HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 859 Florida Tax Credit Scholarship Program
SPONSOR(S): Corcoran
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	17 Y, 6 N, As CS	Wilson	Langston
2) PreK-12 Appropriations Subcommittee		Seifert	Heflin
3) Education Committee			

SUMMARY ANALYSIS

The Florida Tax Credit Scholarship Program (program) provides private school scholarships to students from families that meet specified income limitations. The program is funded with contributions to eligible 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.

HB 859 modifies eligibility requirements for the program. If they meet the requirements related to household income, students will be eligible to receive scholarship funding if they are also eligible to enter kindergarten through fifth grade (instead of kindergarten through first grade under current law).

The bill increases the cap on the amount of tax credits available to the program that may be approved in a fiscal year from $175 million to $229 million for FY 2012-13. For FY 2013-14 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.

The bill also amends certain responsibilities and obligations of parents and students, private schools, the Department of Education, school districts, and the Commissioner of Education regarding the program, including a requirement that the Department of Education, upon request of a participating private school, provide statewide assessments and related materials for administering the assessments at no cost to the private school.

The bill further clarifies that the parents of a public school student may seek private school choice options under the program if a student is currently placed, or during the previous state fiscal year was placed, in foster care as provided by law.

The Revenue Estimating Conference (REC) has not estimated the impact on this bill. However, staff estimates this bill will have a -$10.3 million cash impact in FY 2012-13 (-$25.3 million recurring).

The bill is also expected to result in increased expenditure savings as fewer students will require funding within the Florida Education Finance Program (FEFP). The revenue impacts are expected to be greater than the expenditure savings attributable to the bill.

The bill also expands the assessment and evaluation budget needed by the Department of Education to serve the scholarship students that elect to participate in the FCAT. Because there is no way to estimate the number of students that would choose to participate, the total cost for the additional testing, training, and security is indeterminate at this time.

Also see FISCAL ANLYSIS & ECONOMIC IMPACT STATEMENT.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Program Overview

The Florida Tax Credit Scholarship Program (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% 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 in 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 current FY 2011-12 is $175 million.

As of November 2011, there were 1,181 schools participating in the program and scholarships were awarded to 37,578 students.[2]

Scholarship Funding Organizations

An SFO is 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-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. 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 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.

Private School Participants

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.[3] To be eligible for participation in the Florida Tax Credit Scholarship (FTC) program, a private school must demonstrate fiscal soundness, provide academic accountability, and meet reporting requirements of the SFOs and Department of Education (DOE).[4] The inability to meet the various requirements will cause DOE to declare the private school ineligible to participate in the program.

Student Eligibility

[1] Section 1002.395(5), F.S.
[2] Florida Tax Credit Scholarship Program, November 2011 Quarterly Report, Florida Department of Education. Available at http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2011.pdf (last visited January 20, 2012)
[3] s. 1002.421, F.S.
[4] s. 1002.395(8), F.S.

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 Supplemental Nutrition Assistance Program (SNAP), 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 program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed in foster care.

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 230% 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 scholarship recipient, as long as the student's and the sibling's household income level does not exceed 230% of the federal poverty level.

Student Scholarships

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 2011-12 is 64%, or $4,011 per student.[8] 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.[9]

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.

The following table shows the history of the program and the number of scholarships provided[10]. The actual FY 2011-2012 information will not be fully known until July 2012.

	Award Per Student	Student Scholarships	Awarded Scholarships	Maximum Tax Credit Cap	Tax Credits Approved
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

[5] s. 220.187(3), F.S. The eligibility guidelines for 2009-2010 are published in the Federal Register, March 27, 2009. http://www.fns.usda.gov/CND/Governance/notices/iegs/IEGs09-10.pdf (last visited January 20, 2012)

[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. http://www.fns.usda.gov/ora/MENU/published/CNP/FILES/DirectCert08-Sum.pdf (last visited January 20, 2012)

[7] s. 1002.395(3)(b)2., F.S.

[8] Florida Tax Credit Scholarship Program, November 2011 Quarterly Report, Florida Department of Education. Available at http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2011.pdf (last visited January 20, 2012)

[9] s. 1002.395(12)(a), F.S.

[10] Fast Facts and Program Statistics, Florida Department of Education. Available at http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf (last visited February 3, 2012).

	Award Per Student	Student Scholarships	Awarded Scholarships	Maximum Tax Credit Cap	Tax Credits Approved
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

History of the Tax Credit

The Legislature initially capped the program at $50 million in tax credits per state fiscal year[11], but subsequently expanded the cap to $88 million in 2003.[12] Beginning in FY 2008-2009, the cap was increased by $30 million to $118 million.[13] Until 2009, tax credits under the scholarship were only available against the state's corporate income tax under s. 220.1875, F.S.

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.[14] 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,[15] self-accrued sales tax liabilities of direct pay permit holders,[16] and alcoholic beverage taxes on beer, wine, and spirits.[17,18] The Legislature also increased the tax credit cap to $140 million, beginning in 2010-11, and authorized 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, beginning in 2011-12.[19]

The following table summarizes information related to the tax credits approved by DOR:[20]

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[21]
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[22]	106	62	$85,611,140	0	$0

[11] ch. 2001-225, L.O.F.
[12] ch. 2003-391, L.O.F.
[13] ch. 2008-241, L.O.F.
[14] ch. 2009-108, L.O.F.
[15] s. 211.0251, F.S.
[16] s. 212.1831, F.S.
[17] s. 561.1211, F.S.
[18] ss. 211.0251, 212.1831, and 561.1211, F.S. directs 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.
[19] ch. 2010-24, L.O.F.
[20] DOR, January 23, 2012. (On file with the Finance & Tax Committee)
[21] 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.
[22] 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.

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[21]
2008-09	125	75	$97,415,847	0	$0
2009-10	121	83	$111,773,617[23]	0	$0
2010-11	128	100	$136,321,200	0	$0
2011-12	134	116	$171,928,768	0	$0

Since the tax credit amount allocated for FY 2011-2012 exceeded 90 percent of the $175 million credit cap, the tax credit cap amount will increase to $218,750,000 in FY 2012-2013.[24]

Proposed Changes

Scholarship Eligibility

The bill modifies eligibility requirements for the program. If they meet the requirements related to household income, students will be eligible to receive scholarship funding if they are also eligible to enter kindergarten through fifth grade (instead of kindergarten through first grade under current law).

Scholarship Funding Tax Credits

The bill amends s. 1002.395(5), F.S., to increase the cap on the amount of credits available to the program that may be approved in a fiscal year from $140 million to $229 million for FY 2012-13. Current law provisions for the cap to 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 of that year will continue to apply thereafter.

Participant Responsibilities and Obligations

Parents and Students
The bill amends s. 1002.395(7)(e), F.S. to clarify that if a parent requests that a student participating in the program take statewide assessments and the private school has not chosen to offer and administer the statewide assessments[25], the parent is responsible for transporting the student to the assessment site designated by the school district.

Private Schools
The bill amends s. 1002.395(8)(c)2., F.S., to provide that a participating private school annually report the scores of all participating students to an independent research organization by August 15. The bill also amends s. 1002.395(8)(c)3., F.S., to provide that if a participating private school chooses to offer the statewide assessments[26], that the private school administer the assessments at the private school. The bill further provides that a participating private school can choose to offer and administer the statewide assessments to all students in grades 3 through 10, and must submit a written request to DOE by March 1 each year in order to administer the statewide assessment the following year.

Department of Education
The bill amends s. 1002.395(9)(n)1., F.S., to clarify that DOE may not make more than seven site visits to participating private schools each year. However, DOE may make additional site visits at any time to

[23] Of the total amount of the allocation of tax credits, $21,899,000 was allocated to insurance companies based on 39 approved applications.
[24] Department of Revenue Tax Information Publication. No. 11ADM-03. August 25, 2011. https://taxlaw.state.fl.us/wordfiles/CIT%20TIP%2011ADM-03.pdf (last visited January 20, 2012)
[25] Pursuant to s. 1008.22, F.S.
[26] *Id.*

any school that has received a notice of noncompliance or a notice of proposed action within the previous two years. The bill also amends s. 1002.395(9)(p), F.S., to provide that DOE, upon request of a participating private school, provide at no cost statewide assessments required under s. 1008.22, F.S., and related materials for administering the assessments.

School Districts
The bill adds s. 1002.395(10)(b), F.S., that upon request of DOE, a school district will coordinate with DOE to provide to a participating private school statewide assessments[27] and any related materials for administering the assessments.

Commissioner of Education
The bill amends s. 1002.395(11)(a)2., F.S., to clarify that the Commissioner of Education can consider various additional factors when determining a denial, suspension, or revocation of a private school's participation in the program, including, but not limited to:

- a private school owner's or operator's previous pattern of failure to comply with accountability measures of private schools provided under s. 1002.421, F.S,
- a private school owner's or operator's failure to reimburse DOR or an SFO for scholarship funds improperly received or retained by a school; and
- the imposition of a prior criminal sanction, civil fine, administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an owner's or operator's management or operation of an educational institution.

The bill adds s. 1002.395(11)(c)2., F.S., to provide that the commissioner can immediately suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is a previous pattern of failure to comply with the eligibility requirements of the program or accountability provisions[28] for participating private schools.

K-12 Student and Parent Rights

The bill amends s. 1002.20, F.S., to clarify that the parent of a public school student may seek private school choice options under the program to include a student who is currently placed, or during the previous state fiscal year was placed, in foster care[29]. This provision conforms to current scholarship eligibility under s. 1002.395(3)(b)1.d., F.S.[30]

B. SECTION DIRECTORY:

Section 1: Amends s. 1002.395, F.S., removing certain program eligibility requirements, increases the tax credit cap to $250 million in FY 2012-13, and clarifies and adds various participant responsibilities and obligations for the program.

Section 2: Amends s. 1002.20, F.S., clarifying the private school choice options under the program include a student currently, or placed during the previous fiscal year in foster care.

Section 3: Provides the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[27] *Id.*
[28] s. 1002.421, F.S.
[29] As defined in s. 39.01, F.S.
[30] s. 1002.395(3)(b)1.d., F.S., provides a student is eligible for the program if student qualifies for free or reduced-price school lunches under the National School Lunch Act, or who qualifies for SNAP, TANF, or FDPIR, and is currently place, or during the previous state fiscal year was place in foster care as defined in s. 39.01, F.S.

1. Revenues:

   The Revenue Estimating Conference (REC) has not estimated the impact on this bill. However, staff estimates this bill will have a -$10.3 million cash impact in FY 2012-13 (-$25.3 million recurring).

2. Expenditures:

   The requirement that DOE, upon request of a participating private school, provide at no cost statewide assessments required under s. 1008.22, F.S., and related materials for administering the assessments may result in additional expenditure requirements for DOE.

   The tax credit program is expected to result in expenditure savings as fewer students will require funding within the FEFP. Staff has estimated the FEFP savings under the provisions of the bill. As shown in Table 2 below the estimates indicate a continued total savings at slightly higher levels than under current law as fewer students will require funding within the FEFP as the program is expanded. The estimated total FEFP savings are expected to continue to exceed the total revenue impacts attributable to increased tax credits through FY 2015-16. Table 3 below shows estimated differences in FEFP savings, revenue reductions, and net savings under the bill compared to current law.

   Table 1. Program Impacts under the Current Law (Baseline)

($Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings	197.6	275.3	329.3	390.3	464.2
Revenue Impact	-175.0	-218.8	-273.4	-341.8	-427.2
Net Savings	22.6	56.5	55.8	48.5	37.0

   Table 2. Program Impacts under the Proposed Bill

(Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings	197.6	285.2	341.9	405.2	482.0
Revenue Impact	-175.0	-229	-286.3	-357.8	-447.3
Net Savings	22.6	56.2	55.6	47.4	34.7

   Table 3. Program Impacts: Proposed vs. Current.

($Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings		4.3	5.9	6.3	6.6
Revenue Impact		-10.3	-12.8	-16.0	-20.0
Net Savings		-0.3	-0.2	-1.1	-2.3

   Also see FISCAL COMMENTS below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax cap increase will allow taxpayers who make eligible contributions to SFOs to see a dollar for dollar reduction in their state tax liabilities.

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D. FISCAL COMMENTS:

A recent report has discussed the difficulty in communicating to Legislators the full budgetary implications of changes to the Tax Credit Scholarship Program.[31] The report points out that conventions and practices in the Revenue Estimating Conference (REC) and the budgeting process result in estimates of recurring revenue losses (mostly in future years) for which the expected offsetting expenditure savings are not recognized when the budget is formulated. Consequently, policymakers often see only the revenue losses. The report suggests that REC and/or budgeting conventions and practices could be changed solely with respect to this particular program, given the unique characteristic that "future revenue impacts will create offsetting budget savings that are at least equal to, and in every case to date, greater than, the revenue impacts."

The 2010-2011 school year cost per student for the Florida Comprehensive Assessment Test (FCAT) was $30.87.[32] If all of the scholarship students currently enrolled in private schools participated in the FCAT, the estimated cost of tests would be $1,066,559 ($30.87 per test x 34,550 students). As the number of scholarship participants increase each year, the testing costs would also increase. Because there is no way to estimate the number of students that would choose to participate, the total cost for the additional testing, training, and security is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Should a significant number of private schools elect to participate in the statewide assessment program, the cost of testing materials and cost to school districts for the distribution of testing materials could be increased. The total cost for the additional participation in the state assessment program is indeterminate at this time.

[31] "The Need to Tailor Revenue Conventions to the Unique Characteristics of the Tax Credit Scholarship Program," Alan Johansen, Capital Analytics, January 11, 2012.

[32] Assessment and School Performance Frequently Asked Questions, Florida Department of Education, http://www.fldoe.org/faq/default.asp?Dept=179&ID=977 (last visited February 6, 2012)

There are concerns surrounding test security and reliability for administration of FCAT, FCAT 2.0, and/or end-of-course assessments by participating private schools. It is unclear how the DOE could ensure that the necessary security measures would be in place, in addition to providing the training and test scoring for such tests. The private schools that administered the FCAT, FCAT 2.0, and end-of-course assessment would be included in the data forensics program the DOE conducts after testing is complete. It is unclear what recourse the DOE would have if testing improprieties occurred at a private school as the bill does not provide a line of authority for enforcing test administration requirements and accountability for any breaches of test security. Additionally, the bill is not clear whether private schools could request assessments outside the regularly scheduled administration.

Students with disabilities who attend private schools may have difficulty obtaining an accommodation to take the FCAT. Under s. 1008.22(3)(c), F.S., certain accommodations are allowed if included in a student's individual education plan. Since private school students do not have individual education plans, the procedures for allowing these students an accommodation is unclear.

The bill is not clear on who is responsible for the allocation of resources to train private school staff in administering the assessments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2012, the Finance & Tax committee adopted a strike-all amendment that:

- Modifies eligibility requirements for the program. If they meet the requirements related to household income, students will be eligible to receive scholarship funding if they are also eligible to enter kindergarten through fifth grade (instead of kindergarten through first grade under current law).
- Increased the cap on the amount of tax credits available to the program that may be approved in a fiscal year from $175 million to $229 million for FY 2012-13. For FY 2013-14 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.
- Provided certain responsibilities and obligations of parents and students, private schools, the Department of Education, school districts, and the Commissioner of Education regarding the program, including a requirement that Department of Education, upon request of a participating private school, provide at no cost certain statewide assessments and related materials for administering the assessments.
- Clarifies that the parents of a public school student may seek private school choice options under the program if a student is currently placed, or during the previous state fiscal year was placed, in foster care as provided by law.