

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation &amp; Career Preparation</u>	<u>(ref. removed)</u>	<u></u>	<u></u>
2) <u>Schools &amp; Learning Council</u>	<u>9 Y, 4 N, As CS</u>	<u>White/Eggers</u>	<u>Cobb</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
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### 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 (SFOs). SFOs award scholarships to students from families with limited financial resources. The Council Substitute for HB 653 revises the CITC Program by:

- Providing legislative findings and revising the program's purpose.
- Revising first-time scholarship eligibility criteria for the sibling of a renewing scholarship recipient.
- Increasing the \$88 million maximum tax credit by \$30 million annually for five years.
- 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 received in that fiscal year.
- Authorizing SFOs to retain up to three percent of contributions for administrative expenses.
- 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 \$3,950 for Fiscal Year (FY) 2008-2009 and providing that thereafter the maximum scholarship award amount shall be 60% of the statewide average total funds per unweighted full-time equivalent (FTE) student funding provided in the Florida Education Finance Program (FEFP) for that school year.
- 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 be used for tuition.
- 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 is estimated to have a net positive fiscal impact on state revenues and expenditures. **(See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT).**

## 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 the sibling 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 the sibling of a renewing scholarship recipient.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Corporate Income Tax Credit Scholarship Program**

The 2001 Legislature passed the CITC Program<sup>1</sup> 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.<sup>2</sup>

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 February 2008, 20,076 scholarship recipients are enrolled in 910 participating private schools. Eighty-two percent of participating private schools are religious, whereas 18% of such schools are non-religious.<sup>3</sup>

**Findings and Purpose:** The bill 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 expanded educational 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 free or reduced-priced school lunches under the National School Lunch Act,<sup>4</sup> and:

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<sup>1</sup> Section 220.187, F.S.

<sup>2</sup> 42 U.S.C.A. 1758(b)(1).

<sup>3</sup> Florida Department of Education, Office of Independent Education and Parental Choice, *Corporate Tax Credit Scholarship Program* (February 2008) available at [http://www.floridaschoolchoice.org/Information/CTC/files/ctc\\_fast\\_facts.pdf](http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf).

<sup>4</sup> 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

- Was counted as a full-time student during the previous state FY 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 free or reduced-priced school lunches, 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 200% of the Federal Poverty Level.<sup>5</sup> In the event 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% of the 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:** Currently, the maximum amount of tax credits that may be granted per state fiscal year under the CITC Program is \$88 million.<sup>6</sup> 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.<sup>7</sup>

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

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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).

<sup>5</sup> Additionally, the household must complete the renewal application, 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, and the student must have taken an approved nationally recognized standardized test for students grade 3-10 and must have been actively using the scholarship for the prior school year. See <http://www.floridapride.org/index.cfm/fuseaction=about.Handbook#New> (parent handbook).

<sup>6</sup> The maximum tax credit permissible under the CITC Program was increased by the Legislature effective July 1, 2003, from \$50 million to \$88 million. See Ch. 2003-391, s. 9, L.O.F.

<sup>7</sup> Section 220.187(5), F.S.

The bill increases the maximum, annual per student scholarship amount from \$3,750 to \$3,950 for FY 2008-2009. Beginning with FY 2009-2010 and thereafter, the bill provides that the scholarship amount shall be 60% of the statewide average total funds per unweighted full-time equivalent student funding amount as determined in the FEFP calculation that is incorporated by reference in the General Appropriations Act, or any subsequent special appropriations act. For the 2007-2008 school year, this average amount is \$7,212; however, budget reductions currently being considered by the Legislature would reduce this amount to \$7,126.<sup>8</sup>

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*.

**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.<sup>9</sup>

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 FY 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 FY. Statute prohibits SFOs from retaining any amount of scholarship funds for administrative expenses.<sup>10</sup>

Under the bill, SFOs are authorized to use up to three percent of eligible contributions for administrative expenses incurred under the section. Further, SFOs are no longer required to *obligate* 100% of the contributions; instead, they must *expend* at least 75% of the net eligible contributions remaining after administrative expenses on annual or partial-year scholarships during the FY in which the contributions are collected. Up to 25% of net eligible contributions may be carried forward by a SFO to the succeeding FY. Contributions carried forward must be expended for annual or partial-year scholarships.

**Preservation of Tax Credit:** The bill clarifies that a taxpayer, who has made or who makes an eligible contribution<sup>11</sup> 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; revising first-time scholarship eligibility criteria for siblings of renewing scholarship recipients; revising the 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; revising scholarship

<sup>8</sup> See Conference Report on HB 7009, Special Appropriations Act for FY 2007-2008 (March 9, 2008).

<sup>9</sup> Section 220.187(11), F.S.

<sup>10</sup> Section 220.187(6)(i), F.S.

<sup>11</sup> 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).

award amounts; revising requirements for verification of scholarship student attendance; 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 FY 2008-2009, the bill increases the amount of allowable tax credits under the CITC Program by \$30 million annually for five years. These increases will reduce the amount of corporate income tax revenues that are deposited into the state General Revenue Fund. However, due to the difference in tax credits being granted on a tax year basis and the cap being increased on a state fiscal year basis, there will be a delay in a SFO's ability to collect the full amount of the increase in eligible contributions under the cap in the corresponding state fiscal year. Based on historical collection data, revenues would be impacted as follows:

Fiscal Year	Revenue Impact of Increase
2008-2009	(9,843,675)
2009-2010	(50,365,200)
2010-2011	(76,485,450)
2011-2012	(103,275,450)
2012-2013	(130,065,450)

Total revenue reductions would be offset by fewer students being served in the FEFP in future years 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 combined effect of raising the cap on allowable tax credits, raising the maximum scholarship amount, and allowing SFOs to retain three percent of total collections for administrative expenses will increase the number of students served through the CITC scholarship program in FY 2008-2009. Additionally, the tax credit collections from a corporation for a specific tax year may be spread out over more than one of the state's fiscal years, thereby resulting in a delay in the availability of collections to be used by SFOs for scholarship awards and a corresponding delay in the total decrease to FEFP enrollment. Therefore, the net fiscal impact in the affected fiscal years will be as follows:

Fiscal Year	Revenue Impact of Increase	State Savings in FEFP	Net (Cost)/Savings to State Expenditures
2008-2009	(9,843,675)	10,929,600	1,085,925
2009-2010	(50,365,200)	51,758,721	1,393,521
2010-2011	(76,485,450)	83,985,507	7,500,057
2011-2012	(103,275,450)	115,908,297	12,632,847
2012-2013	(130,065,450)	147,899,992	17,834,542

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

Increasing the number of CITC scholarship recipients will decrease local government revenues generated through the FEFP. Local governments will not, however, incur expenditures associated with the decreased number of students served through the FEFP.

### 2. Expenditures:

Districts would realize an indeterminate amount of savings in expenditures for facilities and other Fixed Capital Outlay purposes because of the reduction in the number of the students being served. In addition, by serving fewer students, districts may more easily comply with class size reduction requirements.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the individual annual scholarship amount from up to \$3,750 to up to \$3,950 for FY 2008-2009. 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. These increases should enable a greater number of eligible tax payers to take advantage of the corporate income tax credit.

The bill authorizes SFOs to use up to three percent of eligible contributions for administrative expenses. Due to the delay in a SFO's ability to collect the full amount of allowable contributions, the exact amount of funds that will be available for administrative expenses is indeterminate; however, based on historical collection data and future collection projections, it appears that SFOs could retain up to the following amounts for administrative expenses:

Fiscal Year	Maximum Allowable Tax Credit	Estimated Three Percent for Administrative Expenses <sup>12</sup>
2008-2009	\$88,130,170	\$2,643,905
2009-2010	\$128,949,200	\$3,868,476
2010-2011	\$155,069,450	\$4,652,084
2011-2012	\$181,859,450	\$5,455,784
2012-2013	\$208,649,450	\$6,259,484

## D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

<sup>12</sup> Actual amounts allowed for administrative expenses would be based on the actual tax credits collected in any one FY.

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill authorizes SFOs to retain up to three percent of eligible contributions for administrative expenses incurred under the CITC Program. The term "administrative expenses" is undefined. Consideration may be given to clarifying the term's meaning.

**D. STATEMENT OF THE SPONSOR**

None.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 7, 2008, the Schools and Learning Council adopted one amendment and reported the bill favorably as a council substitute. The amendment made the following changes:

- Removed an incorrect legislative finding.
- Removed provisions that authorized a \$200 premium payment for specified scholarship students taking the Florida Comprehensive Assessment Test.
- Clarified that SFOs must expend at least 75% of *net* eligible contributions *remaining after administrative expenses* for scholarships in the state FY during which the contributions are collected.
- Lowered the bill's increase in the maximum scholarship award amount for FY 2008-2009 from \$4,500 to \$3,950, and lowered the bill's adjustment to the maximum scholarship award amount for FY 2009-2010 and FYs thereafter from 62% of the statewide average total funds per unweighted FTE to 60% of such average total funds.

This analysis is drafted to the council substitute.