

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 965 Florida Tax Credit Scholarship Program

SPONSOR(S): Appropriations Committee, Finance & Tax Committee, Horner and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	20 Y, 3 N, As CS	Aldridge	Langston
2) State Affairs Committee	12 Y, 3 N	Deslatte	Hamby
3) Appropriations Committee	18 Y, 4 N, As CS	Voyles	Leznoff

SUMMARY ANALYSIS

The Florida Tax Credit Scholarship Program provides private school scholarships to students from families that meet specified income limitations. The program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for:

- Corporate income tax,
- Insurance premium tax,
- Severance taxes on oil and gas production,
- Self-accrued sales tax liabilities of direct pay permit holders, or
- Alcoholic beverage taxes on beer, wine, and spirits.

The bill authorizes the Department of Revenue (department) to provide to eligible SFOs a list of the 100 taxpayers with the greatest tax liabilities for each of these taxes, except the alcoholic beverage taxes on beer, wine and spirits. For corporate income taxpayers only, the bill requires the department to request permission before releasing the information. The taxpayer will have 45 days to object to the release. Under current law, such information is considered confidential and the department may not share it with SFOs.

The bill eliminates a current restriction for the corporate income tax credit and insurance premium tax, that eligible contributions made to eligible SFOs may not exceed 75 percent of the taxpayer's tax due for the taxable year.

Currently, a taxpayer may rescind all or part of an approved tax credit. The amount rescinded may become available to another eligible taxpayer during that fiscal year under certain circumstances. One current restriction on those amounts becoming available to another taxpayer is that the taxpayer rescinding all or part of an approved tax credit may not have previously rescinded any or all of its approved tax credits more than once in the previous 3 tax years. The bill removes this restriction.

The Revenue Estimating Conference estimates that this bill will not have a revenue impact on General Revenue, state trust funds or local governments.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

The Florida Tax Credit Scholarship Program provides private school scholarships to students from families that meet specified income limitations. The program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for:

- Corporate income tax,
- Insurance premium tax,
- Severance taxes on oil and gas production,
- Self-accrued sales tax liabilities of direct pay permit holders, or
- Alcoholic beverage taxes on beer, wine, and spirits.

The tax credit is equal to 100 percent of the eligible contributions made. The SFOs administer the receipt of contributions and scholarship awards.

The amount of credits that may be approved in a fiscal year was set at \$140 million for FY 2010-11. For FY 2011-12 and thereafter, the cap will increase by 25% whenever tax credits approved in the prior fiscal year are equal to or greater than 90% of the tax credit cap amount for that year.¹ The cap amount for FY 2011-12 is \$175 million.

The maximum scholarship award to each individual student is set at a percentage of the unweighted Florida Education Finance Program (FEFP) student funding in the General Appropriations Act. The percentage for FY 2010-11 is 60%, or \$4,106 per student. Thereafter, the percentage increases by four percentage points each fiscal year the tax credit cap increases (when the approved tax credits in the prior fiscal year equal or exceed 90% of the applicable tax credit cap). The percentage will stop increasing upon reaching 80%, and from that year forward, the scholarship limit will be 80% of the unweighted FEFP funding amount.

50% of that scholarship amount is available for students with household income that is more than 215% but less than 230% of the federal poverty level, increasing to 75% for students with household income that is more than 200% but less than 215% of the federal poverty level. For students with a household income of 200% of the federal poverty level or below, the full scholarship award is available.

As of November, 2010, there were 1,073 schools participating in the program and scholarships were awarded to 32,320 students.²

Confidentiality and Information Sharing

All information contained in returns, reports, accounts, or declarations received by the Department of Revenue (department) is confidential except for official purposes and is exempt from Florida's public records laws.³ Section 213.053, F.S., provides specific instances and circumstances under which the department may disclose otherwise confidential taxpayer information, including the persons authorized to receive such information. Any officer or employee, or former officer or employee, of the department

¹ Section 1002.395(5), F.S.

² Florida Tax Credit Scholarship Program, November 2010 Quarterly Report, Florida Department of Education. Available at http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2010.pdf

³ Section 213.053(2), F.S.

who divulges any such information in any manner, except for official purposes, commits a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.

Tax Credit Administration

The corporate income and insurance premium tax credit allowed for eligible contributions made to eligible SFOs may not exceed 75 percent of the taxpayer's tax due for the taxable year.⁴

A taxpayer may apply to the department for any of the credits. The taxpayer must specify in the application each tax for which the taxpayer requests a credit, the applicable taxable year for a credit under s. 220.1875 or 624.51055, F.S., relating to the corporate income and insurance premium tax credits, and the applicable state fiscal year for a credit under s. 211.0251, 212.1831, or 561.1211, F.S., relating to oil and gas production, sales, and alcoholic beverage tax credits, respectively. The department is required to approve the tax credits on a first-come, first-served basis and must obtain the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation's approval prior to approving an alcoholic beverage tax credit under s. 561.1211, F.S.

Taxpayers are authorized to carry forward unused tax credits for up to three years, subject to approval by the department.

Rescinding Scholarship Funding Tax Credits

A taxpayer may apply to the department to rescind all or part of an approved tax credit. The amount rescinded becomes available for that state fiscal year to another eligible taxpayer as approved by the department if the taxpayer receives notice from the department that the rescindment has been accepted. Taxpayers who have previously rescinded any or all of their approved tax credits more than once in the previous 3 tax years are not eligible to receive newly available rescinded tax credits.⁵

Proposed Changes

Confidentiality and Information Sharing

- The bill amends s. 213.053(8), F.S., to authorize the department to provide to eligible SFOs the names and addresses of the 100 taxpayers with the greatest tax liabilities during the most recent calendar year for each of:
 - Insurance premium tax,
 - Severance taxes on oil and gas production,
 - Self-accrued sales tax liabilities of direct pay permit holders, and
 - The 100 taxpayers with the greatest corporate income tax liability for the most recent taxable years
- To be eligible to request and receive such information, an SFO must have been approved for at least \$10 million of tax credit allocations in the prior year.
- The bill provides that eligible SFOs may request such information for any of the above identified taxes, but may not make more than one such request for each tax in any 12 month period.
- The bill requires the department to provide such information for insurance premium taxes, severance taxes on oil and gas production, and self-accrued sales tax liabilities of direct pay permit holders within 45 days of being requested.

⁴ Section 220.1875(1), F.S.

⁵ Section 1002.395(5)(e), F.S.

- The bill requires the department to request corporate income taxpayer's consent to the release of the information before sharing with SFOs. The corporate taxpayer has a 45 day period to object to the release of the information.
- The bill specifies that the information may only be used by the SFOs to notify taxpayers on the top 100 taxpayer lists of the opportunity to make an eligible contribution to the Florida Tax Credit Scholarship Program.

Agencies, governmental or nongovernmental, that receive information are bound by the same requirements of confidentiality as the department. Breach of confidentiality is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.

Corporate Income and Insurance Premium Tax Credit

The bill eliminates the current restriction for the corporate income and insurance premium tax credit that eligible contributions made to eligible SFOs may not exceed 75 percent of the taxpayer's corporate income and insurance premium tax due for the taxable year.

Scholarship Funding Tax Credit Limitations

The bill removes the restriction placed upon taxpayers wishing to receive all or part of a tax credit that another taxpayer rescinded. They will be eligible to receive those credits even if they have rescinded any approved tax credits more than once in the previous three tax years. The bill also increases the maximum credit carry forward period from three years to five years.

B. SECTION DIRECTORY:

- Section 1: Adds paragraph (dd) to s. 213.053(8), F.S., authorizing and requiring the department to disclose certain otherwise confidential information to specified scholarship funding organizations.
- Section 2: Amends s. 220.1875(1), F.S., changing a cap on the amount of corporate income tax credit that a taxpayer may be eligible for.
- Section 3: Amends s. 624.51055(1), F.S., changing a cap on the amount of insurance premium tax credit that a taxpayer may be eligible for.
- Section 4: Amends ss. 1002.395(5), F.S., regarding rescinding approved tax credits.
- Section 5: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) estimates that this bill will not have an impact on General Revenue or state trust fund revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC estimates that this bill will not have a revenue impact on local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to effect county or municipal governments

2. Other:

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution.⁶

The bill provides additional access to confidential information and does not require a separate bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2011, the Finance and Tax Committee adopted two amendments that:

- Changed one of the criteria for being eligible to demand lists of the top 100 taxpayers in the relevant tax categories from the Department of Revenue. The criterion requiring that an SFO provide scholarships to 10,000 or more eligible students was changed to the requirement that an SFO must have been approved for at least \$10 million of tax credit allocations in the prior year.
- Eliminated the restriction for the insurance premium tax credit that eligible contributions made to eligible SFOs may not exceed 75 percent of the taxpayer's insurance premium tax due for the taxable year.

⁶ Section 24(c), Art. I of the State Constitution.

On April 15, 2011, the Appropriation Committee adopted one amendment that requires the DOR to request permission from a corporate income taxpayer before releasing the taxpayer's information. The taxpayer will have 45 days to object to the release of the information.

This analysis is drafted to CS/CS/HB 965.