT testing sites and providing that the premium payment shall be used for transportation, test preparation, or other school fees.
- Requiring the Department of Education (DOE) to determine if 95% of a private school's scholarship students take the FCAT and to provide private schools with FCAT-test preparation.
- Clarifying that a taxpayer who has made or who makes an eligible contribution to a SFO will not lose the tax credit retroactively if a court holds any provision of s. 220.187(5), F.S., unconstitutional.

The bill could have a maximum negative impact of \$30 million in General Revenue for Fiscal Year 2008-2009; however, this revenue reduction could be offset by an approximate \$43 million reduction in FEFP expenditures. Public school districts will incur additional costs for the administration of the FCAT to scholarship recipients if the bill's \$200 premium payment increases the number of scholarship recipients taking the FCAT. **(See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT).**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty-- The bill provides parents of low-income students with greater opportunity to exercise educational choice by increasing scholarship award amounts and by revising the scholarship eligibility provisions for siblings of a renewing scholarship recipient.

Empower Families-- The bill provides parents of low-income students with greater opportunity to exercise educational choice by increasing scholarship award amounts and by revising the scholarship eligibility provisions for siblings of a renewing scholarship recipient.

B. EFFECT OF PROPOSED CHANGES:

Corporate Income Tax Credit Scholarship Program

The 2001 Legislature passed the CITC Program¹ with an implementation date of January 1, 2002. The program's purpose is to expand educational opportunities for families that have limited financial resources and enable Florida's children to achieve a greater level of excellence in their education. The CITC Program provides an income tax credit for corporations that make eligible contributions to nonprofit SFOs. SFOs award scholarships to students from families with limited financial resources as demonstrated by the student qualifying for free or reduced-price school lunches (FFRL) under the National School Lunches Act.² According to the DOE, \$59.3 million in scholarships were awarded during the 2006-2007 school year to more than 17,800 students. As of November 2007, 19,416 scholarship recipients are enrolled in 906 participating private schools. Eighty-two percent of participating private schools are religious, whereas 18% of such schools are nonreligious.³

Findings and Purpose: House Bill 653 includes legislative findings and revises the purpose of the CITC program. The findings provide that the Legislature has the inherent power to determine subjects of taxation for general or particular public purposes. Thus, the Legislature may promote the following valid public purposes: expanding educational opportunities; improving the quality of educational services within the state; and ensuring that parents may exercise and enjoy their basic right to educate their children as they see fit. Further, the legislative findings provide that per-student funding in Florida public schools has risen each year since the inception of programs that provide educational opportunities and that these opportunities are critical to improving Florida's quality of education and ensuring that all children receive the high quality education to which they are entitled.

The bill revises the purpose of the program to enable taxpayers to make private, voluntary contributions to SFOs in order to promote the general welfare and to financially help parents with limited resources exercise their basic right to educate their children as they see fit. Also, the bill provides that the purpose of the CITC program is to improve Florida's quality of education, both by expanding educational opportunities and by creating incentives for schools to achieve excellence.

Student Eligibility: A student is eligible for a first-time CITC scholarship if he or she qualifies for FFRL under the National School Lunch Act,⁴ and:

¹ Section 220.187, F.S.

² 42 U.S.C.A. 1758(b)(1).

³ Florida Department of Education, Office of Independent Education and Parental Choice, *Corporate Tax Credit Scholarship Program* (January 2008) available at http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.

⁴ Eligibility for free or reduced-price school lunches under the National School Lunch Act is dependent upon the household size and income of a student's family. If the family's income is: (a) equal to or less than 130% of the federal poverty guidelines for the relevant household size, the student is entitled to free lunches; or (b) more than 130%, but equal to or less than 185%, of the federal poverty guidelines for the relevant household size, the student is entitled to reduced-price lunches. See Federal Register, Wednesday, March 15, 2006, Child Nutrition Programs—Income Eligibility Guidelines, U.S. Department of Agriculture, 42 USC 1758(b)(1).

- Was counted as a full-time student during the previous state fiscal year for purposes of state per-student funding;
- Received a scholarship from an eligible SFO or the State of Florida during the previous school year; or
- Is eligible to enter kindergarten or first grade.

In order to qualify for FFRL, a student's parents must document that their household income does not exceed 185% of Federal Poverty Level.

In subsequent years, a scholarship recipient may be eligible for a renewal scholarship, contingent upon available funds, if the student's parents document that their household income does not exceed for 200% of Federal Poverty Level.⁵ In the event, however, that a sibling of a scholarship student wishes to qualify for a first-time scholarship, the parents must document that their income does not exceed 185% Federal Poverty Level for the sibling's eligibility. Thus, a household's income could meet the renewing scholarship income guideline, but exceed the first-time scholarship income guideline.

Under the bill, the sibling of a renewing scholarship recipient who resides in the same household as the renewing student will be eligible as a first-time CITC scholarship recipient as long as the household income does not exceed 200% of Federal Poverty Level.

Tax Credits: The maximum amount of tax credits that may be granted per state fiscal year under the CITC Program is \$88 million. A taxpayer is allowed a tax credit of 100% of his or her eligible contribution. However, the credit may not exceed 75% of taxes owed by the taxpayer during the year of the contribution. At least one percent of the maximum tax credit amount must be reserved for small businesses as defined in s. 288.703(1), F.S., that make scholarship contributions.⁶

The bill provides for \$30 million annual increases to the maximum tax credit amount for five years until 2013. Thus, under the bill, the maximum tax credit is increased from \$88 million to:

- \$118 million on July 1, 2008;
- \$148 million on July 1, 2009;
- \$178 million on July 1, 2010;
- \$208 million on July 1, 2011; and
- \$238 million on July 1, 2012.

The bill also deletes provisions reserving at least one percent of the maximum tax credit amount for small businesses that make scholarship contributions.

Scholarships: Current law provides that the scholarship award provided to any child for any single school year by all eligible SFOs shall not exceed the following limits:

- \$3,750 for a scholarship awarded to a student for enrollment in an eligible private school.
- \$500 for a scholarship awarded to a student for enrollment in a Florida public school that is located outside the district in which the student resides.

The bill increases the maximum, annual per student scholarship amount from \$3,750 to \$4,500. Beginning June 30, 2009, the bill requires the SBE to annually amend its rules to adjust the maximum amounts for CITC scholarship awards to reflect 62% of the unweighted FEFP per student funding amount established in the annual appropriations act for the ensuing state fiscal year. Beginning July 1,

⁵ Additionally, the household must complete the renewal application, must have taken an approved nationally recognized standardized test for students grade 3-10, must have been actively using the scholarship for the prior school year, must be free of debt to the current private school for the prior school year, and must not have been disqualified by Florida P.R.I.D.E. for any reason, including internal audit process. See <http://www.floridapride.org/index.cfm/fuseaction=about.Handbook#New> (parent handbook).

⁶ Section 220.187(5), F.S.

2009, and each year thereafter, adjusted amounts must be rounded downward to the nearest dollar and are effective for the following school year.

SFOs are also required to obtain verification from the private school of the scholarship student's *continued attendance prior to each scholarship payment* and to make such payments on no less than a quarterly basis. The bill revises this responsibility to require a SFO to obtain verification for *each period covered by a scholarship payment*.

FCAT Premium Payment: Statute requires the DOE to select nationally norm-referenced tests that participating private schools may use to assess scholarship students.⁷ The private school and student's parent must ensure that the student is subject to an assessment. The parent may choose to have the student take either the norm-referenced test offered by the private school or the FCAT. Parents that choose the FCAT option are responsible for transporting the student to the testing site.⁸ Currently, private schools must cooperate with scholarship students whose parents choose the FCAT option, but they are not explicitly required to provide FCAT preparation materials to such students.⁹

The bill establishes an annual premium payment of \$200 for scholarship students who take the FCAT. To be eligible for the premium, the student must take the FCAT and attend a private school where at least 95% of eligible scholarship students take the FCAT. For purposes of awarding the premium payment, the bill requires the DOE to determine whether at least 95% of the private school's scholarship students participate in the FCAT. The bill also requires the DOE to provide FCAT preparation and instructional materials to participating schools for use in preparing scholarship students for the FCAT. The bill deletes provisions making the student's parent responsible for transporting the student to the FCAT test site.

Under the bill, the SFO shall make the premium payment by warrant payable to a student's parent, who must restrictively endorse the warrant to the private school for deposit into the account of the private school. The bill requires the premium payment to be applied to transportation and test preparation costs associated with participation in the FCAT, or any other school fees.

Obligations of SFOs: Currently, SFOs must provide scholarships from eligible contributions to eligible students for tuition, textbook expenses, or transportation to an eligible private school. At least 75% of the scholarship must be used for tuition expenses.¹⁰ The bill deletes textbook and transportation expenses as an allowable use of private school scholarship funds and provides that such funds must cover "tuition and fees." It also deletes the requirement that at least 75% of the scholarship must be used for tuition.

Currently, statute requires SFOs to obligate, in the same fiscal year in which the contribution was received, 100% of the eligible contribution to provide annual or partial-year scholarships provided that up to 25% of the total contribution may be carried forward for scholarships to be granted in the following state fiscal year. Statute prohibits SFOs from retaining any amount of scholarship funds for administrative expenses.¹¹

Under the bill, a SFO is no longer required to *obligate* 100% of the contributions; instead, they are required to *expend* at least 75% of the eligible contributions on annual or partial-year scholarships during the fiscal year that the contributions are collected. The bill retains current law authorizing up to 25% of eligible contributions to be carried forward to the succeeding fiscal year. Additionally, the bill

⁷ Section 220.187(9)(i), F.S.; Rule 6A-6.0960, F.A.C., (authorizing private schools to use the following assessment tests to assess scholarship students: Basic Achievement Skills Inventory; Iowa Test of Basic Skills; Metropolitan Achievement Tests, 8th Edition; Stanford Achievement Test, 10th Edition; TerraNova Basic Battery; TerraNova, 2nd Edition; and the FCAT, and specifying that the DOE may authorize the use of other assessments that meet specified criteria).

⁸ Section 220.187(7)(e), F.S.

⁹ Section 220.187(8), F.S.

¹⁰ Section 220.187(11), F.S.

¹¹ Section 220.187(6)(i), F.S.

permits SFO's to retain up to three percent of eligible collected contributions for administrative expenses.

Preservation of Tax Credit: The bill clarifies that a taxpayer, who has made or who makes an eligible contribution¹² to a SFO under s. 220.187(5), F.S., will not lose the tax credit retroactively if a court holds: (a) any provision or portion of s. 220.187(5), F.S., unconstitutional or invalid; or (b) the application of s. 220.187(5), F.S., to any person or circumstance unconstitutional or invalid. Further, the bill specifies that this "preservation of tax credit" provision may never result in the allowance of more than one dollar of credit for each dollar paid to a SFO.

C. SECTION DIRECTORY:

Section 1.: Amending s. 220.187, F.S.; providing Legislative findings; revising program purposes; providing first-time scholarship eligibility for siblings of renewing scholarship recipients; revising total annual tax credit limit; deleting reservation of at least one percent of total tax credit limit for contributing small businesses; revising authorized uses of scholarship funds; providing for premium payments for scholarship students who participate in FCAT; removing parent responsibility for transportation to test administration sites; requiring the DOE to provide FCAT preparation materials to participating schools; requiring the DOE to determine if 95% of a participating school's scholarship students participate in the FCAT; revising scholarship award amounts and providing amount and allowable uses of premium payment; requiring the SBE to annually adjust scholarship award amount in rule; and providing for preservation of tax credit under certain circumstances.

Section 2.: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Beginning with Fiscal Year (FY) 2008-2009, the bill increases the amount of allowable tax credits under the CITC Program by \$30 million annually for five years. The maximum negative impact on General Revenue in FY 2008-2009 is \$30 million. However, this revenue reduction could be offset by approximately 6,000 fewer students being served in the FEFP and therefore a reduction in FEFP expenditures. Please see "2. Expenditures," below, for the calculation of the bill's impact on state expenditures.

2. Expenditures:

The DOE estimates that the bill's \$30 million increase in allowable tax credits under the CITC Program for the 2008-2009 school year, taking into consideration the bill's increase to the maximum scholarship amount, could result in approximately 6,000 additional CITC scholarship awards.¹³ The most recent calculation of public school operating funding in the FEFP provides a statewide average of \$7,212 per FTE.¹⁴ If the number of CITC scholarship recipients increases by 6,000 students, FEFP expenditures could be decreased in the 2008-2009 school year by \$43,272,000 (6,000 scholarship recipients multiplied by \$7,212).

The bill requires an annual premium payment of \$200 to be paid for each scholarship recipient who takes the FCAT and attends a private school where at least 95% of CITC scholarship recipients take the FCAT. The number of scholarship recipients who will qualify for the \$200 premium

¹² Section 220.187(2)(b), F.S. ("Eligible contribution" is defined to mean a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible nonprofit scholarship funding organization).

¹³ DOE Analysis for HB 653, dated February 26, 2008.

¹⁴ Florida Education Finance Program third calculation, dated December 18, 2007

payment in the 2008-2009 school year is indeterminate; however, if all current scholarship recipients, i.e., 19,416 recipients in the 2007-2008 school year, were eligible for the premium payment under the bill, the total cost would be approximately \$3.9 million (19,416 recipients multiplied by \$200). If these payments are made from the allowable tax credits received by the SFOs, the total number of available CITC scholarships would be reduced by 867 (\$3.9 million divided by \$4,500 per scholarship).

The bill requires the DOE to provide FCAT preparation and instructional materials to participating private schools. The DOE currently makes sample FCAT testing materials available on-line; therefore, the DOE estimates that additional costs will be minimal if these materials are sufficient to address the bill's requirement.¹⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If CITC scholarship recipients increase by 6,000 students, FEFP expenditures could be decreased by a \$43,272,000 reduction in FY 2008-2009 revenue to public school districts. Public school districts, however, would not incur expenditures for these 6,000 students.

2. Expenditures:

In the 2007-2008 school year, 15 CITC scholarship recipients took the FCAT. It is anticipated that the bill's \$200 premium payment will encourage a significantly greater number of scholarship recipients to take the FCAT. As a result, districts may incur increased FCAT administration costs. According to a survey of districts conducted by the DOE, these costs may include expenditures for additional testing space requirements, proctors to administer the test, and part-time district employees to work with the private schools on the planning and logistics of test administration.¹⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the individual annual scholarship amount from \$3750 to \$4500 for the 2008-2009 school year. Thus, parents of scholarship recipients will receive larger financial awards to pay for private school expenses.

The bill provides for \$30 million annual increases to the maximum tax credit amount for five years until 2013, i.e., the bill will increase the annual tax credit limit from \$88 million to \$238 million in 2013. This will enable a greater number of eligible tax payers to choose to take advantage of the corporate income tax credit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared

¹⁵ DOE Analysis for HB 653, dated February 26, 2008.

¹⁶ *Id.*

in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

Article I, s. 2 of the Florida Constitution, sets forth the guaranty of equal protection, which provides that:

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Equal protection, however, does not require that a statute apply equally and uniformly to all persons within the state. It is sufficient if the statute applies uniformly to all persons who are similarly situated. Furthermore, reasonable classifications, meaning a grouping of things because they agree with one another in certain particulars and differ from other things in those particulars, is permissible under the equal protection clause, so long as the classification is not arbitrary and is based on some difference in the classes having a substantial relation to the purpose of the legislation.

The bill provides a \$200 annual premium payment for the benefit of CITC scholarship students who take the FCAT and attend a private school where at least 95% of eligible scholarship students take the FCAT. Distinguishably, CITC scholarship recipients in private schools with less than 95% participation in the FCAT, and students in public schools, who take the FCAT are not the beneficiaries of any such payment. As a result of these classifications among similarly situated students, the bill might be subject to a challenge on equal protection grounds.

B. RULE-MAKING AUTHORITY:

The bill requires the SBE to annually amend its rules to adjust the maximum scholarship award amount to reflect 62% of the unweighted FEFP per student funding amount established in the annual appropriations act for the ensuing state fiscal year.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Scholarship Amount: The bill amends s. 220.187(11), F.S., to increase the maximum scholarship award amount from \$3,750 to \$4,500 per year. The bill also requires the SBE beginning on June 30, 2009, and annually thereafter, to specify in rule a maximum scholarship amount that reflects 62% of the unweighted FEFP per student funding amount. The requirement that the SBE amend its rules each year may be burdensome, as rule development is a multi-stage process, subject to public notice, input, and hearing requirements.¹⁷ Additionally, the fact that statute will specify a maximum scholarship amount of \$4,500, while rule will specify the actual maximum scholarship amount may cause confusion. For clarity and to eliminate the necessity for annual SBE rule making, it may be desirable to amend the bill to remove reference to the \$4,500 amount and provide that the maximum scholarship amount shall be 62% of the statewide average total funds per unweighted full-time equivalent student funding amount as calculated in the General Appropriations Act Conference Report of the FEFP for that school year. For the 2007-2008 school year, this average amount was \$7,305, which when multiplied by 62% would result in a maximum scholarship amount of \$4530.

FCAT Premium Payment: Under current law, the parent of a scholarship recipient may choose to have the student take either the norm-referenced test offered by the private school or the FCAT.

¹⁷ Section 120.54, F.S.

Statute specifies that parents choosing the FCAT option are responsible for transporting the student to the testing site.

The bill removes current law requiring parents to transport students to the FCAT testing site. It also provides for an annual premium payment of \$200 for a scholarship student who takes the FCAT and attends a private school where at least 95% of eligible scholarship students take the FCAT. The premium payment is to be deposited into the private school's account and applied to transportation and test preparation costs associated with participation in the FCAT, or any other school fees. The DOE is required to provide FCAT preparation and instructional materials to participating schools for use in preparing scholarship recipients for the FCAT.

These provisions of the bill present a number of drafting, implementation, and policy issues that include the following:

- The bill provides that a SFO shall make the \$200 premium payment, but does not clearly identify the source of funds to be used for this payment, e.g., eligible contributions to the CITC Program.
- The bill requires the DOE to determine whether 95% of scholarship-recipients in a private school have participated in the FCAT, but does not specify a time frame for when this determination is to be made. Further, the bill does not identify when the \$200 premium payments are to be made by the SFO. Due to the fact that the FCAT is administered in the spring, the DOE would not be able to determine how many scholarship recipients qualify for the premium payments until late in the school year. This could pose accounting issues for a SFO as it will not know at the beginning of each school year how much to reserve for premium payments.
- The bill requires the \$200 premium payment to be applied to transportation and test preparation costs associated with participation in the FCAT, or any other school fees. It does not, however, provide an accounting mechanism to ensure that the payment is used in this manner.
- The bill deletes current provisions placing FCAT-related transportation responsibilities on the parent and does not transfer this responsibility to another entity. As such, the responsibility for FCAT-related transportation is unclear.
- The bill requires the DOE to provide FCAT preparation and instructional materials to participating schools. Current FCAT preparation materials available from the DOE are intended for students who are being taught a curriculum based on the Sunshine State Standards (SSS). Private school curriculums are not SSS-based and, thus, available FCAT preparation materials may not be of adequate assistance to a scholarship recipient who takes the FCAT. If the DOE is required to develop alternative FCAT preparation curricula, there is likely to be a significant fiscal impact to the department.
- The bill's premium payment may result in a significant increase in the number of scholarship recipients electing to take the FCAT. As discussed above in the section entitled, "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," such an increase would: (a) reduce the number of scholarships that would otherwise be available; and (b) impose increased work load and fiscal burdens on school districts, which appear to implicitly be required to administer the FCAT for these students. Although the bill does not specifically state that school districts are required to administer the FCAT, this would be necessary as a practical matter in order to maintain testing security for the FCAT.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES