

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: SB 1388

INTRODUCER: Senator Flores

SUBJECT: Department of Revenue

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill narrows the exemption in s. 213.053, F.S., to allow nonprofit scholarship-funding organizations (SFOs) that provide scholarships to 10,000 or more eligible students with the names and addresses of the 100 taxpayers having the greatest tax liability. This applies to taxpayers making contributions for credit related to taxes for oil and gas production, direct pay permits, insurance premiums, and corporate income tax. An SFO would only be permitted to use the taxpayer information to raise funds for the Florida Tax Credit Scholarship Program.

Under the bill, a corporation may claim the tax credit up to the full amount of its state corporate income tax for donations to an eligible SFO. Taxpayers are permitted to carry forward an unused tax credit for up to five years. Additionally, the bill removes the prohibition against taxpayers rescinding tax credits unless the taxpayer has rescinded credit less than once in the previous three tax years.

This bill substantially amends sections 213.053, 220.1875, and 1002.395 of the Florida Statutes.

II. Present Situation:

Florida Tax Credit Scholarship Program (FTC program)

Under the FTC 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 against its state corporate income tax,

¹ ss. 1002.395(1) and 1002.421, F.S. In 2010, the program was transferred from s. 220.187, F.S., to s. 1002.395, F.S., by ch. 2010-24, L.O.F.

insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders, and alcoholic beverage tax on beer, wine, and spirits for donations to private nonprofit scholarship-funding organizations.

Eligible Private Schools and Students

Private schools participating in the FTC program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.² To be eligible for participation in the FTC program, a private school must demonstrate fiscal soundness and accountability.³

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act⁴ or who qualifies for the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance to Needy Families Program (TANF), or the Food Distribution Program on Indian Reservations (FDPIR)⁵ and:

- 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 FTC program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed, in foster care.

A student does 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 230 percent of the federal poverty guidelines.⁶ 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 FTC scholarship recipient, as long as the student's and the sibling's household income level does not exceed 230 percent of the federal poverty level.⁷

Eligibility is contingent upon available funds.⁸ The amount of the scholarship provided to any child for any single school year by any eligible SFO may not exceed the following limits:⁹

² ss. 1002.395(8) and 1002.421, F.S.

³ s. 1002.421, F.S.

⁴ s. 1002.395(3)(b), F.S. The eligibility guidelines are available at:

<http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs10-11.htm>.

⁵ Children from households that receive benefits under SNAP (formerly the Food Stamp Program), TANF, or the 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), October 2010, available at:

<http://www.fns.usda.gov/ora/menu/published/CNP/FILES/DirectCert2010Summary.pdf>.

⁶ s. 1002.395(3)(b)2., F.S.

⁷ s. 1002.395(3)(b)3., F.S. The student must also meet one or more of the eligibility criteria.

⁸ s. 1002.395(3)(b), F.S.

⁹ s. 1002.395(12)(a), F.S. Beginning in FY 2011-2012, the percentage used to determine the maximum scholarship award increases by four percent in any fiscal year when the tax credit cap also increases, until it reaches a maximum of 80 percent. In that fiscal year and thereafter, the scholarship limit will be equal to 80 percent of the per FTE funding amount.

- For FY 2010-2011, the maximum scholarship amount is 60 percent of the Florida Education Finance Program (FEFP) unweighted full-time equivalent (FTE) amount for the fiscal year, for a scholarship awarded to a student for tuition and fees;¹⁰ 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.

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.¹¹ Scholarships must be provided for eligible students on a first-come, first-served basis, unless the student qualifies for priority consideration.¹² 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.¹³ If the SFO 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.¹⁴

The Legislature initially capped the scholarship program at \$50 million in tax credits per state fiscal year,¹⁵ but subsequently expanded the cap to \$88 million in 2003.¹⁶ Beginning with FY 2008-2009, the cap was increased by \$30 million to \$118 million.¹⁷ Until 2009, tax credits under the scholarship program were only available against the state's corporate income tax.

In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed for donations to an SFO to include the premium tax under s. 624.509, F.S., which is imposed on insurance premiums written in Florida and paid by insurance companies to the Department of Revenue (DOR).¹⁸

In 2010, the Legislature added three new revenue sources by allowing taxpayers to receive credits for eligible contributions against: severance taxes on oil and gas production;¹⁹ self-accrued sales tax liabilities of direct pay permit holders;²⁰ and alcoholic beverage taxes on beer,

¹⁰ While chapter 2010-24, L.O.F., increased the maximum household income threshold for renewing scholarship recipients and their siblings from 200 percent of the federal poverty level to 230 percent of that level, it reduced the maximum scholarship award available to the newly eligible scholarship recipients.

¹¹ s. 1002.395(2)(f), F.S.

¹² s. 1002.395(6), F.S.

¹³ s. 1002.395(2)(e), F.S.

¹⁴ s. 1002.395(6)(i), F.S.

¹⁵ ch. 2001-225, L.O.F.

¹⁶ s. 9, ch. 2003-391, L.O.F.

¹⁷ ch. 2008-241, L.O.F.

¹⁸ s. 624.51055, F.S., allows insurance companies to receive a credit of 100 percent of an eligible contribution to an eligible SFO against any tax due for a taxable year under the provisions of the insurance premium tax. However, the credit may not exceed 75 percent of the tax due.

¹⁹ s. 211.0251, F.S., authorizes a credit of 100 percent of an eligible contribution to an SFO against any tax due under ss. 211.02 or 211.025, F.S., for oil or gas production. However, the credit may not exceed 50 percent of the tax due on the return the credit is taken.

²⁰ s. 212.1831, F.S., authorizes a credit of 100 percent of an eligible contribution against any state sales tax due from a direct pay permit holder (e.g., dealers who annually make purchases in excess of \$10 million per year in any county and dealers

wine, and spirits.²¹ The 2010-2011 fiscal year cap on tax credits authorized under the FTC program is \$140 million.²² In fiscal year 2011-2012 and thereafter, the cap will increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount for that year. The tax credit cap amount is \$175 million for the 2011-2012 state fiscal year.

The following summarizes information related to the tax credits approved by the DOR:²³

Tax Year	Number of Approved Tax Credit Allocation Applications	Number of Taxpayers	Total Amount of Tax Credit Allocations Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credit Allocations	Total Amount of Tax Credit Allocations Approved for Small Businesses ²⁴
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 ²⁵	106	62	\$85,611,140	0	\$0
2008-09	125	75	\$97,415,847	0	\$0
2009-10	121	83	\$111,773,617 ²⁶	0	\$0
2010-11	125	104	\$139,777,856	0	\$0
2011-12	19	19	\$9,545,000	0	\$0

The following reflects the credit allocations per SFO for 2007-2008, 2008-2009, 2009-2010, 2010-2011,²⁷ and 2011-2012:

Credit Allocations per SFO 2007-2008 ²⁸	
SFO	TOTAL
Academy Prep Foundation, Inc.	\$0
Children First Central Florida ²⁹	\$38,178,882

who purchase promotional materials whose ultimate use is unknown at purchase) as a result of the direct pay permit held. See s. 212.183, F.S., and Rule 12A-1.0911, F.A.C.

²¹ s. 561.1211, F.S., authorizes a credit of 100 percent of an eligible contribution to an SFO against tax due under ss. 563.05, 564.06, or 565.12, F.S., except for taxes imposed on domestic wine production. Further, the credit is limited to 90 percent of the tax due on the return on which the credit is taken.

²² s. 1, ch. 2010-24, L.O.F., codified in s. 1002.395(5), F.S.

²³ E-mail, DOR, March 28, 2011, on file with the committee.

²⁴ 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 ch. 2008-241, L.O.F.

²⁵ Effective for tax years beginning January 1, 2006, s. 220.187(5)(d), F.S., (currently s. 1002.395(5)(e), F.S.) permits a taxpayer to rescind all or part of its previously allocated tax credit. When approved, the rescinded allocation can be allocated to another taxpayer.

²⁶ Of the total amount of the allocation of tax credits, \$15,130,000 was allocated to insurance companies based on 18 approved applications.

²⁷ Data for applications for credit allocations current through February, 2010. The 2008-09 and 2009-10 applications are still open as of that date.

²⁸ E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2007. The allocation began January 1, 2007, for tax years beginning in calendar year 2007. The allocation is closed.

²⁹ Children First Central Florida was subsequently known as Children First Florida.

Credit Allocations per SFO 2007-2008²⁸	
SFO	TOTAL
Florida School Choice Fund ³⁰ (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
Credit Allocations per SFO 2008-2009³¹	
SFO	TOTAL
The Children's Cause, Inc. ³²	\$0
Children First Florida (Children First Central Florida)	\$42,317,008
Florida P.R.I.D.E.	\$35,930,000
The Carrie Meek Foundation, Inc.	\$3,010,000
Step Up for Students ³³	\$7,001,750
Credit Carry Forward	\$9,157,089
Total Allocations	\$97,415,847
Credit Allocations per SFO 2009-2010³⁴	
SFO	TOTAL
Children First Florida ³⁵	\$14,406,666
Florida P.R.I.D.E. ³⁶	\$7,431,666
The Carrie Meek Foundation, Inc.	\$2,734,318
Step Up for Students	\$64,909,850
Credit Carry Forward	\$22,291,117
Total Allocations	\$111,773,617
Credit Allocations per SFO 2010-2011³⁷	
SFO	TOTAL
The Carrie Meek Foundation, Inc.	\$3,186,666
Light Bearer's, Inc.	\$0
Step Up for Students	\$136,591,199
Total Allocations	\$139,777,856
Credit Allocations per SFO 2011-2012³⁸	
SFO	TOTAL
Step Up for Students	\$9,545,000
Total Allocations	\$9,545,000

Currently, there are 1,073 participating private schools and 32,320 students receiving scholarships from two SFOs: Step Up for Students and the Carrie Meek Foundation, Inc.³⁹ The

³⁰ Florida School Choice Fund was subsequently known as Florida P.R.I.D.E.
³¹ DOR, March 1, 2010, for tax years beginning in 2008. The allocation began January 1, 2008, for tax years beginning in calendar year 2008. This allocation is closed.
³² The Children's Cause was approved by the DOE for 2008-2009.
³³ The Florida School Choice Fund, Inc., d/b/a Step Up for Students, was approved effective July 1, 2009. The assets of Florida PRIDE and Children First Florida were transferred to Florida School Choice Fund, Inc.
³⁴ E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2009. The allocation began January 1, 2009, for tax years beginning in calendar year 2009. This allocation is closed.
³⁵ Children First Florida ceased to exist on July 1, 2009. The assets of Children First Florida were transferred to Step Up for Students.
³⁶ Florida PRIDE ceased to exist on July 1, 2009. The assets of Florida Pride have been transferred to Step Up for Students.
³⁷ E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2010. The allocation began January 1, 2010, for tax years beginning in calendar year 2010. The allocation is open.
³⁸ E-mail, DOR, March 28, 2011, on file with the committee, for tax years beginning in 2011. The allocation began January 1, 2011, for tax years beginning in calendar year 2011. The allocation is open.
³⁹ *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, November 2010. Of the participating private schools, 79.3 percent are religious schools and 20.7 percent are non-religious schools. See https://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2010.pdf.

following data represents the number of students receiving FTC scholarships, by SFO, for the current year: Step Up for Students, 30,923 students (95.7 percent) and the Carrie Meek Foundation, Inc., 1,397 students (4.3 percent.) Five SFOs are eligible to participate in the FTC Scholarship program, Step Up For Students, Educate Today (serving the Tampa Bay area), The Carrie Meek Foundation (serving select areas of Miami-Dade County), and Lightbearers, Inc.(serving Volusia and Flagler counties).⁴⁰ Two SFOs no longer participate in the program: Academy Prep Foundation, Inc., and The Children’s Cause, Inc.

Confidentiality of Taxpayer Information

The law provides for the confidentiality of taxpayer information received by the DOR in relation to the taxes on: severance and production of oil and gas under s. 211.0251, F.S; sales, use, and other transactions under s. 212.1831, F.S.; corporate income under s. 220.1875, F.S.; alcoholic beverages under s. 561.1211, F.S.; and insurance premiums under s. 624.51055, F.S.⁴¹ This information may not be shared with third parties unless expressly authorized by statute.

The law also allows the DOR to provide the Department of Education (DOE) and the Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation with confidential and exempt information related to the administration of the tax credit program.⁴² Further, the law requires the ABT, the DOR, and the DOE to develop a cooperative agreement and requires the DOR to obtain prior approval from ABT before approving the tax credits, carryforwards, and rescindments related to alcoholic beverage taxes.⁴³ Additionally, the law directs the DOR, the ABT, and the State Board of Education to adopt rules necessary to administer their responsibilities.⁴⁴

Any information and documentation provided to the DOE and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution remains confidential, in accordance with s. 213.053, F.S.⁴⁵

III. Effect of Proposed Changes:

Contributions

For purposes of ensuring that the tax credit cap is not exceeded, the DOR is currently responsible for approving each tax credit, carryforward tax credit, and rescindment of a tax credit, as well as adopting rules that establish tax credit application forms and procedures governing the approval of tax credits on a first-come, first-served basis.⁴⁶ A taxpayer may apply to the DOR for any of the credits.⁴⁷

⁴⁰ See https://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.

⁴¹ s. 213.053(8)(u), F.S.

⁴² *Id.*

⁴³ s. 1002.395(5)(b),(c), and (e) and (13), F.S.

⁴⁴ s. 1002.395(13), F.S.

⁴⁵ s. 1002.395(6), F.S.

⁴⁶ s. 1002.395(5) and (13), F.S.

⁴⁷ s. 1002.395(5)(b), F.S.

A corporation can receive a dollar for dollar tax credit up to 75 percent of its state corporate income tax for donations to an eligible SFO.⁴⁸ Under the bill, a corporation would claim the credit up to the full amount of the tax due under chapter 220, F.S.

Carry Forward

Taxpayers are permitted to carry forward an unused tax credit when the credit cannot be used because of an insufficient tax liability.⁴⁹ The carry forward of unused credit is subject to DOR approval.⁵⁰ A taxpayer may only convey, assign, or transfer an approved tax credit or carry forward to another taxpayer when all the taxpayer's assets are also conveyed, assigned, or transferred. Under the bill, unused tax credit may be carried forward for five years rather than for three years.⁵¹

Rescindment of Approved Tax Credit

Within any state fiscal year, a taxpayer may rescind all or part of an approved tax credit.⁵² The amount rescinded becomes available for that state fiscal year to another eligible taxpayer as approved by the DOR, if the taxpayer has not previously rescinded any or all of its approved tax credits more than once in the previous three tax years. The amount rescinded may be reallocated to other taxpayers on a first-come, first-served basis. Under the bill, the ability to rescind tax credit would no longer be contingent upon the taxpayer's rescindment history.

Confidentiality of Taxpayer Information

Unless otherwise specified by law, Florida taxpayers have the right to have tax information kept confidential, unless otherwise specified.⁵³ Current law does not permit the DOR to share any tax information with an SFO. Under s. 213.053, F.S., the DOR may disclose specified taxpayer information to governmental and nongovernmental agencies. However, most of these provisions relate to governmental agencies when performing their official duties.

The bill narrows the exemption in s. 213.053, F.S., to allow SFOs that provide scholarships to 10,000 or more eligible students with the names and addresses of the 100 taxpayers having the greatest tax liability.⁵⁴ This applies to taxpayers making contributions for credit related to taxes for oil and gas production, direct pay permits, insurance premiums, and corporate income tax. However, there is an exception for corporate income tax information that compromises an information-sharing agreement between the DOR and a federal government agency. Each SFO would be limited to one request for each tax year in any 12-month period. Taxpayer information for contributions for credit against taxes on alcoholic beverages is not affected by the bill.

⁴⁸ s. 220.1875, F.S.

⁴⁹ s. 1002.395(5)(c), F.S.

⁵⁰ *Id.*

⁵¹ While some provisions of law limit a taxpayer's ability to carry forward unused tax credit to one year, other provisions permit taxpayers to carry forward unused tax credit for five years. *See* ss. 220.1896(6)(Jobs for the Unemployed Tax Credit Program), 220.19(1) (child care), and 220.193(3)(d) (Florida renewable energy production), F.S.

⁵² s. 1002.395(5)(e), F.S.

⁵³ s. 213.015(9), F.S.

⁵⁴ It is unclear as to whether the term "greatest tax liability" refers to the liability paid with the tax return or the liability prior to or after credits.

An SFO would only be permitted to use the taxpayer information to raise funds for the FTC program. Currently, only one SFO, Step Up for Students, would be eligible to request the names and addresses of taxpayers.

Pursuant to current law, information would be disclosed under a written agreement between the DOR's executive director and the SFO. An SFO would be bound by the same confidentiality requirements as the DOR. Breach of confidentiality is a first degree misdemeanor.⁵⁵

The bill provides that taxpayer information would be provided for the most recent years it is available. Presumably, an SFO would be able to access only that information which was not confidential prior to the effective date of the bill, when a taxpayer had an expectation that it remain confidential.

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:

None.

B. Private Sector Impact:

The rescindment provisions of the bill may allow other taxpayers to use available tax credits.

C. Government Sector Impact:

According to the official estimate adopted by the Revenue Estimating Conference on March 11, 2011, current projections and credits approved show SFOs are meeting the allotted cap. The estimate also notes that the provisions of the bill for sharing taxpayer information, claiming credit up to the full amount of the tax, and carrying forward unused tax credit are expected to have no fiscal impact.⁵⁶

⁵⁵ s. 213.053(8), F.S.

⁵⁶ See <http://edr.state.fl.us/Content/conferences/revenueimpact/pdf/impact0311.pdf>.

The DOR reports that the bill will have an insignificant impact on the operation of the agency.

VI. Technical Deficiencies:

Lines 29-33 of the bill require the DOR to share confidential tax information with SFOs that provide scholarships to 10,000 or more eligible students. According to the DOR, the agency does not track the number of students who are provided scholarships by each SFO.

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.)

None.

B. **Amendments:**

None.