

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 Commerce and Tourism Committee

BILL: SB 1542

INTRODUCER: Senator Siplin

SUBJECT: Corporate Income Tax Credits

DATE: April 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.	_____	_____	ED	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Florida currently offers state tax credits in exchange for business contributions to the Florida Tax Credit Scholarship Program, designed to assist low-income students who attend private schools. This program is capped at \$140 million for FY 10-11.

SB 1542 would create a similar credit against corporate income tax liabilities for businesses that make contributions to Florida public schools, to support educational expenses or tutoring, mentoring, or extracurricular programs, or other specified purposes.

The tax credit is equal to 100 percent of the contribution but may not exceed 75 percent of the contributor's tax liability after all other credits for which the contributor is eligible have been taken. The tax credits are capped at \$118 million per state fiscal year.

Recipient schools must use the contributions for the purposes selected by the contributors, except that any undesignated contributions may be used as determined by the schools, relying upon recommendations of the applicable school advisory councils. Also, each recipient school must annually report to the Department of Revenue (DOR) information about the amount and number of contributions it received the previous calendar year, and how much it spent.

Unused credits may be carried forward for up to 3 years, and a taxpayer's credits may not be transferred to another entity unless all of the original taxpayer's assets are transferred in the same transaction to the other entity.

SB 1542 creates s. 220.1877, F.S.

II. Present Situation:

The Corporate Income Tax Credit Scholarships for K-12 Students

The Legislature established the Corporate Income Tax Credit Scholarship Program in 2001¹ to expand educational opportunities for low-income students.² The program enables these students to attend private schools using scholarships financed with contributions from businesses, in exchange for those businesses receiving 100 percent of their contributions as a credit against their corporate income³ or insurance premium tax⁴ liabilities, as a credit against businesses eligible for direct payment of sales and use taxes,⁵ the excise taxes owed on oil or natural gas production,⁶ on malt beverages, and on other alcoholic beverages.⁷

Businesses participating in the scholarship program make contributions to non-profit scholarship funding organizations (SFOs), and receive tax credits equal to the amount of these contributions, not to exceed 75 percent of their corporate or premium insurance tax liabilities. The maximum amount of tax credits that may be granted annually under the program was capped originally at \$50 million, but over the years that cap has increased so that for FY 10-11, the cap is \$140 million.⁸

As of November 2010, there were 1,073 private schools in 60 counties serving 32,320 students who received scholarships under this program.⁹ More information is available on the 2009-2010 school year; according to a report compiled by the Florida Department of Education's school choice website:¹⁰

- 28,927 students received scholarships;
- 1,033 private schools – of which 79 percent were described as “religious” and 21 percent as “non-religious – participated in the program;
- Each scholarship was valued at \$3,950;
- A total of \$106 million in contributions were made by businesses, who later received tax credits; and
- Four SFOs participated in the 2009-2010 school year – Step Up For Students, based in Jacksonville; The Carrie Meek Foundation, based in Tampa; Lightbearers, Inc., based in Daytona Beach; and Educate Today, based in Tampa.

¹ Originally s. 220.187, F.S. (ch. 2000-225, L.O.F.); however, this section was transferred in 2010 to s. 1002.395, F.S. (ch. 2010-24, L.O.F.)

² Information in this section about the Corporate Income Tax Credit Scholarship Program was taken from Report No. 08-68 “The Corporate Income Tax Credit Scholarship Program Saves State Dollars,” prepared by the Office of Program Policy Analysis & Government Accountability. Published in December 2008.

³ Section 220.1875, F.S.

⁴ Section 624.51055, F.S.

⁵ Section 212.1831, F.S. Eligible companies are those whose operations do not collect sales taxes nor lend themselves to immediate computation of sales taxes owed. The best example is an interstate trucking company that leases its vehicles. Because the trucks may drive through multiple states as they deliver goods, the lessee must wait until the end of each month to calculate, for Florida tax purposes, how many miles were driven in Florida to compute the state sales tax owed on the lease.

⁶ Section 211.0251, F.S.

⁷ Section 561.1211, F.S.

⁸ Section 1002.395(5)(a)1., F.S. Subsequent subparagraphs describe how the cap is calculated in subsequent fiscal years.

⁹ See http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2010.pdf.

¹⁰ See http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.

Tax Credit Information

Because the amount of tax credits is capped, corporations must apply, and DOR must approve, the tax credits prior to the companies, which made eligible contributions, claiming the credits on their tax returns.

According to information provided by DOR, for the state's 2010-11 fiscal year, where the credit allocation process for this scholarship program began on January 1, 2010, the following credit allocations were made to 104 different taxpayers:

- \$70.79 million for corporate income tax liability;
- \$21.90 million for insurance premium tax liability;
- \$38.9 million for the malt beverage excise tax liability; and
- \$8.14 million for the liquor and other alcoholic beverage excise tax liability.

DOR says most of the taxpayers have not yet filed their tax returns, because of the difference in tax year and fiscal year for corporations and because of the longer filing period for corporations.

Private Contributions to K-12 Public Schools in Florida

Sixty of Florida's 67 school districts have direct-support organizations called "education foundations" that serve as direct support organizations for the districts. The statewide Consortium of Florida Education Foundations (CFEF)¹¹ claims in its 2009-2010 annual report that nearly \$40 million was contributed to Florida public schools in FY 2008-2009. The CFEF supports programs promoting literacy and STEM (Science, Technology, Engineering & Math) education, as well as assistance for low-performing students and support for career and technical education.

Additionally, the state Department of Education reported that school districts maintain an account for "gifts, grants, and bequests," which likely includes contributions. The total reported in FY 2009-2010 was \$11,664,313.¹²

III. Effect of Proposed Changes:

SB 1542 creates the Florida Public School Tax Credit Program, by which businesses subject to the state corporate income or insurance premium tax may receive credits against those liabilities by contributing to Florida public schools. The program is capped at \$118 million per fiscal year. The tax credit is equal to 100 percent of the contribution but may not exceed 75 percent of the contributor's tax liability after all other credits for which the contributor is eligible have been taken.

Section 1: Creates s. 220.1877, F.S., which outlines a program awarding state tax credits for contributing tax credits to public schools to defray school expenses and sponsor other programs. SB 1542 includes definitions of terms used, and expresses a number of legislative findings about the importance of expanding educational opportunities and improving the quality of educational services in state, so that children will receive higher-quality educations.

¹¹ Website at <http://www.cfef.net/>.

¹² Information on file with the Senate Commerce Committee.

Uses of contributions

The contributions may be used to pay for a public school's educational expense or for the school's programs related to:

- Special assistance;
- Tutoring;
- The Foundation for Florida's Future;¹³
- Mentoring;
- Extracurricular activities;
- Character education; and
- Pay-to-play fees for sports programs.

The contributing business may designate the specific use to which its contribution must be applied. However, each public school that receives contributions not designated for a specific purpose can determine how the contributions are used. The school's advisory council may make recommendations as to how best to apply undesignated contributions.

All eligible contributions received by a public school shall be deposited in a manner consistent with s. 17.57(2), F.S.

Reporting Requirement

SB 1542 requires each public school that receives fees or a cash contribution to report to DOR, in a form prescribed by DOR, the following information;

- The total number of fee and cash contribution payments received during the previous calendar year;
- The total dollar amount of fees and contributions received during the previous calendar year; and
- The total dollar amount from fees and contributions received that were spent by the public school during the previous calendar year.

Administration of Tax Credits

The bill creates a tax credit equal to 100 percent of an eligible contribution to a Florida public school against any tax due in a taxable year from a contributing business. The credit is allowed against the corporate income tax liabilities taxes imposed in ch. 220, F.S., during the same taxable year as the contribution was made. However, such a credit may not exceed 75 percent of the tax due under this chapter for the taxable year, after the application of any other allowable credits by the taxpayer. This new tax credit must be reduced by the difference between the amount of federal corporate income tax owed by the contributing taxpayer, taking into account the credit, and the amount of federal corporate income tax without application of this credit.

The amount of new tax credits and carryforward tax credits available each fiscal year is capped at \$118 million, for this new program and for the tax credits available to insurance companies participating in the Corporate Income Tax Credit Scholarship Program for private school students, pursuant to s. 624.51055, F.S. Insurers who participate in the private-school scholarship program will not be able to participate in this new program.

¹³ Information about the foundation is at <http://www.foundationforfloridasfuture.org/>. Site last visited April 8, 2011.

DOR is authorized to apportion to each district school board the total dollar amount of tax credits available to taxpayers who make eligible contributions to a public school in the school board's district. The apportionment will be calculated based on multiplying each school district's percentage of the previous fiscal year's statewide total number of unweighted, full-time equivalent students times \$118 million. The applicable dollar amount resulting from the calculation for each school district will be apportioned to the school board for allocation by DOR to taxpayers in accordance with DOR rules adopted to implement this provision.

An eligible business who files a Florida consolidated return as a member of an affiliated group pursuant to s. 220.131(1), F.S., may be allowed the credit on a consolidated return basis; however, the total credit taken by the affiliated group is subject to the same 75- percent limitation. A business can only transfer its credits earned under this program to another entity if all of the business' assets are transferred in the same transaction to the other entity. Eligible taxpayers also may choose, beginning with the January 1, 2012, tax year for corporations, to rescind their share of the tax credit, with DOR approval, with the rescinded amount becoming available under the cap for other eligible taxpayers to claim, on a first-come, first-served basis.

Finally, a business may carry forward any unused credits, because of insufficient tax liability, for up to 3 years. This applies to tax credits awarded on the basis of contributions made after January 1, 2012.

DOR and the Department of Education are authorized to develop a cooperative agreement to assist in the administration of this new tax credit/scholarship program, and to adopt any necessary rules. Specifically, DOR is authorized to adopt rules to implement the new program, including rules establishing application forms and procedures, and governing the allocation of tax credits and carryforward credits on a first-come, first-served basis.

Preservation of Credits

SB 1542 specifies that if any provision or portion of the bill related to tax credits is held unconstitutional by any court or is otherwise declared invalid, the unconstitutionality or invalidity shall not affect any credits earned by any taxpayer, with respect to any contribution paid to a public school before the date of a determination of unconstitutionality or invalidity. Such credit shall be allowed as if a determination of unconstitutionality or invalidity had not been made, provided that nothing in this bill, or in combination with any other provision of law, results in the allowance of any credit to any taxpayer in excess of \$1 of credit for each dollar paid to a public school.

Section 2: Provides an effective date of July 1, 2011.

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 has not met to evaluate SB 1542. The bill caps the annual amount of tax credits that could be awarded and claimed at \$118 million under the new Florida Public School Tax Credit Program and that portion of the separate Corporate Income Tax Credit Scholarship Program that is claimed by insurance companies against their premium insurance tax liabilities. As noted above in Section II, DOR has calculated that insurers who contributed to the private school scholarship program are eligible to receive nearly \$22 million in tax credits. This means that the new public school contribution program could actually generate only \$96 million for contributing businesses. If the full amount of \$118 million was contributed to public schools, then the contributing businesses would receive less than a \$1-to-\$1 exchange rate for their contributions.

B. Private Sector Impact:

Indeterminate, but likely positive for those businesses that choose to participate.

C. Government Sector Impact:

Indeterminate. DOR is likely to incur some costs in administering the new program.

VI. Technical Deficiencies:

DOR staff has identified a number of technical deficiencies related to accounting for the tax credits on tax returns. The sponsor's staff has indicated an amendment will be prepared to address these issues.

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.

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