HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 14-02 Relating to Tax Credit Scholarship Programs
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Flieger	Langston

SUMMARY ANALYSIS

The proposed committee bill makes numerous changes to the Florida Tax Credit Scholarship program's student eligibility criteria, scholarship amounts, tax credit availability, and scholarship-funding organization (SFO) accountability standards. It also creates a new Florida Sales Tax Credit Scholarship program that allows dealers who collect state sales and use tax to receive tax credits for making donations to scholarship-funding organizations. The administrative provisions of the new program will parallel those of the existing program as modified by this bill.

The bill removes the prior public attendance requirement for students whose household income is below 185% of the federal poverty level. Beginning in fiscal year 2016-17, new eligibility is created for students whose household income is greater than 185% but does not exceed 260% of the federal poverty level and who are eligible to enter kindergarten or first grade, or attended public school in the prior year. Scholarship-funding organizations are required to serve all new applicants at or below 185% of the federal poverty level before serving students above 185%.

The bill increases the maximum amount of the per student scholarship by 4% so that the maximum is 84% of the FEFP per student funding amount. In concert with the expansion of student eligibility to those with higher household incomes, the bill establishes a means-tested, tiered phasedown of the maximum per student scholarship amount, beginning in the 2016-2017 fiscal year:

- The amount is reduced by 12% for household incomes between 200% and 215%
- The amount is reduced by 26% for household incomes between 215% and 230%
- The amount is reduced by 40% for household incomes between 230% and 245%
- The amount is reduced by 50% for household incomes between 245% and 260%

The bill increases the accountability for scholarship-funding organizations by strengthening the application, approval, and renewal process to participate in the programs by requiring additional financial, organizational, and operational documentation in the application. In consultation with the Department of Revenue and Chief Financial Officer, the Department of Education will review and provide recommendations for approval or disapproval of each application. The State Board of Education will give final approval or disapproval. With the initial application, the organization is required to have a surety bond for an amount equal to 25% of their anticipated fund donations, which will be adjusted on an annual basis thereafter to equal the amount of undispersed donations.

SFOs that wish to renew their application to continue participating will be required to include a written statement from the auditor general verifying annual audit results, a copy of its IRS Form 990, annual audit, as well as an annual report regarding donations, expenditures, scholarship applications, and scholarship recipients.

The existing scholarship program and the new scholarship program will operate under a combined tax cap. Credits can be approved under either program until the sum of the credits for both programs reach the combined cap. Assuming that each year the annual tax credit amount is at least 90% of the prior year's cap, the bill increases the combined cap by approximately $30 million over, compared to current law, in each year from 2014-15 through 2017-18. The bill also allows tax credits for both the existing program and the new sales tax program to be transferred between affiliated corporate entities.

Staff estimates that, while the program as revised by this bill will produce net savings to the state over the next five years (i.e., expenditure savings greater than revenue losses) the net savings will be substantially reduced, compared to current law. Net savings are estimated to be $3.7 million higher in fiscal year 2014-15, compared to current law, and lower by $1.9 million, $35.9 million, $48.3 million and $62.8 million in fiscal years ending 2016, 2017, 2018, and 2019, respectively.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

History of the Florida Tax Credit Scholarship Program

The Florida Tax Credit Scholarship Program (program) provides private school scholarships to students from families that meet specified income levels.[1] 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.[2] The tax credit is equal to 100 percent of the eligible contributions made.[3]

The Legislature initially capped the program at $50 million in tax credits per state fiscal year,[4] but expanded the cap to $88 million in 2003.[5] Beginning in FY 2008-09, the cap was increased by $30 million to $118 million.[6] Until 2009, tax credits under the program were only available against the state's corporate income tax liability.[7]

In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed to include the premium tax.[8] The premium tax is imposed on insurance premiums written in Florida and paid by insurance companies. In 2010, the revenue sources against which tax credits can be claimed were further expanded to include severance taxes on oil and gas production;[9] self-accrued sales tax liabilities of direct pay permit holders;[10] and alcoholic beverage taxes on beer, wine, and spirits.[11] Tax credits received under this program may not be transferred, with an exception for transactions where all of the assets of a taxpayer who has received a credit are being transferred.

The Legislature also increased the tax credit cap to $140 million, beginning in FY 2010-11, and authorized the cap to increase by 25 percent for the subsequent year whenever credits approved by Department of Revenue (DOR) in the prior fiscal year exceeded 90 percent of the tax credit cap for that year, beginning in FY 2011-12.[12] In 2012, the legislature increased the cap for FY 2012-13 to $229 million, an additional $10.25 million increase over the 25 percent increase provided by statute.

During the 2012-13 school year, scholarships in the amount of $206.9 million were awarded to a total of 51,075 students enrolled in 1,338 participating Florida private schools.[13]

Scholarship Funding Organizations

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[1] Section 1002.395(3), F.S.
[2] Section 1002.395(1) and (5), F.S.
[3] Sections 220.1875 and 1002.395(5), F.S.
[4] Section 5, ch. 2001-225, L.O.F.
[5] Section 9, ch. 2003-391, L.O.F.
[6] Section 1, ch. 2008-241, L.O.F.
[7] *See* s. 3, ch. 2009-108, L.O.F.
[8] *Id*.; a premium tax pursuant to s. 624.509, F.S.
[9] Section 211.0251, F.S.
[10] Section 212.1831, F.S.
[11] Sections 211.0251, 212.1831, and 561.1211, F.S., direct DOR and the Department of Business and Professional Regulation to disregard tax credits accordingly for purposes of the distributions of tax revenue under ss. 211.06, 212.20, 561.12(1)(a) and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced.
[12] Section 1, ch. 2010-24, L.O.F.
[13] Florida Department of Education, *Fast Facts and Program Statistics*, *available at*, http://www.floridaschoolchoice.org/Information/CTC/files/Fast_Facts_FTC.pdf (last accessed February 14, 2014)

SFOs are charitable organizations exempt from federal income tax[14] that administer the receipt of contributions and distribution of scholarship awards.[15] Scholarships must be provided for eligible students on a first-come, first-serve 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.[16] Similarly, a taxpayer making a contribution may not designate a specific child or group of children as the beneficiaries of the scholarship.[17] If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may use up to three percent of the contributions received for reasonable and necessary administrative expenses. No more than one-third of the funds available for administrative expense may be used for expenses related to recruitment of contributions.[18]

SFOs must expend at least 75 percent of donations, net administrative costs, as scholarship payments each year. Any amounts carried forward to the next year must be spent in that year.

Currently, to become an SFO, any non-profit organization may apply to the Department of Education. All owners and operators of the organization must pass a level 2 background check upon beginning employment there and every 5 years thereafter. They also must provide to the Auditor General and the Department of Education an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant and in accordance with rules adopted by the Auditor General. The Department of Education requires additional quarterly reports from each SFO regarding the number of students participating and the schools at which they are enrolled.

Participating Private Schools

Private schools participating in the program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.[19] To be eligible for participation in the program, a private school must demonstrate fiscal soundness, provide information on academic results, and meet Department of Education (DOE) and SFO reporting requirements.[20] The inability to meet these requirements will cause DOE to declare the private school ineligible to participate in the program.[21]

Student Eligibility

Under the program, SFOs may provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act[22] or is on the direct certification list[23] and:[24]

- 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 through fifth grade; or
- Received a scholarship under the program or from the state the previous school year;

[14] Section 1002.395(2)(f), F.S.; s. 501(c)(3) of the Internal Revenue Code.
[15] Section 1002.395(6), F.S.
[16] Section 1002.395(6), F.S.
[17] Section 1002.395(2)(e), F.S.
[18] Section 1002.395(6), F.S.
[19] Section 1002.421, F.S.
[20] Section 1002.395(8), F.S.
[21] Section 1002.395(9), F.S.
[22] United States Department of Agriculture (USDA), *National School Lunch Program Fact Sheet* (Oct. 2011), *available at* http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf.
[23] "Direct certification list" is the certified list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations provided to the Department of Education by the Department of Children and Family Services. Section 1002.395(2)(c), F.S.
[24] Children from households that receive benefits under the supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program, Temporary Assistance to Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR), and children placed in foster care are deemed "categorically eligible" for free school meals, thereby eliminating the need for households to submit an application for meal benefits. USDA, *Eligibility Manual for School Meals*, at 11-13 (Oct. 2011), *available at* http://www.fns.usda.gov/cnd/Guidance/EliMan.pdf.

A student who is placed, or during the previous state fiscal year was placed, in foster care is eligible regardless of household income.

Contingent upon available funds, a student does not lose his or her scholarship due to a change in the economic status of the student's parents unless the parents' household income exceeds 230 percent of the federal poverty guidelines.[25] A sibling of a scholarship student who continues to participate in the program and resides in the same household as the student is also eligible as a first-time 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.[26]

A student is not eligible for a scholarship if enrolled in a school providing educational services to youth in Department of Juvenile Justice commitment programs, is receiving a scholarship from another SFO, is receiving another scholarship pursuant to Ch. 1002, is being home-schooled, is participating in certain private tutoring programs, is participating in a state-funded virtual school, correspondence program, or distance learning program beyond two courses per year, or is enrolled in the Florida School for the Deaf and the Blind.

Student Scholarship Amounts

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 2013-2014 is 72 percent, or $4,880 per student. Thereafter, the scholarship amount increases by four percentage points each fiscal year the tax credit amounts meet or exceed 90 percent of the tax credit cap. The percentage will stop increasing upon reaching 80 percent, and from that year forward, the scholarship limit will be 80 percent of the unweighted FEFP funding amount.[27] The maximum limit for a scholarship awarded to a student for enrollment in a Florida public school that is located outside the district in which the student resides or in a lab school as defined in s. 1002.32, F.S., is $500.

The actual scholarship amount a student receives is further dependent upon the student's household income level. For students with household income levels above 215 percent, but equal to or less than 230 percent of the federal poverty level, the scholarship amount is 50 percent of the maximum award. The amount increases to 75 percent of the maximum award for students with household income that is more than 200 percent but less than 215 percent of the federal poverty level. For students with a household income of 200 percent of the federal poverty level or below, the full scholarship award is available.

The following table shows the history of the program and historical tax credit information.[28]

	Award Per Student	**Student Scholarships**	**Awarded Scholarships**	**Maximum Tax Credit Cap**	**Tax Credits Approved[29]**
FY 2001-02	$3,500			$50,000,000	
FY 2002-03	$3,500	15,585	$50,000,000	$50,000,000	$47,686,000
FY 2003-04	$3,500	11,550	$40,000,000	$88,000,000	$47,579,000
FY 2004-05	$3,500	10,549	$36,655,500	$88,000,000	$47,560,000
FY 2005-06	$3,500	15,123	$46,745,482	$88,000,000	$80,323,071
FY 2006-07	$3,750	17,819	$59,300,655	$88,000,000	$87,123,000
FY 2007-08	$3,750	21,493	$73,450,691	$88,000,000	$85,611,140
FY 2008-09	$3,950	24,871	$88,626,463	$118,000,000	$97,415,847
FY 2009-10	$3,950	28,927	$106,049,940	$118,000,000	$111,773,617
FY 2010-11	$4,106	34,550	$129,474,868	$140,000,000	$136,321,200
FY 2011-12	$4,011	40.248	$147,481,308	$175,000,000	$174,459,107
FY 2012-13	$4,335	51,075	$206,974,102	$229,000,000	$229,000,000

Proposed Changes

[25] Section 1002.395(3)(b)2., F.S.
[26] Section 1002.395(3)(b)3., F.S.
[27] Section 1002.395(12)(a), F.S.
[28] Florida Department of Education, *Fast Facts and Program Statistics*, *available at*, http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf. (last accessed 2/14/2014)
[29] Email from Department of Revenue on file with House Finance and Tax

Student Eligibility

Beginning in the 2014-2015 fiscal year, the prior public school attendance requirement for students whose household income is below 185% of the federal poverty level is removed. Beginning in the 2016-2017 fiscal year, the maximum household income for eligibility is increased to 260% of the federal poverty level. Students with household incomes between 185% and 260% of the federal poverty level are required to have spent the prior school year in public school unless they are entering kindergarten or first grade.

Students in foster or out-of-home care will remain eligible for the program until age 21 or graduation, whichever is later. Additionally, they will be allowed to apply to enter the program at any time.

The bill requires SFOs to give priority among new applicants to those students with household incomes below 185% of the federal poverty level and to students in foster or out-of-home care. Students who received a scholarship in the prior year will continue to receive priority over any new applicants.

In order to comply with the expanded household income requirements, parents of students who wish to participate must authorize the SFO to access information held by other state or federal agencies necessary for verification of income.

Student Scholarship Amounts

The bill increases the maximum scholarship limit from 80 percent to 84 percent of the unweighted FEFP funding amount.

In concert with the 2016-2017 fiscal year increase in maximum household income for eligibility discussed above, the bill creates a new tiered phasedown of the maximum, per student scholarship amount. For household incomes between 200% and 215% of the federal poverty line, the maximum is reduced by 12%. For household incomes between 215% and 230%, the maximum is reduced by 26%. For household incomes between 230% and 245%, the maximum is reduced by 40%. Finally, for household incomes between 245% and the newly increased maximum of 260% the amount is reduced by 50%.

Scholarship Funding Organization Accountability

The bill creates a new application process for organizations that wish to become scholarship funding organizations. In order to participate, organizations must submit an application for initial approval or renewal to the Office of Independent Education and Parental Choice by September 1 of the year prior to the year in which that SFO intends to begin offering scholarship funding. After consultation with the Department of Revenue and Chief Financial Officer, the Commissioner of Education provides a recommendation for each application to the State Board of Education, which will have final approval or disapproval responsibility.

The application is required to include a copy of a SFO's incorporation documents and organizational chart, a description of the organization's financial plan and intended area of operation, and descriptions of the organization's intended operational procedure. Each SFO is also required include with their initial application a copy of a surety bond or letter of credit for the amount equal to 25% of their anticipated donations. SFOs already approved as of July 1, 2014, will have until August 1, 2014, to comply with the requirements for providing a copy of a surety bond or letter of credit. This bond or letter of credit will be adjusted on an annual basis thereafter to equal the amount of undispersed donations based on annual audits reviewed by the Department of Education.

Applications for renewal by an SFO that operated the prior year must also include the organization's IRS Form 990[30], an annual audit, as well as an annual report regarding donations, administrative expenditures, scholarship applications, and scholarship recipients. Any funds held by a SFO whose application for renewal is denied shall revert to the Department of Revenue for redistribution to eligible SFOs.

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[30] This is an informational return for tax exempt organizations. The deadline for submitting the form 990 is extended until November 30 instead of September 1.

The allowable uses of the administrative allowance are expanded to include professional development to support participating schools.

The bill strengthens the background check requirement for owners and operators of SFOs by adding a number of additional disqualifying offenses.[31]

Tax Credits

The bill creates a new section of statute, s. 1002.396, F.S., establishing the Sales Tax Credit Scholarship Program, which allows taxpayers to receive credit against their sales and use tax liability under chapter 212, F.S., for donations made to scholarship funding organizations participating in the new program. The Sales Tax Credit Scholarship Program will operate in parallel to current law's Tax Credit Scholarship program; while it is an entirely distinct program it mirrors the existing program's administrative procedures.

The bill also establishes, in newly created s. 1002.397, F.S., a unified tax credit cap for the new Sales Tax Credit Scholarship Program and existing program. The Department of Revenue (DOR) may approve tax credits under either program until the sum of such approvals under both programs combined reaches the limits specified in the bill.

The cap is set at $390 million in fiscal year 2014-2015, which is $32.2 million above the cap level expected to apply under current law. In subsequent years, the cap can increase sequentially to $475 million, 590 million, $730 million, and $873.6 million. The amount of credits approved each year will be required to reach 90% of the new combined cap in each year to trigger an increase in the subsequent year. Past experience suggests that the above stated levels will be achieved during the next five years. If so, then in each of the fiscal years 2014-2015 through 2017-2018, the cap is expected to be approximately $30 million above the levels expected under current law. By fiscal year 2018-2019 the applicable cap will be $873.6 million, which is equal to that expected under current law.

Additionally, taxpayers will be able to transfer tax credits received under both programs so long as the transfer is between members of an affiliated group of corporations. The transferred tax credit must be applied against the same tax as it was to be applied against prior to the transfer. Taxpayers must notify the DOR (who in turn notifies the Division of Alcoholic Beverages and Tobacco for credits against excise taxes on alcoholic beverages) of their intent to transfer a credit, and the credit is not available until the Department of Revenue approves the transfer.

Notification

The bill also requires a copy of the letter approving a taxpayer's tax credit application be provided by DOR to the scholarship funding organization designated in the letter to receive a donation. The bill revises the confidentiality provisions of s. 213.053, F.S., to allow this letter to be provided.

Rulemaking

The bill grants emergency rulemaking authority to the Department of Revenue and Department of Education.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.1831, F.S., allowing credits to be granted against sales and use tax liability under the new Sales Tax Credit Scholarship Program.

Section 2. Amends s. 213.053, F.S., revising confidentiality requirements for the Department of Revenue.

[31] The new offenses include any felony and numerous misdemeanor-level financial crimes

Section 3. Amends s. 1002.395, F.S., making various changes to the Tax Credit Scholarship Program.

Section 4. Creates s. 1002.396, F.S., creating the Sales Tax Scholarship Program.

Section 5. Creates s. 1002.397, F.S., creating a new combined cap for tax credits approved under the two scholarship programs.

Section 6. Amending s. 1002.421, F.S., conforming a cross reference.

Section 7. Providing that any scholarship funding organization approved prior to July 1, 2014, shall have until August 1, 2014, to comply with the new requirements for maintaining a surety bond or letter of credit.

Section 8. Granting emergency rulemaking authority to the Department of Revenue and Department of Education.

Section 9. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not estimated the impact on this bill. However, assuming that the new tax credit caps will be reached in each of the next five fiscal years, staff estimates the impact of the bill on General Revenue collections will be -$32.2 million, -$27.7 million, -$30.9 million, -$31.1 million, and zero in fiscal years ending 2015, 2016, 2017, 2018, and 2019, respectively.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax credit cap increase will allow more taxpayers to make eligible contributions to SFOs and therefore more taxpayers will receive a dollar for dollar reduction in their state tax liabilities.

D. FISCAL COMMENTS:

Staff has estimated the total program impacts on both revenue and FEFP expenditures under current law (Table 1) and the proposed law (Table 2). Table 3 displays the estimated change in total program impacts as a result of the bill. Under the bill, expenditure savings are expected to continue as fewer students will require funding within the FEFP. The tables indicate that under both current and proposed law, the FEFP savings from the program are expected to exceed the revenue losses due to tax credits through fiscal year 2018-2019, though the net savings are expected to be lower as a result of the bill. Table 3 shows the net positive savings to the state are reduced by $1.9 million, $35.9 million, $48.3 million and $62.8 million in fiscal years ending 2016, 2017, 2018, and 2019, respectively.

	2014-15	2015-16	2016-17	2017-18	2018-19
Table 1: Total Program Impacts—Current Law ($ in millions)					
Revenue Impact	($357.8)	($447.3)	($559.1)	($698.9)	($873.6)
FEFP Savings	$415.0	$489.6	$608.7	$758.4	$944.8
Net State Savings	$57.2	$42.3	$49.6	$59.5	$71.3
Table 2: Total Program Impacts—Proposed Law					
Revenue Impact	($390.0)	($475.0)	($590.0)	($730.0)	($873.6)
FEFP savings	$450.8	$515.4	$603.7	$741.2	$882.1
Net State Savings	$60.8	$40.4	$13.7	$11.2	$8.5
Table 3: Change in Total Program Impacts					
Revenue Impact	($32.2)	($27.7)	($30.9)	($31.1)	$0.0
FEFP Savings	$35.9	$25.8	($4.9)	($17.1)	($62.8)
Net State Savings	$3.7	($1.9)	($35.9)	($48.3)	($62.8)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Sales Tax Scholarship Program created by this bill allows for dealers of sales and use tax to receive credits against their tax liability in exchange for donations to scholarship-funding organizations which may in turn provide scholarships to students who choose to attend sectarian schools. Sales and use tax collections by dealers become state funds at the moment of collection.[32]

B. RULE-MAKING AUTHORITY:

The bill grants emergency rulemaking authority to both the Department of Education and the Department of Revenue

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[32] Section 212.15(1), F.S.