HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1009 Florida Tax Credit Scholarship Program
SPONSOR(S): Finance & Tax Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Diez-Arguelles	Langston
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Florida Tax Credit Scholarship Program (FTC Program) provides scholarships to students from families that meet specified income limitations. The program is funded with contributions from corporations and insurance companies. The contributors receive a tax credit to be used against their corporate income tax or premium tax liability equal to 100% of their contribution.

<u>Tax credit cap</u>: The bill increases the cap on the amount of credits that may be approved in a fiscal year from $118 million to $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.

<u>Tax credits:</u> The bill expands the revenue sources against which tax credits may be granted for contributions to the program to include: (1) severance taxes on oil and gas production; (2) self-accrued sales tax liabilities of direct pay permit holders; and (3) alcoholic beverage taxes.

<u>Scholarship amount:</u> For FY 2010-11, the bill replaces the maximum scholarship amount of $3,950 with a variable amount stated as a percentage of the Florida Education Finance Program (FEFP) unweighted full-time equivalent (FTE) amount for that fiscal year. For FY 2010-2011, percentage will be 60%. Beginning in FY 2011-12, the percentage increases by 4 percentage points in each fiscal year when the tax credit cap increases, until it reaches a maximum of 80%.

<u>Eligibility for certain students</u>: The bill increases the maximum household income threshold for renewing scholarship recipients and their siblings from 200% of the federal poverty level to 230%, but reduces the maximum scholarship award available to the newly eligible scholarship recipients.

<u>Private school accountability:</u> The bill adds new accountability measures that:

- Require each private school receiving more than $250,000 in scholarship payments in one year to submit a financial report, referred to as an agreed-upon procedures report. The report must be completed by an independent certified public accountant and must address the adequacy of the school's accounting system and financial controls.
- Require student learning gains to be published for each private school that has at least 30 scholarship students with norm-referenced test scores for two consecutive years.
- Authorize the Commissioner of Education to deny, suspend, or revoke a private school's participation in the program if an owner or operator has operated an educational institution in a manner contrary to the public's health, safety, or welfare.

The Revenue Estimating Conference estimated that the additional tax credits authorized by the bill will reduce receipts to the General Revenue Fund by $31.0 million in fiscal year 2010-11 with a recurring reduction in General Revenue Fund receipts of $228.8 million. The bill is also expected to result in increased savings as fewer students will require funding within the FEFP. The increased FEFP savings are expected to exceed the revenue impacts in each of the first four years under the legislation.

The effective date of the bill is July 1, 2010 unless otherwise expressly provided.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

OVERVIEW OF THE PROGRAM

The Florida Tax Credit Scholarship Program (FTC program), was created to encourage private, voluntary contributions from corporate donors to nonprofit scholarship-funding organizations (SFOs).[1] A corporation can receive a dollar for dollar tax credit against its state corporate income tax or insurance premium tax for donations to private nonprofit scholarship-funding organizations (SFOs). The SFOs administer the receipt of contributions and scholarship awards.

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]While current law requires an SFO to provide the Auditor General and the DOE with an annual financial and compliance audit conducted by an independent certified public accountant,[4] there is no similar requirement for participating private schools.

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act[5] or who qualifies for the Food Stamp Program, the Temporary Assistance to Needy Families Program (TANF), or the Food Distribution Program on Indian Reservations (FDPIR) and:[6]

- 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.

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[1] ss. 220.187(1) and 1002.421, F.S.

[2] s. 220.187(8), F.S.

[3] s. 1002.421, F.S.

[4] s. 220.187(6)(l), F.S.

[5] s. 220.187(3), F.S. The eligibility guidelines for 2009-2010 are published in the Federal Register, March 27, 2009, Vol. 74, No. 58. *See* http://www.fns.usda.gov/CND/Governance/notices/iegs/IEGs09-10.pdf

[6] Children from households that receive benefits under the Supplemental Nutrition Assistance Program (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), December 2008, available at http://www.fns.usda.gov/ora/MENU/published/CNP/FILES/DirectCert08-Sum.pdf

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% of the federal poverty guidelines.[7] 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 200% 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.

Student Assessment
For the FTC 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.[8] The DOE approved 21 norm-referenced tests for participating private schools to administer to scholarship students in the 2009-2010 school year.[9]

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 reports to the DOE the year-to-year improvement of participating students.[10] 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 FTC 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 FTC program affects public school performance.[11] The most recent evaluation compares baseline data from the 2006-2007 school year to data from the 2007-2008 school year to measure learning gains.[12] The report noted the following:[13]

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[7] *Id.*
[8] s. 220.187(8)(c)2. and (9)(i)(j), F.S. Chapter 2009-108, L.O.F., renamed the Corporate Income Tax Scholarship (CTC) program as the FTC program.
[9] Rule 6A-6.0960, F.A.C., DOE, Technical Assistance Paper No. 2009-01, available at http://www.floridaschoolchoice.org/information/ctc/files/norm_CTC.pdf The rule also permits the DOE to approve additional tests, if they meet specific criteria. In 2007-2008, four schools that participated in the program used tests that were not approved by the DOE. The DOE terminated the participation of these schools for the 2008-2009 school year. (DOE correspondence, February 23, 2010, on file with the committee). 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 FTC students.
[10] s. 220.187(9)(j), F.S.
[11] *Evaluation of Florida's Corporate Tax Credit Scholarship Program, Baseline Report – Compliance and Test Scores in 2006-07*, Dr. David N. Figlio, Department of Economics, University of Florida and National Bureau of Economic Research, March 6, 2008, *available at* https://www.floridaschoolchoice.org/information/ctc/files/CTC_Baseline_Report.pdf
[12] *Evaluation of Florida's Corporate Tax Credit Scholarship Program First Follow-Up Report – Participation, Compliance and Test Scores in 2007-08*, Dr. David N. Figlio University of Florida, Northwestern University, and National Bureau of Economic Research, June 16, 2009, *available at* https://www.floridaschoolchoice.org/information/ctc/files/figlio_report_2009.pdf The vast majority of the students (70.8 percent) took the Stanford Achievement Test, the nationally norm-referenced test administered to all public school students in Florida in 2007-08, while another 19.9 percent took the Iowa Test of Basic Skills and 3.8 percent took the Terra Nova test. The other students took a number of other tests, most notably the Basic Achievement Skills Inventory, taken by 2.0 percent of students.
[13] *Id.* The DOE is currently under contract with the University of Florida to compare scholarship students' test score gains with comparable students in public schools. Contract dated July 1, 2009, on file with the committee.

- Because the 2007-08 academic year is the first year in which data collection was fully controlled, measures of test score gains from 2006-07 to 2007-08 should only be properly interpreted as descriptive. True test score gains might have been larger or smaller. While it is inappropriate to draw conclusions about the efficacy of the program based on these incomplete data, it is still possible to compare test score gains for descriptive purposes based on the available data.

- Program participants tend to come from less advantaged families than other students receiving free or reduced-price lunches.

- Program participants are more likely to come from lower-performing public schools prior to entering the program. In addition, they tend to be among the lowest-performing students in their prior school, regardless of the performance level of their public school.

- The typical student in the program scored at the 44.8th national percentile in reading and the 46.3rd percentile in mathematics. The distribution of test scores is similar whether one considers the entire program population or only those who took the Stanford Achievement Test in the spring of 2008.

- The mean reading gain for program participants is -0.1 national percentile ranking points in reading and -0.9 national percentile ranking points in mathematics. In other words, the typical student participating in the program tended to maintain his or her relative position in comparison with others nationwide.

- Test score gains for program participants are similar in magnitude to comparable students in the public schools. Because the retroactive 2006-07 test score collection was imperfect, it will be necessary to wait until the collection of 2008-09 scores before one can determine whether program participants' gains are larger, smaller, or about the same as public school students' gains.

- The 2008-2009 school year will be the first year in which it will be possible to calculate student test score gains for a nearly complete set of students participating in the program in tested grades.

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. 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. If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may use up to 3% of the contributions received for reasonable and necessary administrative expenses. No more than one-third of the funds may be used for expenses related to recruitment of contributions.

History

The Legislature initially capped the scholarship program at $50 million in tax credits per state fiscal year[14], but subsequently expanded the cap to $88 million in 2003.[15] Beginning with FY 2008-2009, the cap was increased by $30 million to $118 million.[16] Until 2009, tax credits under the scholarship 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 to include the premium tax under s. 624.509, F.S. The premium tax is imposed on insurance premiums

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[14] ch. 2001-225, L.O.F.

[15] s. 9, ch. 2003-391, L.O.F.

[16] ch. 2008-241, L.O.F.

written in Florida and paid by insurance companies. The law allows insurance companies to receive a credit of 100% of an eligible contribution to an eligible SFO against any tax due for a taxable year. However, the credit may not exceed 75% of the tax due. The law provides that the $118 million cap applies to all tax credits (the corporate income tax and the insurance premium tax credits 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 following table summarizes information related to the tax credits approved by the DOR:[17]

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[18]
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[19]	106	62	$85,611,140	0	$0
2008-09	125	75	$97,415,847	0	$0
2009-10	110	75	$99,646,682[20]	0	$0
2010-11	4	3	$6,275,000	0	$0

Currently, there are 1,017 participating private schools and 27,700 students receiving scholarships from two SFOs: Step Up for Students (26,240) and the Carrie Meek Foundation, Inc. (1,280).[21]

In a Research Memorandum published March 1, 2010, The Office of Program Policy Analysis and Government Accountability concluded that net savings from the FTC Scholarship Program totaled $36.2 million in FY 2008-09. Net savings were determined by subtracting FTC program tax credits (based on the eligible contributions to SFOs) from the estimated FEFP cost savings.

PROPOSED CHANGES

Tax Credits for Contributions to Eligible SFOs

Currently, s. 220.187, F.S., contains the statutory authority for the FTC program and grants credits against the state corporate income tax and insurance premium tax for eligible contributions to SFOs. The bill transfers and renumbers s. 220.187, F.S., to s. 1002.395, F.S., so that the statutory authorization for the FTC Program is now set forth in the K-20 Education Code, specifically Part III of Chapter 1002, F.S., entitled "Educational Choice." However, the provisions relating to the current corporate tax credit in s. 220.187(5)(a) and (c), F.S., are reestablished as a new section 220.1875,

[17] DOR, March 1, 2010.

[18] 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.

[19] Effective for tax years beginning January 1, 2006, section 220.187(5)(d), 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.

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

[21] *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, February 2010. Of the participating private schools, 79.5 percent are religious schools and 20.5 percent are non-religious schools. *See* https://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_feb2010.pdf

F.S., so that current law relating to the corporate income tax credit remains in the chapter that imposes the tax, Chapter 220. Current law relating to the insurance premium tax credit remains in s. 624.51055, F.S.

Revenue Sources

The bill expands the revenue sources against which tax credits can be claimed for donations to a SFO. The new revenue sources are:

Severance Taxes on Oil and Gas Production

Oil and gas production severance taxes under ss. 211.02 and 211.025, F.S., respectively, are imposed on persons who sever oil or gas in Florida for sale, transport, storage, profit, or commercial use. These taxes are remitted to the Department of Revenue (DOR) and distributed to General Revenue with additional distributions to the Minerals Trust Fund and to the counties where production occurred. General Revenue distributions from the severance taxes on oil and gas are estimated to be $3.3 million in FY 2010-11.

The bill creates section 211.0251, F.S., which authorizes a credit of 100% of an eligible contribution to an SFO against any tax due under ss. 211.02 or 211.025, F.S. However, the credit may not exceed 50% of the tax due on the return the credit is taken. The bill directs the DOR to disregard tax credits under this section for purposes of the distributions of tax revenue under s. 211.06, F.S., so that only amounts distributed to the General Revenue Fund are reduced. This section takes effect January 1, 2011.

Sales Taxes Paid by Direct Pay Permit Holders

Section 212.183, F.S., authorizes DOR to establish a process for the self-accrual of sales taxes due under Chapter 212; the process involves DOR granting a direct pay permit to a taxpayer, who then pays the taxes directly to the DOR.[22] Direct pay permit holders include: dealers who annually make purchases in excess of $10 million per year in any county; dealers who annually purchase at least $100,000 of tangible personal property, including maintenance and repairs for their own use; dealers who purchase promotional materials whose ultimate use is unknown at purchase; eligible air carriers, vessels, railroads, and motor vehicles engaged in interstate and foreign commerce; and dealers who lease realty from a number of independent property owners.[23] According to information obtained from DOR, there were 648 direct pay permit holders as of February 2010. Taxes due as a result of the direct pay permits totaled $162.1 million in 2008 and $138.5 M for the 11-month period of 2009 ending in November.

The bill creates section 212.1831, F.S., which authorizes a credit of 100% of an eligible contribution against any state sales tax due from a direct pay permit holder as a result of the direct pay permit held pursuant to s. 212.183, F.S. The bill directs the DOR to disregard tax credits under this section for purposes of the distributions of tax revenue under s. 212.20, F.S., so that only amounts distributed to the General Revenue Fund are reduced. This section takes effect January 1, 2011.

Alcoholic Beverage Taxes

Excise taxes on malt beverages (beer), wines, and liquor are imposed by ss. 563.05, 564.06, and 565.12, F.S. The taxes are due from manufacturers, distributors and vendors of malt beverages, and from manufacturers and distributors of wine, liquor, and other specified alcoholic beverages. Taxes are remitted to the Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation (DBPR). The ABT is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in

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[22] Direct pay was originally designed to overcome the tax complexities in situations where the taxability of a transaction could not be easily determined at the time of purchase. For example, a number of states exempt transactions if the item purchased is used in a particular manner, e.g., for manufacturers, if the item is used in the manufacturing process or as an "ingredient and component part" of their sale products. In such instances, direct pay authority would allow an entity to purchase certain products for all types of uses and to report the appropriate tax after the actual use had been determined. *See Model Direct Payment Permit Regulation: A Report of the Steering Committee,* Task Force on EDI Audit and Legal Issues for Tax Administration, June 2000, available at http://www.taxadmin.org/FTA/pub/DPay.pdf

[23] s. 212.183, F.S., and Rule 12A-1.0911, F.A.C.

Florida.[24] Distributions of the excise taxes on alcoholic beverages are made to the General Revenue Fund, the Alcoholic Beverage and Tobacco Trust Fund, and Viticulture Trust Fund.

The bill creates s. 561.1211, F.S., to authorize a credit of 100% 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. The credit is limited to 90% of the tax due on the return on which the credit is taken. ABT is directed to disregard tax credits under this section for purposes of the distributions of tax revenue under ss. 561.12(1)(a) and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced. This section takes effect July 1, 2010.

Application and Approval of Tax Credits

Newly created s.1002.395(5), F.S., sets forth the process for application and approval of the credits. A taxpayer may apply to DOR 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 ss. 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 ss. 211.0251, 212.1831, or 561.1211, F.S., relating to oil and gas production, sales, and alcoholic beverage tax credits, respectively. DOR is required to approve the tax credits on a first-come, first-served basis and must obtain the Division's approval prior to approving an alcoholic beverage tax credit under s. 561.1211, F.S.

As in current law, taxpayers are authorized to carry forward unused tax credits for up to three years, subject to approval by DOR, and may also request DOR to approve the rescindment of an approved tax credit. The bill adds a requirement that the DOR obtain the Division's approval prior to approving the carryforward or rescindment of an alcoholic beverage tax credit under s. 561.1211, F.S.

Cap on Annual Tax Credit Approvals

The maximum amount of tax credits and carryforward of tax credits that may be granted in each state fiscal year under the program is currently $118 million.[25,26] For purposes of ensuring that the $118 million tax credit cap is not exceeded, the Department of Revenue (DOR) is responsible for approving each tax credit, carryforward tax credit and rescindment of a tax credit, as well as for adopting rules that establish tax credit application forms and procedures governing the allocation of tax credits on a first-come, first-served basis.[27] While the current cap on tax credits is for the state fiscal year as provided in s. 220.187(5)(b), F.S., in practice, the fiscal year is interpreted to encompass all corporate taxable years that begin on or after the January 1 of the calendar year preceding the start of the state fiscal year. Generally, all taxable years for insurance premium taxes begin on January 1. For purpose of allocation within the fiscal year cap, credits against premium tax are administered in the same fashion as corporate tax credits.

For fiscal year 2010-11, the bill increases the tax credit cap to $140 million. Beginning in fiscal year 2011-12, the bill authorizes the cap to increase by 25% whenever credits approved by DOR in the prior fiscal year exceed 90% of the tax credit cap for that year. Carryforwards of unused tax credits previously approved continue to be allowed as under current law. However, carryforwards of unused tax credits no longer count against the tax credit cap in subsequent years, even though DOR must still approve them in order to maintain information needed for revenue estimating purposes. The mechanisms for limiting tax credit approvals by DOR and for increasing the tax credit cap rely on two new definitions:

- The term "annual tax credit amount" is defined in s. 1002.395(2)(a), F.S., to mean: "for any state fiscal year, the sum of the amount of tax credits approved under paragraph (5)(b), including tax credits to be taken under s. 220.1875 or s. 624.51055 that are approved for a taxpayer whose taxable year begins on or after the January 1 of the calendar year preceding the start of the state fiscal year."

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[24] s. 561.02, F.S.

[25] s. 220.187(5)(b), F.S.

[26] When the FTC Program began in 2002, the maximum amount of tax credits that could be granted for each state fiscal year was $50 million. Subsequently, the Legislature increased this amount to $88 million effective July 1, 2003, and to $118 million effective July 1, 2008. *See* chs. 2003-391 and 2008-241, L.O.F.

[27] s. 220.187(5) and (13), F.S.

- The term “tax credit cap amount” is defined in s. 1002.395(2)(i), F.S., to mean, “the maximum annual tax credit amount that the [DOR] may approve for a state fiscal year.”

The bill specifies in s. 1002.395(5)(a)1., F.S., that the “tax credit cap amount” is $140 million for fiscal year 2010-11. Beginning in fiscal year 2011-12 and thereafter, if the amount of approved tax credits in the prior fiscal year is equal to or greater than 90% of the tax credit cap amount applicable to that year, the tax credit cap amount will increase by 25% and will remain at the new amount until the 90% threshold is met again, allowing another 25% increase in the cap. The state fiscal year cap in the bill preserves the current timing and administration of FTC credits against corporate income and insurance premium taxes, except for approved carryforwards of unused tax credits, which will no longer count against the cap. Tax credits allowed against the new revenue sources must be applied for and taken within the applicable fiscal year. DOR is required to publish on its website information identifying the tax credit cap amount when it is increased under the bill.

Adjusted Federal Income Definition
Section 220.13, F.S., defines “adjusted federal income” and lists adjustments, additions, and subtractions to be made for Florida tax purposes. Section 220.13(1)(a)11., F.S., provides an addition for the amount taken as a credit against corporate income tax for the taxable year under s. 220.187, F.S.

The bill amends s. 220.13(1)(a)11., F.S., to provide that the addition for the amount taken as a credit against corporate income tax under s. 220.1875, F.S.: (a) is intended to ensure that same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax; and (b) is not intended to result in adding the same expense back to income more than once. The bill creates an unnumbered section of law to provide that this amendment is intended to be clarifying and remedial in nature and applies retroactively to corporate income tax credits under s. 220.187, F.S., between January 1, 2002 and June 30, 2010, and prospectively to corporate income tax credits under s. 220.1875, F.S.

Cooperation between DOR, ABT and DOE and Sharing of Taxpayer Information
Section 213.053, F.S., provides for the confidentiality of taxpayer information received by DOR in relation to the taxes on: severance and production of minerals under ch. 211, F.S; sales, use, and other transactions under ch. 212, F.S.; corporate income under ch. 220, F.S.; and insurance premiums under s. 624.501, F.S. This information may not be shared with third parties unless expressly authorized by statute.

The bill allows DOR to provide DOE and ABT with confidential and exempt information related to the administration of the tax credit program. Further, the bill requires ABT, DOR, and DOE to develop a cooperative agreement, and requires DOR to obtain prior approval from ABT before approving the tax credits, carryforwards, and rescindments related to alcoholic beverage taxes. Additionally, the bill directs DOR, the ABT division of DBPR, and the State Board of Education to adopt rules necessary to administer their new responsibilities.

Eligible Students
A student may continue to receive a scholarship under the FTC program if the household income does not exceed 230% of the federal poverty level, an increase from the current 200% threshold. A sibling of a scholarship student who continues in the program is eligible for a scholarship if he or she resides in the same household, meets one or more of the eligibility criteria, and the household income level does not exceed 230% of the federal poverty level.

Scholarships
Currently, the maximum scholarship award is set at $3,950. Beginning with state fiscal year 2010-2011, the bill provides for calculating the maximum scholarship award as a percentage of the unweighted Florida Education Finance Program (FEFP) student funding in the General Appropriations

Act. The bill sets the percentage for FY 2010-11 at 60%.[28] Thereafter, the bill increases the percentage by four percentage points for any fiscal year when the tax credit cap also 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 FTE funding amount.

Under the bill, the scholarship amount will be reduced by 25% for a student with a household income that is more than 200% but less than 215% of the federal poverty level, and by 50% for a student with a household income that is more than 215% but less than 230% of the federal poverty level.

Student Assessment

Under current law, a participating private school is responsible for ensuring that scholarship students take one of the nationally norm-referenced tests identified by the DOE. The bill clarifies that this responsibility applies to students in grades three through ten.

The bill requires an independent research organization to annually report the year-to-year learning gains of FTC scholarship students on a statewide basis to the DOE and to the extent possible compare them to the learning gains of public school students with similar socioeconomic backgrounds. The learning gains must also be reported according to each participating school that has a minimum of 30 students with scores for tests administered during or after the 2009-2010 school year for two consecutive years at that school.

Participating Private Schools

A private school that receives more than $250,000 in FTC scholarship funds in a state fiscal year is subject to an agreed-upon procedures engagement, in accordance with attestation standards established by the American Institute of Certified Public Accountants and guidance from the SFOs. Under the bill, an SFO that provides more than $250,000 in scholarship funds to an eligible private school in the 2009-2010 state fiscal year and thereafter must participate in the joint development of agreed-upon procedures[29] and guidelines governing the materiality of exceptions identified during the accountant's engagement. In developing and reviewing the procedures and guidelines, the SFO must consult with the accreditation associations that are members of the Florida Association of Academic Nonpublic Schools (FAANS).[30] In developing agreed-upon procedures, professional standards provide for the involvement of a practitioner (a certified public accountant) and specified parties.

Based on the "agreed upon procedures" and pursuant to an annual contract with an independent certified public accountant, an annual report must be provided to DOE by any private school which receives more than $250,000 in scholarship funds from an SFO in the 2010-2011 state fiscal year and thereafter. The purpose of the report is to determine if a private school:

- Was verified as eligible to participate in the FTC program;
- Has an adequate accounting system, system of financial controls, and process for deposit and classification of scholarship funds; and
- Has properly expended scholarship funds for education-related expenses.

The results of the report must be provided by the private school to the SFO providing the majority of the school's scholarship funds. The SFO must monitor the school's compliance with the contract

[28] If 60% of unweighted FEFP funding had been used in FY 2009-10 to determine the maximum scholarship amount, it would have been $4,124 instead of $3,950.

[29] The specified parties and the practitioner agree upon the procedures that the parties believe are appropriate. *See* American Institute of Certified Public Accountants (AICPA), AT §201.03, Codification of Statement of Auditing Standards for Agreed-Upon Procedures Engagements, available at http://www.aicpa.org/download/members/div/auditstd/AT-00201.PDF

[30] FAANS is a voluntary association of private school accrediting agencies and other private school organizations. FAANS accreditation agency members include the Association of Christian Schools International, the Association of Independent Schools of Florida, the Christian Schools of Florida, the Council of Bilingual Schools, the Episcopal Diocese of Florida, the Florida Association of Christian Colleges and Schools, the Florida Catholic Conference, the Florida Conference of Seventh-Day Adventist Schools, the Florida Council of Independent Schools, the Florida Kindergarten Council, the Florida League of Christian Schools, the Lutheran Schools, the Florida-Georgia District, and the National Independent Private School Association. *See* http://www.faans.org/index.html

requirements and annually notify the Commissioner of Education if the school fails to submit the report or if the report identified any exceptions.

The Commissioner of Education is authorized to impose sanctions on a participating private school if he or she determines that the owner or operator is operating or has operated an educational institution in manner that jeopardizes public health, safety, or welfare. The bill provides factors that the commissioner may consider prior to making a determination, such as prior criminal or civil administrative sanctions.

B. SECTION DIRECTORY:

Section 1 renumbers s. 220.187, F.S. as 1002.395 and makes changes to the Florida Tax Credit Scholarship Program.

Section 2 creates s. 211.0251, F.S., providing a credit against oil and gas severance taxes.

Section 3 creates s. 212.1831, F.S., providing a credit against state sales taxes.

Section 4 amends s. 213.053, F.S., providing for information sharing.

Section 5 amends s. 220.02, F.S., providing for the order in which tax credits are taken.

Section 6 amends s. 220.13, F.S., providing additions to taxable income.

Section 7 provides for retroactive application of the amendment in Section 6.

Section 8 amends s. 220.186, F.S. to change a cross-reference.

Section 9 creates s. 220.1875, F.S. to provide for a corporate income tax credit.

Section 10 creates s. 561.1211, F.S. to provide for an excise tax on alcoholic beverage credit.

Sections 11-19 change cross-references.

Section 20 provides an effective date of July 1, 2010, except as otherwise provided (Sections 2 and 3 are effective January 1, 2011).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On March 12, 2010, the Revenue Estimating Conference (REC) estimated the impact on General Revenue Fund receipts of the additional tax credits authorized by the bill to be -$31.0 million in fiscal year 2010-11, with a recurring impact of -$228.8 million. The following table sets forth the year-by-year revenue impacts.

REC Impacts March 12, 2010 ($Millions)	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash	FY 2014-15 Cash
Beverage Excise Tax GR	-24.8	-183.0	-52.0	-86.2	-129.2	-183.0
Sales and Use Tax GR	-6.2	-45.8	-13.0	-21.6	-32.3	-45.8
Total GR	-31.0	-228.8	-65.0	-107.8	-161.4	-228.8

   The estimate is based on the expectation that additional eligible contributions will result in the tax credit cap increasing by 25% each year of the forecast.

2. Expenditures:

The bill is expected to result in savings as fewer students will require funding within the FEFP as the FTC program is expanded. At the March 12, 2010 REC impact conference, the Office of Economic and Demographic Research presented an estimate of FEFP savings based on the higher annual tax credit caps and higher limits on scholarship awards per student.[31] Net anticipated savings are expected in each of the first four years, with an anticipated loss in the fifth year. The following table compares anticipated savings with the estimated revenue impacts.

Comparison of Potential FEFP Savings with Revenue Impact
($Millions)

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
FEFP Savings	38.2	70.8	111.9	164.1	222.5
Revenue Impact	(31.0)	(65.0)	(107.8)	(161.4)	(228.8)
Net Savings	7.2	5.8	4.1	2.7	(6.3)

The estimate of savings is based on the expectation that the additional contributions will result in the maximum possible number of students being awarded scholarships.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, the maximum annual scholarship amounts will be based on a percentage of the unweighted FEFP funding per FTE, and the percentage is allowed to increase until it reaches a maximum of 80%. This calculation will result in increases in the maximum annual scholarship from the current limit of $3,950. Schools that accept scholarship funds may see an increase in revenues.

Under current law, some SFOs may use 3% of eligible contributions for reasonable and necessary administrative expenses. The amounts that may be used for administrative expenses will increase as the tax credit cap increases and more eligible contributions are received.

Taxpayers who make eligible contributions to SFOs will see a dollar for dollar reduction in their state tax liabilities.

A private school that receives more than $250,000 in FTC scholarship funds in a state fiscal year is subject to the agreed-upon procedures engagement specified in the bill. The number of schools subject to these engagements is unknown. According to the DOE, 80 schools received in excess of $250,000 in FTC scholarship funds from one SFO (Step Up for Students) for the 2008-2009 school year.[32] These schools may have expenses to comply with this requirement.

[31] In a Research Memorandum published March 1, 2010, The Office of Program Policy Analysis and Government Accountability concluded that net savings from the FTC Scholarship Program totaled $36.2 million in FY 2008-09. Net savings were determined by subtracting FTC program tax credits (based on the eligible contributions to SFOs) from the estimated FEFP cost savings. The FEFP cost saving estimates for the provisions of this bill were presented to the REC on March 12, 2010, and were based on a methodology consistent with that used by OPPAGA, but adjusted for the changes in the FTC program under the bill, most significantly the higher tax credit cap and higher maximum scholarship amount.

[32] DOE correspondence. February 24, 2010. The SFO provided scholarship funds to 272 schools during that school year.

D. FISCAL COMMENTS:

Under the provisions of the bill, a scholarship student retains eligibility to participate in the FTC program if the household income does not exceed 230% of the federal poverty level. A sibling of a scholarship student who continues in the program is eligible for a scholarship if he or she resides in the same household and the household income level does not exceed 230% of the federal poverty level. Current FTC scholarship students and a sibling who resides in the same household may only continue to participate in the program, if parental income does not exceed 200% of the federal poverty level. The current federal poverty level for a household of four individuals is $22,050.[33] For a student to be eligible for reduced price lunches under the National School Lunch Program, the annual household income may not exceed $40,793 (185% of the federal poverty level). For a student to be eligible for free lunches, the annual household income may not exceed $28,665 (130% of the federal poverty level). Under the provisions of the bill, a student from a family of four could continue to participate in the CTC program if the annual household income does not exceed $50,715 (230% of the federal poverty level). The number of additional students who will remain in the FTC program because of the higher income thresholds is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

The Proposed Council Substitute is different than HB 1009 in the following ways:

- As filed, the bill changed the accounting period for approving and granting tax credits under the FTC program to the calendar year. The CS retains the state fiscal year as the fundamental accounting period on which the program is based.
- The tax credit cap is set at $140 million for state fiscal year 2010-11 and allowed to increase thereafter, replacing the original 2009 calendar year tax credit cap of $118 million, which was allowed to increase in 2010 based on 2009 tax credit approvals.
- Unused tax credits previously approved and counted against a prior year tax credit cap may still be carried forward and used in subsequent years, but approved tax credit carryforwards will no longer count against the tax credit cap in the years after initial approval.
- For fiscal year 2010-11, the limit on scholarship awards is changed to 60%, rather than 65%, of the unweighted FEFP funding per FTE. After FY 2010-11, the original bill called for three subsequent 5 percentage point increases in the percentage applied to FTE funding to determine the scholarship limits in FY 2011-12 through FY 2013-14, with the percentage at 80% for FY 2013-14 and thereafter. As revised, increases in the

[33] Federal Register, March 27, 2009, Vol. 74, No. 58.

percentage used to determine the scholarship limit are allowed only when the tax credit cap increases - requires tax credit approvals to be 90% of the prior year tax credit cap – and the percentage is only allowed to increase by four percentage points in any year the contingency is met until the percentage reaches 80%.

- Tax credits against the oil and gas severance tax are limited to 50% of the tax due on the return the credit is taken.
- Tax credits against alcoholic beverages taxes are limited to 90% of the tax due on the return the credit is taken.