

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 859 (CS/SB 962)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Education Committee; PreK-12 Appropriations Subcommittee; Finance & Tax Committee; Corcoran and others (Education Pre-K-12; Benacquisto and others)	92 Y's	24 N's
COMPANION BILLS:	CS/SB 962	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/CS/CS/HB 859 passed the House on March 7, 2012, and subsequently passed the Senate on March 9, 2012. The bill modifies student eligibility requirements for the Florida Tax Credit Scholarship Program (program) to include students who qualify for free or reduced price lunches and are eligible to enter kindergarten through fifth grade. Currently, a student in second through twelfth grade must have spent the prior school year in a public school. The bill removes the requirement that a student attend a public school in the prior year for students in second through fifth grade. The bill also removes the requirement that a student placed in foster care meet certain household income levels.

The cap on the amount of credits available to the program increases from \$140 million for FY 2010-11 to \$229 million for FY 2012-13. The cap increased by 25 percent for FY 2011-12 to \$175 million and is currently scheduled to increase by 25 percent for FY 2012-13 to \$218.75 million. The bill increases the cap \$10.25 million above the scheduled increase. The 25 percent increase will continue to occur as annual tax credit amounts meet or exceed 90 percent of the tax credit cap.

The bill authorizes private schools to administer statewide assessments at the school and requires the Department of Education (DOE) and school districts to provide the assessments and support to private schools that choose to administer statewide assessments. Private schools that choose to administer statewide assessments are subject to the same laws, rules, and district-level policies regarding test administration and security as public schools.

Currently, DOE may make seven random site visits to participating private schools each year. The bill eliminates the requirement that the visits be random and allows DOE to make additional site visits at any time to any school that has received a notice of noncompliance or a notice of proposed action within the previous two years.

The bill authorizes the Commissioner of Education to deny, suspend, or revoke a private school's participation in the program if the commissioner determines that an owner or operator of a private school has exhibited a previous pattern of failure to comply with the law related to the program or private school accountability.

See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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 whenever credits approved by Department of Revenue (DOR) in the prior fiscal year exceed 90 percent of the tax credit cap for that year, beginning in FY 2011-12.¹² The current tax credit cap amount is \$175 million;¹³ however, since the tax credit amount allocated for FY 2011-12 exceeded 90 percent of the \$175 million credit cap, the tax credit cap amount will increase to \$218,750,000 in FY 2012-13.¹⁴

As of November 2011, there were 1,181 schools participating in the program and scholarships were awarded to 37,578 students.¹⁵

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, *Florida Tax Credit Scholarship Program, Fast Facts and Program Statistics*, available at http://www.floridaschoolchoice.org/Information/CTC/files/etc_fast_facts.pdf.

¹⁴ Department of Revenue, Tax Information Publication No. 11ADM-03. *Florida Tax Credit Scholarship Program Tax Credit Cap Amount Will Increase*, Aug. 25, 2011, available at <http://dor.myflorida.com/dor/tips/tip11adm-03.html> (last visited Feb. 15, 2012).

¹⁵ Florida Department of Education, *Florida Tax Credit Scholarship Program, November Quarterly Report* (2011), available at http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2011.pdf.

The following table summarizes information related to the tax credits approved by DOR:¹⁶

Tax Year	# of Approved Tax Credit Allocation Applications	# of Taxpayers	Total Amount of Tax Credit Allocations Approved for All Taxpayers	# of Small Businesses Approved for Tax Credit Allocations	Total Amount of Tax Credit Allocations Approved for Small Businesses ¹⁷
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 ¹⁸	106	62	\$85,611,140	0	\$0
2008-09	125	75	\$97,415,847	0	\$0
2009-10	121	83	\$111,773,617 ¹⁹	0	\$0
2010-11	128	100	\$136,321,200	0	\$0
2011-12	134	116	\$172,928,768	0	\$0

Scholarship Funding Organizations

An SFO is a charitable organization exempt from federal income tax²⁰ that administers the receipt of contributions and scholarship awards.²¹ 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.²² Similarly, a taxpayer making a contribution may not designate a specific child or group of children as the beneficiaries of the scholarship.²³ 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.²⁴

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.²⁵ To be eligible for participation in the program, a private school must demonstrate fiscal soundness, provide academic accountability, and meet Department of Education (DOE) and SFO reporting requirements.²⁶ The inability to meet these requirements will cause DOE to declare the private school ineligible to participate in the program.²⁷

¹⁶ Email, Department of Revenue (Jan. 23, 2012).

¹⁷ 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. Section 2, ch. 2006-75, L.O.F., reduced the small business cap to one percent. The cap was subsequently repealed by s. 1, ch. 2008-241, L.O.F.

¹⁸ Effective for tax years beginning Jan. 1, 2006, s. 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.

¹⁹ Of the total amount of the allocation of tax credits, \$21,899,000 was allocated to insurance companies based on 39 approved applications.

²⁰ Section 1002.395(2)(f), F.S.; s. 501(c)(3) of the Internal Revenue Code.

²¹ Section 1002.395(6), F.S.

²² Section 1002.395(6), F.S.

²³ Section 1002.395(2)(e), F.S.

²⁴ Section 1002.395(6), F.S.

²⁵ Section 1002.421, F.S.

²⁶ Section 1002.395(8), F.S.

²⁷ Section 1002.395(9), F.S.

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 Act²⁸ or is on the direct certification list²⁹ and:³⁰

- 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.³¹

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' economic status exceeds 230 percent of the federal poverty guidelines.³² 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.³³

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 percent, or \$4,011 per student.³⁴ 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.³⁵

However, the actual scholarship amount a student receives is 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.

²⁸ 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>.

²⁹ "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.

³⁰ 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>.

³¹ Section 1002.395(3), F.S.

³² Section 1002.395(3)(b)2., F.S.

³³ Section 1002.395(3)(b)3., F.S.

³⁴ Section 1002.395(12)(a).; Florida Department of Education, *Fast Facts and Program Statistics*, available at http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.

³⁵ Section 1002.395(12)(a), F.S.

The following table shows the history of the program and the number of scholarships awarded.³⁶

	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
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	\$129,000,000	\$175,000,000	\$136,321,200

Effect of Proposed Changes

Scholarship Eligibility

The bill modifies student eligibility requirements by allowing a student to receive a program scholarship if the student qualifies for free or reduced price lunches and is eligible to enter kindergarten through fifth grade. Currently, a student in second through twelfth grade must have spent the prior school year in a public school. The bill removes the prior public requirement for students in second through fifth grade.

Additionally, the bill removes the requirement that a student currently, or in the previous fiscal year was, placed in foster care meet certain household income levels. Foster students are currently categorically eligible for free meals through the National School Lunch Act.³⁷ Since foster students are categorically eligible, removing this requirement does not limit or expand access to the program for foster students; however, if the federal government ever reclassifies foster students and they are no longer categorically eligible for free meals, the foster students will continue to be eligible for the program.

The bill also authorizes the parent³⁸ of a public school student, who is currently placed or during the previous fiscal year was placed in foster care, to seek private school choice options under the program, to comport with the changes made by the bill to the eligibility requirements.³⁹

Scholarship Funding Tax Credits

The bill increases the cap on the amount of credits available to the program that may be approved in a fiscal year from \$140 million for FY 2010-11 to \$229 million for FY 2012-13. The cap increased by 25 percent for FY 2011-12 to \$175 million and is currently scheduled to increase by 25 percent for FY 2012-13 to \$218.75 million.⁴⁰ The bill increases the cap \$10.25 million above the scheduled increase. The 25 percent increase will continue to occur as annual tax credit amounts meet or exceed 90 percent of the tax credit cap.

³⁶ Florida Department of Education, *Fast Facts and Program Statistics*, available at, http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf. The data for FY 2011-2012 will not be available until July 2012.

³⁷ USDA, *Eligibility Manual for School Meals*, at 13 (Oct. 2011), available at <http://www.fns.usda.gov/cnd/Guidance/EliMan.pdf>.

³⁸ Parent is defined as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of a parent. Section 1000.21(5), F.S.

³⁹ Foster care is defined in s. 39.01, F.S.

⁴⁰ Section 1002.395(5)(a)2., F.S., requires the cap to increase by 25 percent whenever tax credits approved in the prior fiscal year are equal to or greater than 90 percent of the tax credit cap amount of that year.

Statewide Assessments

Currently, students participating in the program in grades 3 through 10 are required to take, and private schools are obligated to administer, a nationally norm-referenced assessment. A parent may also choose to have the student participate in the statewide assessments⁴¹ administered in public schools. If a parent chooses to have the student participate in a statewide assessment, the parent is responsible for transporting the student to the assessment site.

The bill revises the obligations of participating private schools to require a school to administer either norm-referenced assessments or statewide assessments to students in grades 3 through 10 participating in the program. This provides private schools the option to choose which test to administer to participating students. Private schools that choose to administer statewide assessments are subject to the same laws, rules, and district-level policies regarding test administration and security as public schools.⁴² Additionally, if a private school chooses to administer norm-referenced assessments, parents that choose to have their students take the statewide assessments must continue to provide transportation to the assessment site.

The bill authorizes a private school that administers statewide assessments to choose to offer and administer the assessments to all students who attend the private school in grades 3 through 10. Although schools are only required to administer a norm-referenced or statewide assessment to students in grades 3 through 10 participating in the program, the bill allows a private school the option to administer statewide assessments to all students in the school.

If a private school chooses to administer the statewide assessments, the school must submit a request in writing to DOE by March 1 of each year in order to administer the statewide assessments in the next school year. Additionally, the private school must annually report by August 15th the scores of all participating students on the norm-referenced assessment or the statewide assessment to the independent research organization selected by DOE. Private schools are currently required to report this data; the bill simply provides a deadline by which the data must be reported and includes statewide assessment data.

Upon request by a private school participating in the program, DOE must provide the statewide assessments and any related materials for administering the assessments to the schools at no cost. The students may be assessed using the statewide assessments, provided the addition of students at participating private schools does not cause the state to exceed its contractual caps for the number of students tested and the number of testing sites. By providing a limitation on the number of students to be assessed by the statewide assessments, the bill limits the cost of administering the assessments. The bill also requires the state to provide the same materials and support to a private school as it provides to a public school. Likewise, it subjects the private schools that choose to administer the statewide assessments to the same requirements as public schools regarding test administration and security.

Upon request of DOE, a school district must coordinate with DOE to provide the statewide assessments and related materials for administering the assessments to participating private schools. A school district is responsible for implementing test administrations at a participating private school. A school district must provide training for private school staff on test security and assessment administration procedures; distribute and retrieve testing materials; provide the required format for the private school to submit information to the district for test administration and enrollment purposes;⁴³ and provide any required assistance, monitoring, or investigation at a private school. The bill expands the duties and responsibilities of a school district related to statewide assessments which may require a school district to hire additional personnel to provide the necessary materials and support for administering statewide assessments.

⁴¹ Statewide assessments include FCAT, FCAT 2.0, and end-of-course assessments. Section 1008.22, F.S.

⁴² See ss. 1008.22, and 1008.24, F.S.

⁴³ The information submitted to a school district is used to label the assessments before distributed to students. Telephone interview with Department of Education staff (Feb. 14, 2012).

Program Oversight

Currently, DOE may make seven random site visits to participating private schools each year. The bill eliminates the requirement that the visits be random. Additionally, the bill authorizes DOE to make additional site visits at any time to any school that has received a notice of noncompliance or a notice of proposed action within the previous two years. By authorizing additional site visits to schools in noncompliance, the bill provides DOE the opportunity to verify information provided by these schools which may help DOE determine if further action is necessary.

The bill authorizes the Commissioner of Education to deny, suspend, or revoke a private school's participation in the program if the commissioner determines that an owner or operator of a private school has exhibited a previous pattern of failure to comply with the law related to the program or private school accountability.⁴⁴ Currently, the commissioner may deny, suspend, or revoke a school's participation in the program if the commission determines that an owner or operator is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public. Currently, the commissioner, in making his or her determination may consider a variety of factors. The bill expands the factors that may be considered to include an owner's or operator's failure to reimburse a nonprofit scholarship-funding organization for scholarship funds improperly received or retained by a school; the revocation or suspension of a license; and the suspension, termination, or revocation of program eligibility. The bill also clarifies that the commissioner may consider the imposition of a prior criminal sanction, civil fine, or administrative fine and provides additional guidance to the commissioner in determining if a private school's participation in the program should be denied, suspended, or revoked.

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, 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 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.

⁴⁴ Section 1002.421, F.S.

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 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

See also FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill expands the duties and responsibilities of a school district related to private schools administering statewide assessments which may require a school district to hire additional personnel to provide the necessary materials and support to private schools.

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:

A recent report has discussed the difficulty in communicating to Legislators the full budgetary implications of changes to the Florida Tax Credit Scholarship Program.⁴⁵ 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.”⁴⁶

The 2010-2011 school year cost per student for the Florida Comprehensive Assessment Test (FCAT) was \$30.87.⁴⁷ 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.

⁴⁵ Capital Analytics, *The Need to Tailor Revenue Conventions to the Unique Characteristics of the Tax Credit Scholarship Program*, Alan Johansen, Jan. 11, 2012.

⁴⁶ *Id.*

⁴⁷ Florida Department of Education, *Assessment and School Performance Frequently Asked Questions*, available at <http://www.fldoe.org/faq/default.asp?Dept=179&ID=977> (last visited Feb. 15, 2012).