

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 Policy and Steering Committee on Ways and Means

BILL: CS/CS/SB 1310

INTRODUCER: Finance and Tax Committee, Education Pre-K Committee and Senator Gardiner

SUBJECT: Tax Credits/Nonprofit Scholarship-Funding Organizations

DATE: April 21, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	Johansen	McKee	FT	Fav/CS
3.	Armstrong	Hamon	EA	Favorable
4.	Hamon	Kelly	WPSC	Favorable
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill expands the revenue sources that can be claimed as tax credits for donations to a scholarship funding organization under the Corporate Income Tax Credit Scholarship Program (CTC) to fund scholarships for certain disadvantaged students. The additional revenue source is the premium tax under s. 624.509, F.S. The maximum amount of tax credits that may be granted each state fiscal year under the CTC program remains at \$118 million. The bill provides that the \$118 million cap applies to all tax credits (the corporate income tax and the insurance premium tax combined). Insurers receiving an insurance premium tax credit under this program are not able to receive a similar corporate income tax credit under the program.

The bill also defines a “direct certification list” to mean a certified list of children who qualify for the Food Stamp Program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations. This list is provided to the Department of Education by the Department of Children and Family Services pursuant to a memorandum of understanding. Children on the certification list would be eligible to receive a scholarship under the CTC Program.

Finally, the bill renames the CTC program the Florida Tax Credit Scholarship Program.

This bill substantially amends ss. 220.186, 220.187, 1002.20, 1002.23, 1002.39, and 1002.421, and creates s. 624.51055 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 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;
- Received a scholarship under the CTC program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed in foster care.

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 A sibling of a scholarship student who continues to participate in the program and resides in the same household as the student 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 amount of the scholarship provided to any child for any single school year by any eligible SFO may not exceed the following limits:

- \$3,950 for a scholarship awarded to a student for tuition and fees; 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.

¹ ss. 220.187(1) and 1002.421, F.S.

² s. 220.187(8), F.S.

³ s. 220.187(3), F.S. The eligibility guidelines for 2008-2009 are published in the Federal Register, April 9, 2008, Vol. 72, No. 69. See

<http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs08-09.pdf> (last visited March 23, 2009)

⁴ *Id.*

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 19 norm-referenced tests for participating private schools to administer to scholarship students in the 2008-2009 school year.⁶

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.⁷ 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.⁸ Baseline data from the 2006-2007 school year will be compared to data from the 2007-2008 school year to measure learning gains.⁹ According to the DOE, this report is expected to be released in late spring of 2009.

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, if it has been in operation for three years and does not have any negative financial findings, the SFO may retain up to three percent of the taxpayer's contributions for reasonable and necessary 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.

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

⁶ Rule 6A-6.0960, F.A.C., DOE Technical Assistance Paper No: 2008-01. *See* http://www.floridaschoolchoice.org/information/ctc/files/norm_CTC.pdf (last visited March 23, 2009).

Pursuant to ch. 2008-142, L.O.F., the Florida Comprehensive Assessment Test (FCAT) NRT in Reading and Mathematics is no longer listed as a nationally norm-referenced test that may be administered to CTC students.

⁷ s. 220.187(9)(j), F.S.

⁸ 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

⁹ *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.

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 2003.¹⁰ Beginning with FY 2008-2009, the cap was increased by \$30 million to \$118 million.¹¹

The following summarizes information related to the tax credits approved by the Department of Revenue (DOR):¹²

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 ¹³
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 ¹⁴	106	62	\$85,611,140	0	\$0
2008-09	121	71	\$88,414,097	0	\$0
2009-10	7	NA	\$8,875,000	0	\$0

The following reflects the credit allocations per SFO for 2007-2008 and 2008-2009:¹⁵

Credit Allocations per SFO 2007-2008 ¹⁶	
SFO	TOTAL
Academy Prep Foundation, Inc.	\$0
Children First Central Florida ¹⁷	\$38,178,882
Florida School Choice Fund ¹⁸ (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	\$85,611,140

¹⁰ s. 9, ch. 2003-391, L.O.F.

¹¹ ch. 2008-241, L.O.F.

¹² DOR, January 5, 2009.

¹³ 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. The cap was subsequently repealed by chapter 2008-241, L.O.F.

¹⁴ 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.

¹⁵ The DOR noted that as of March, 2009, there were 7 approved applications for fiscal year 2009-2010, for tax years beginning in 2009. This allocation was still open as of March, 2009.

¹⁶ DOR, March, 2009, for tax years beginning in 2007. The allocation began January 1, 2007, for tax years beginning in calendar year 2007. The allocation is closed.

¹⁷ Children First Central Florida is now known as Children First Florida.

¹⁸ Florida School Choice Fund is now known as Florida P.R.I.D.E.

Credit Allocations per SFO 2008-2009¹⁹	
SFO	TOTAL
The Children's Cause, Inc. ²⁰	\$0
Children First Florida	\$40,317,008
Florida P.R.I.D.E.	\$35,930,000
The Carrie Meek Foundation, Inc.	\$3,010,000
Credit Carry Forward	\$9,157,089
Total Allocations	\$88,414,097

Currently, there are 988 participating private schools and 23,259 students receiving scholarships from three SFOs: Florida P.R.I.D.E., Children First Florida, and the Carrie Meek Foundation, Inc.²¹ The following data represents the number of students receiving CTC scholarships, by SFO, for the current year: Florida P.R.I.D.E., 10,541 students; Children First Florida, 11,638 students; and the Carrie Meek Foundation, Inc., 1,080 students. Four SFOs no longer participate in the program: Faith Based Scholarship Foundation of Florida; FloridaChild; Silver Archer; and Academy Prep Foundation, Inc.

Office of Program Policy Analysis and Government Accountability (OPPAGA) Report²²

In 2008, the Legislature directed OPPAGA to review the use of credits for insurance premium taxes²³ as an additional source of funding for the scholarship program.²⁴ OPPAGA reported the following:

- Allowing insurance premium tax credits to be included in the scholarship program would broaden the base of companies likely to participate and increase the chance that higher caps set by the Legislature would be met.
- Currently, not all insurance companies in the state have an incentive to participate in the program and the ability of an insurance company to reduce their tax liability by participating in the program depends on their financial situation.
- Insurance companies must have a net corporate income tax liability greater than 65 percent of their insurance premium tax liability in order to reduce their tax liability by contributing to the scholarship program. Companies that do not have such a corporate income tax liability may contribute to the program, but would not receive a reduction in tax liability for doing so.
- Allowing insurance companies the flexibility of receiving tax credits against either their corporate income taxes or their insurance premium taxes would maximize the number of

¹⁹ DOR, March, 2009, for tax years beginning in 2008. The allocation began January 1, 2008, for tax years beginning in calendar year 2008. This allocation is still open.

²⁰ The Children's Cause was approved by the DOE for 2008-2009.

²¹ *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, February 2009. Of the participating private schools, 84.5 percent are religious schools and 15.5 percent are non-religious schools. See https://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ctc_report_feb2009.pdf (last visited March 23, 2009)

²² <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0868rpt.pdf> (last visited March 24, 2009) *The Corporate Income Tax Credit Scholarship Program Saves the State Dollars*, OPPAGA, Report No. 08-68, December 2008.

²³ ch. 624, F.S.

²⁴ ch. 2008-241, L.O.F.

companies that would make contributions to scholarship-funding organizations. However, it would also complicate tax administration.

- Out-of-state insurance companies could face increased retaliatory taxes if they lowered their Florida insurance premium tax liability by taking credits for scholarship contributions. Establishing a provision that exempts these insurance companies from additional retaliatory taxes in Florida would help ensure that they have an incentive to participate in the program.

The Capital Investment Program and the Community Contribution Tax Credit Program permit insurance companies to claim an insurance premium tax credit for certain activities. While the participating insurance companies may take tax credits, they are not assessed additional retaliatory taxes.

III. Effect of Proposed Changes:

The bill renames the CTC program the Florida Tax Credit (FTC) Scholarship Program.

Tax Credits for Contributions to Eligible SFOs

Insurance Premium Tax Credit

The insurance premium tax is imposed on insurance premiums written in Florida and paid by insurance companies to the DOR.²⁵ The bill allows insurance companies to receive a credit of 100 percent of an eligible contribution to an eligible SFO against any net tax due for a taxable year under the provisions of the insurance premium tax. However, the credit may not exceed 75 percent of the net tax due. An insurer claiming a credit against premium tax liability is not required to pay any additional retaliatory tax levied under s. 624.5091, F.S., as a result of claiming the credit. The bill provides that s. 220.187, F.S., applies to these credits. However, it does not specify what provisions apply.

Credit Limits

The bill also provides that a taxpayer's use of the credit granted under the FTC program does not reduce the amount of the alternative minimum tax credits available under s. 220.186, F.S.²⁶ The bill provides that the \$118 million cap applies to all tax credits (the corporate income tax and the insurance premium tax combined). Insurers receiving an insurance premium tax credit under this program are not permitted to receive a similar corporate income tax credit under the program.

Special Provision for Certain Contributions Made by Insurers in 2006 through 2008

An insurance company that made eligible contributions under the CTC program for tax years beginning in 2006, 2007 or 2008, but did not receive a dollar-for-dollar benefit because of the interaction between the corporate income tax and the insurance premium tax, may apply to DOR by July 31, 2009, to take a credit against its 2009 corporate tax liability. Credits taken pursuant to this provision will be counted toward the \$118 million cap in fiscal year 2009-10; such credits will be treated as corporate taxes paid for purposes of computing the corporate tax credit against the insurance premium tax.

²⁵ s. 624.509, F.S.

²⁶ The alternative minimum tax credit is the excess of the alternative minimum tax over the regular corporate income tax, after credits. DOR, March 26, 2009.

Eligible Students

Students who are on a direct certification list are eligible to receive a scholarship, which the bill defines as a list of children who qualify for the Food Stamp Program, the Temporary Assistance for Needy Families Program, or the Food Distribution Program on Indian Reservations. Since any child on the direct certification list is eligible to participate in the National School Lunch Program, it appears unnecessary to make this distinction.²⁷

At the request of a scholarship-funding organization that is eligible to use eligible contributions for administrative expenses,²⁸ school districts must inform all households participating in the National School Lunch Program that they are eligible to apply for a tax credit scholarship. School districts must include the information in any normal correspondence with an eligible household. Once a year an SFO may request a special communication from the district to each household and the SFO must reimburse the district for postal expenses.

The DOE is currently tasked with developing a framework for a parent guide to successful achievement which describes how parents can help their child to succeed in school.²⁹ The framework must include information related to the scholarship program. Similarly, districts are expected to fully cooperate in a program that helps parents to effectively participate in the child's education. It is unclear as to the necessity for this specific communication.

Under the bill, the DOE is required to match the direct certification list with scholarship applicant data submitted by an SFO that is eligible to use eligible contributions for administrative expenses. The bill is silent on how the matched data will be used. Under a Memorandum of Understanding, the DOE receives direct certification lists from the Department of Children and Families (DCF) that includes student names and social security numbers.³⁰ Any disclosure of this information to a third party raises significant concerns about the privacy afforded to the children. The DOE notes that federal and state laws provide individuals receiving public assistance the right of confidentiality and limit the disclosure of the information.³¹ The DOE notes that upon receipt of the direct certification list, it would be confidential and protected from disclosure by the National School Lunch Act.³² According to the DOE, it does not appear that disclosure to an SFO would be allowed under federal regulations.

²⁷ Student eligibility for free meals is determined by application or by direct certification. Children from households that receive benefits under the Supplemental Nutrition Assistance Program (SNAP – formerly the Food Stamp Program), Temporary Assistance for Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR), are deemed “categorically eligible” for free school meals, thereby eliminating the need for households to submit an application for meal benefits. *Direct Certification in the National School Lunch Program: State Progress in Implementation, Report to Congress – Summary*, U.S. Department of Agriculture (USDA), December 2008.

²⁸ s. 220.187(6)(i), F.S.

²⁹ s. 1002.23, F.S.

³⁰ Effective July 1, 2005. The DCF administers the U.S. Department of Agriculture’s Supplemental Nutrition Assistance Program (SNAP – formerly the Food Stamp Program), while the DOE administers the Food and Nutrition Services.

³¹ DOE bill analysis, March 24, 2009.

³² 42 U.S.C. § 1758 (6)(A) specifies the parties to whom information may be disclosed and the criminal penalties and fines for unlawful disclosure.

Additionally, the Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records.³³ The law applies to any public or private educational agency or institution that receives funds under any program administered by the U.S. Department of Education (U.S. DOE).³⁴ Parents have specific rights with respect to their children's education records, including the right to inspect and review education records, to seek to have education records amended in certain circumstances, and to consent to the disclosure of education records.³⁵ These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. The direct certification information maintained by the DOE may be considered to be an education record and, as such could not be disclosed without the consent of the parent.

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:

The Revenue Estimating Conference concluded that under the provisions of this bill, credits against the insurance premium tax for contributions to SFOs would increase and credits against the state corporate income tax would fall by an equivalent amount; the net impact on state revenues is expected to be \$0.

B. Private Sector Impact:

The bill allows insurance companies to receive a credit against insurance premium taxes for contributions to an SFO.

C. Government Sector Impact:

According to the DOE, if the increase in the potential sources of tax credits results in an expansion of the program to its limit of \$118 million, school districts would lose state revenue for any increase in the number of students who otherwise would have attended

³³ 20 U.S.C. § 1232g and 34 CFR Part 99. Education records are those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.

³⁴ 20 U.S.C. § (a)(3) and 34 CFR Part 99.1(a), December 2008.

³⁵ 20 U.S.C. § 1232g

public schools.³⁶ If the increase in the potential sources of tax credits results in an expansion of the program to its limit of \$118 million, school district expenditures may decrease due to any reduction in enrollment of students.³⁷

However, the CTC Program produces a net savings to the state according to the OPPAGA analysis. OPPAGA estimated that during the 2007-2008 fiscal year, taxpayers saved \$1.49 in state education funding for every dollar loss in corporate income tax revenue due to credits for scholarship contributions.³⁸

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.)

CS by Finance and Tax Committee on April 1, 2009:

The committee substitute added a special provision for CTC program contributions made by insurers in 2006 through 2008, who did not receive a dollar-for-dollar benefit because of the interaction between the corporate income tax and the insurance premium tax. An insurance company in this situation may apply to DOR by July 31, 2009, to take a credit against its 2009 corporate tax liability. Credits taken pursuant to this provision will be counted toward the \$118 million cap in fiscal year 2009-10.

The committee substitute also clarified that the credits against the insurance premium tax are limited to 75% of the tax due after specified deductions and credits are taken.

CS by Education Pre-K-12 on March 26, 2009:

The committee substitute:

- Deletes the provision allowing a tax credit against sales and use tax for contributions made to an eligible SFO for scholarships;
- Provides that the \$118 million cap applies to all tax credits (the corporate income tax and the insurance premium tax combined);
- Requires school districts rather than the DOE to notify households whose children receive free or reduced-price meals regarding scholarship eligibility and allows districts to be compensated for special communications;

³⁶ DOE Bill analysis, March 24, 2009.

³⁷ *Id.*

³⁸ <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0868rpt.pdf> *The Corporate Income Tax Credit Scholarship Program Saves the State Dollars*, OPPAGA, Report No. 08-68, December 2008.

- Deletes the requirement that an SFO be provided with the direct certification list;
- Requires the DOE to establish a process to match the direct certification list with scholarship applicant data;
- Provides that insurers receiving an insurance premium tax credit under this program are not able to receive a similar corporate income tax credit under the program; and
- Contains a severability clause.

B. Amendments:

None.