

PreK-12 Policy Committee

Tuesday, March 3, 2009

2:00 p.m.

404 HOB

Larry Cretul
Speaker pro tempore

John Legg
Chair



The Florida House of Representatives

Education Policy Council

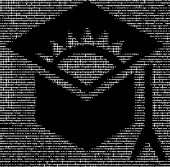
PreK-12 Policy Committee

Larry Cretul
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Meeting Agenda
Tuesday, March 3, 2009
2:00 p.m.
404 House Office Building

- I. Call to Order**
- II. Roll Call**
- III. Workshop on High School Graduation Standards and College & Career Preparation**
 - **Presentation by Achieve, Inc.**
- IV. OPPAGA presentation on the Corporate Income Tax Credit Scholarship Program**
- V. HB 453 Tax Credits for Contributions to Nonprofit Scholarship-funding Organizations by Weatherford**
- VI. Closing Comments/Adjournment**



Achieve, Inc.

American Diploma Project Network

***Creating a High School Diploma
That Counts:***

Lessons from the American Diploma Project

Michael Cohen

Florida House of Representatives

PreK-12 Policy Committee

March 3, 2009

Too Many Students Graduate from High School Unprepared for College and Work

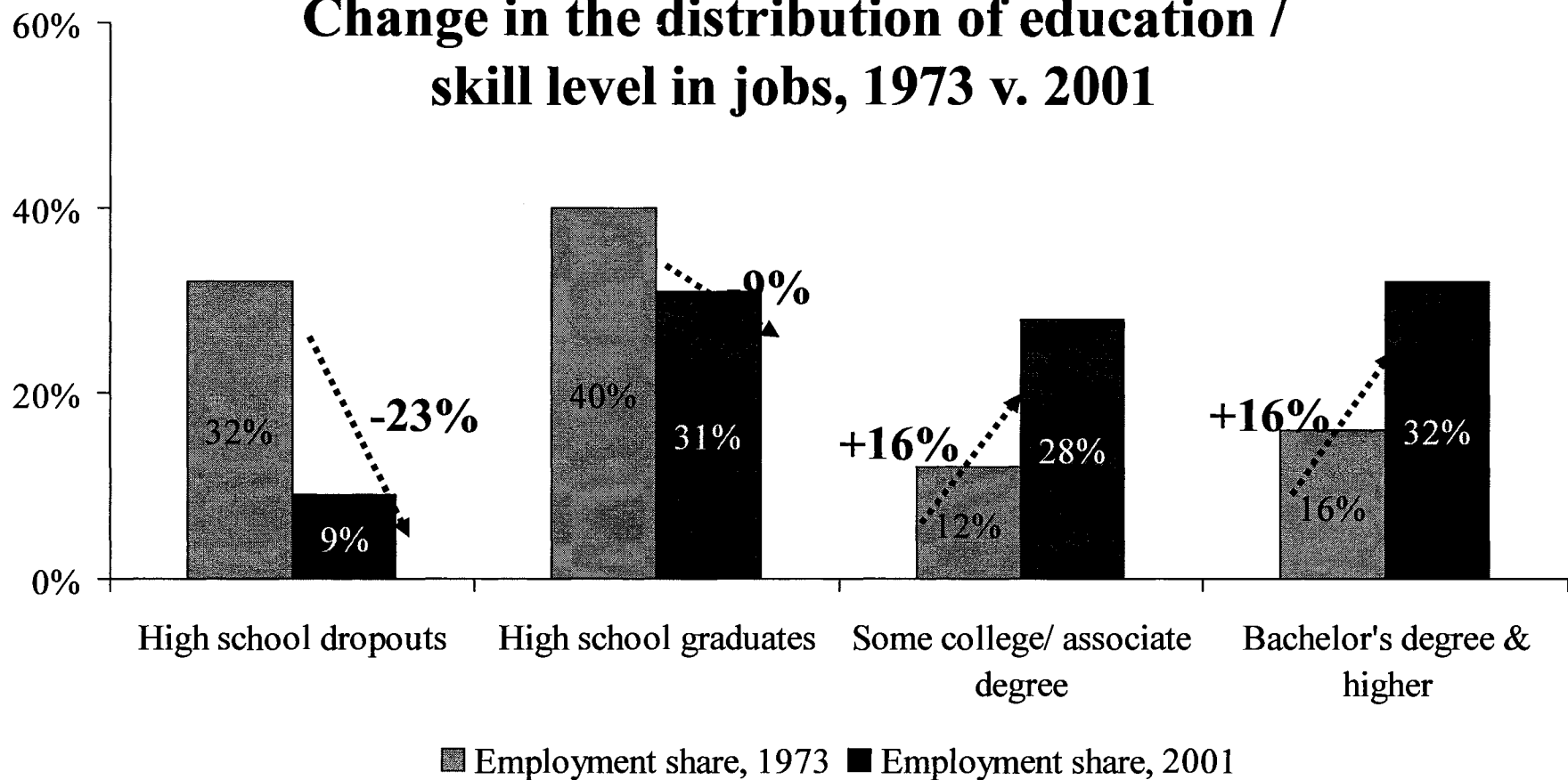
- 30% of first year students in postsecondary education are required to take remedial courses
- 40% - 45% of recent high school graduates report significant gaps in their skills, both in college and the workplace
- Faculty estimate 42% of first year students in credit-bearing courses are academically unprepared
- Employers estimate 45% of recent high school graduates lack skills to advance
- ACT estimates only half of college-bound students are ready for college-level reading

Many Florida High School Graduates are also Unprepared

- 55% of all students entering Florida's public postsecondary institutions require remediation in math, reading and/or writing.
 - 94% of students requiring remediation were enrolled in community colleges
- In 2005-06 the total cost of postsecondary remediation was \$129.8 million
 - The state paid \$70 million – more than half – of these costs

Jobs in today's workforce require more education & training

Change in the distribution of education / skill level in jobs, 1973 v. 2001



Source: Carnevale, Anthony P. & Donna M. Desrochers, *Standards for What? The Economic Roots of K-16 Reform*, Educational Testing Service, 2003.

American Diploma Project

- The American Diploma Project (ADP) was created to ensure all graduates leave high school ready for college and work.
- Early research by ADP sought to identify “must-have” knowledge and skills graduates will need to be successful in college and the workplace.
- Found a convergence between the skills that high school graduates need to be successful in college and those they need to be successful in a job that supports a family and offers career advancement.
- Developed ADP benchmarks that include the content and skills all students should have when they graduate high school

Convergence of College & Career Readiness

- ADP research found a common core of knowledge & skills in math and English that are necessary for success in postsecondary education and in “good jobs.”
- ACT Study *Ready for College Ready for Work: Same or Different?:*
 - *Whether planning to enter college or workforce training programs after graduation, high school students need to be educated to a comparable level of readiness in reading and mathematics.*

Cross-Disciplinary Proficiencies

Research and Evidence Gathering

- conduct research and to utilize the research process to describe, summarize and synthesize information or to solve problems

Critical Thinking and Decision Making

- employ logic; use abstract and concrete reasoning to make and assess inferences, conclusions and predictions

Communication and Teamwork

- understand different viewpoints to reach consensus; work productively in teams; communicate effectively

Media and Technology

- assess and employ a variety of media and formats to evaluate, create and distribute information

To be college and work ready, students need to complete a rigorous sequence of courses

To cover the content in the ADP benchmarks, high school graduates need:

■ In math:

- Four courses
- Content equivalent to Algebra I and II, Geometry, and a fourth course such as Statistics or Precalculus

■ In English:

- Four courses
- Content equivalent to four years of grade-level English or higher (i.e., honors or AP English)

ADP Research Documents an Expectations Gap

- Academic standards not aligned
- Graduation requirements too low
- Assessments not meaningfully connected with students' college or career aspirations
- **RESULT:** In nearly every state, students can earn a high school diploma without the skills necessary for success in college and work.

ADP Policy Agenda: Closing the Expectations Gap

- Align high school standards with the demands of postsecondary education and work.
- Require students to take a college- and work-ready curriculum, aligned with standards, to earn a high school diploma.
- Build college- and work-ready measures into statewide high school assessment systems.
- Hold high schools and postsecondary institutions accountable for student preparation and success.

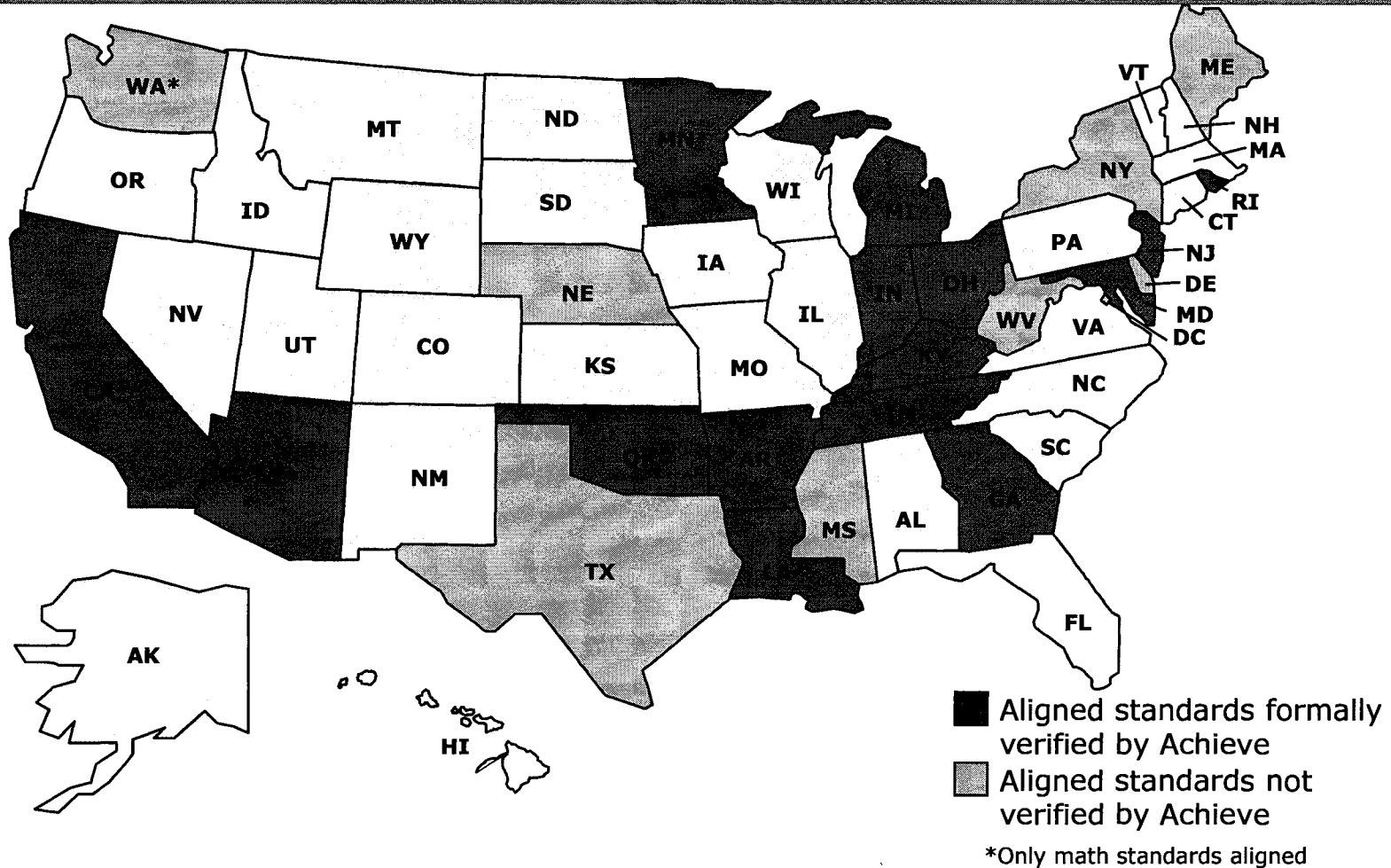


NATIONAL PROGRESS

FLORIDA'S PROGRESS

AMERICAN DIPLOMA PROJECT

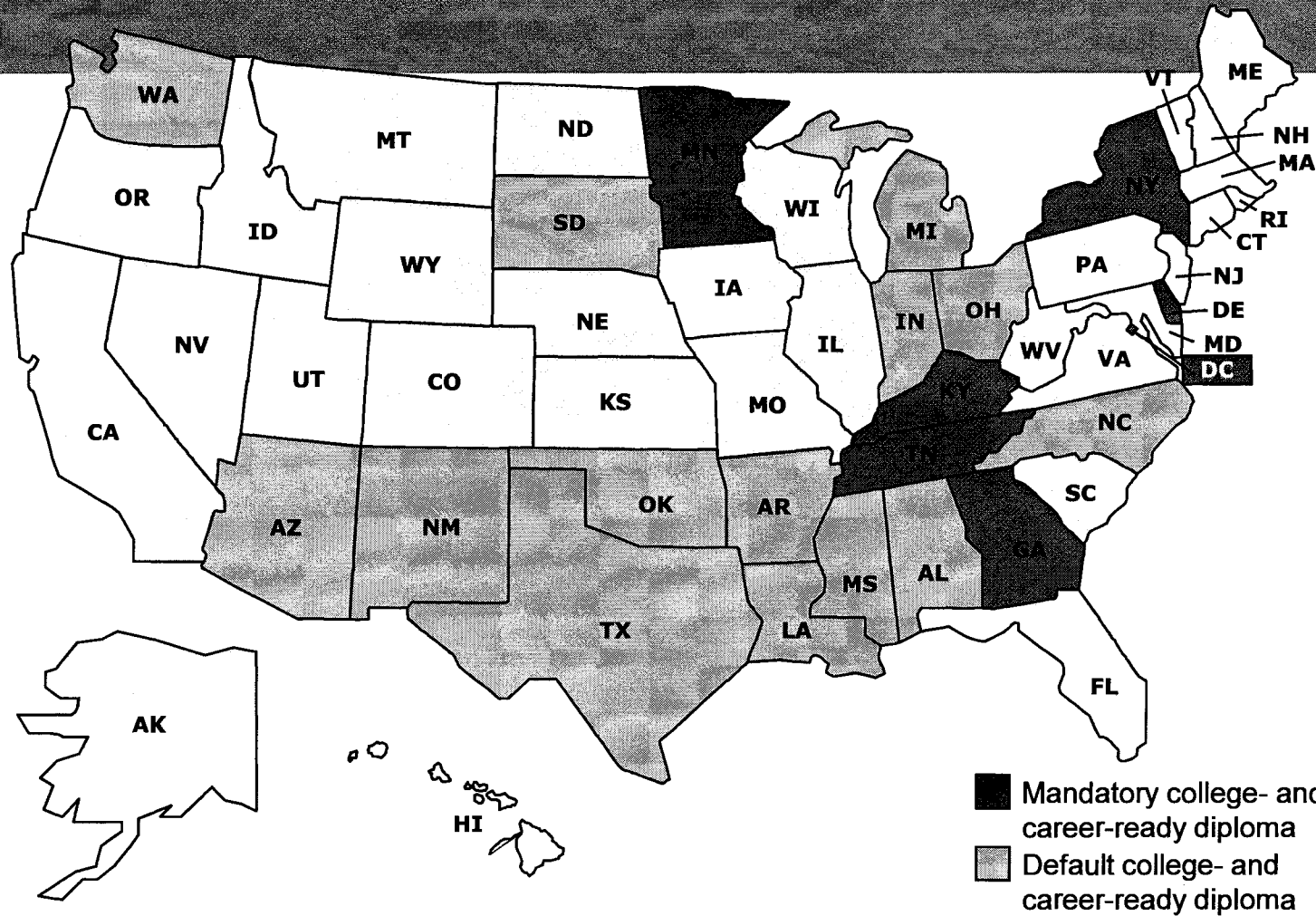
23 states have aligned standards



Are Florida's High School Standards Aligned with the Demands of Postsecondary Education?

- Florida State University System, Florida's Community Colleges and Florida Department of Education are working with Achieve to review K-12 standards and define college-readiness standards

20 states and DC require a college- and career-ready diploma



Florida's math requirements for graduation for students entering the ninth grade this fall (2007)

Years & Courses	General Diploma (4-yr)	Career Prep Diploma (3-yr)	College Prep Diploma (3-yr)	ADP Recommended
First Year	Algebra I	Algebra I	Algebra I level or higher*	Algebra I**
Second Year	Equivalent to or higher than Algebra I	unspecified	Algebra I level or higher*	Geometry**
Third Year	Equivalent to or higher than Algebra	unspecified	Algebra I level or higher*	Algebra II**
Fourth Year	Equivalent to or higher than Algebra	n/a		4 th rigorous course beyond Algebra II**

* Courses must be selected from list of those that qualify for state university admission (see slide 6)

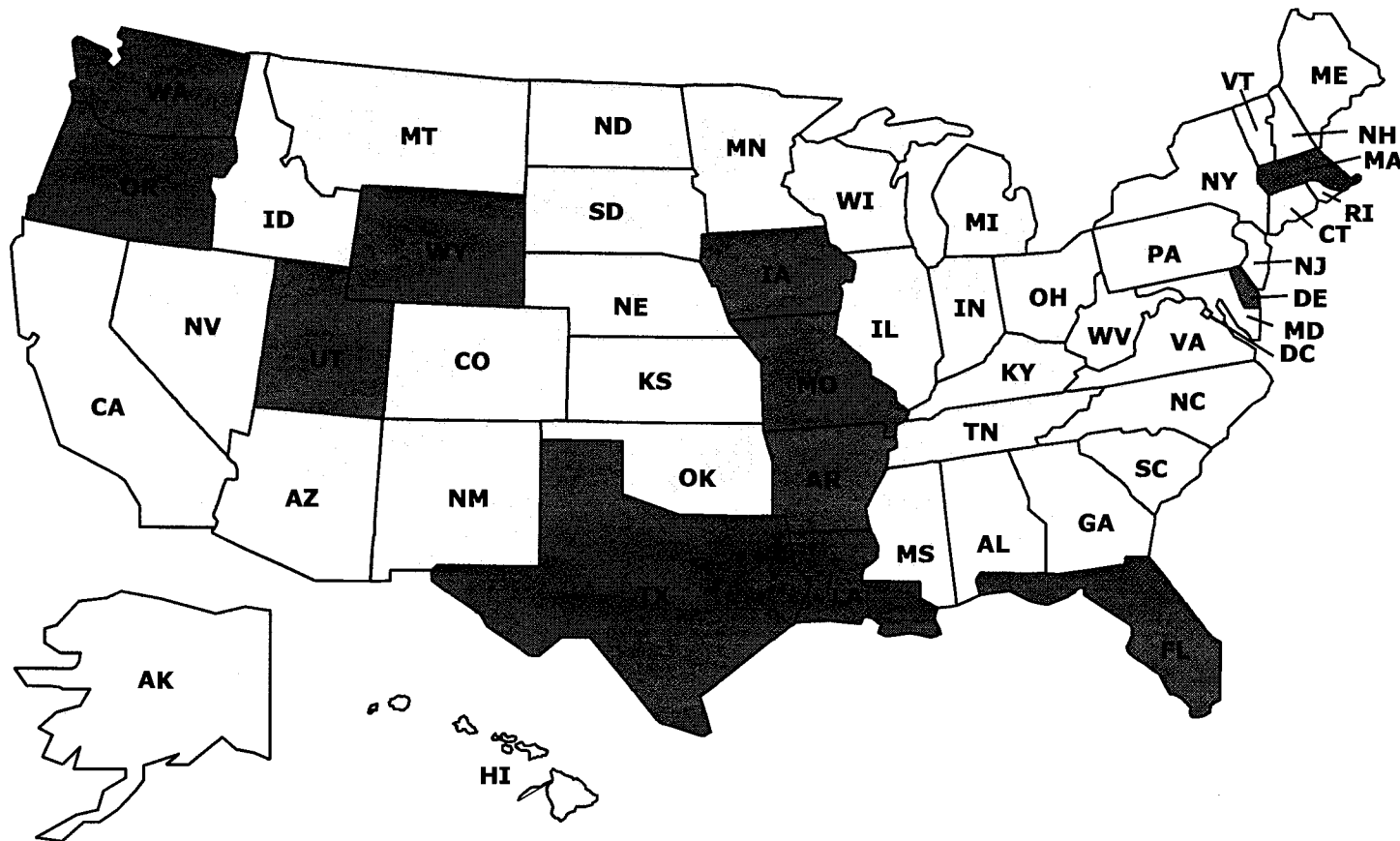
** A rigorous course sequence equivalent to Algebra I, Geometry, Algebra II & Beyond.

Next Generation Assessments for Florida

SB 1908 authorizes End of Course Exams

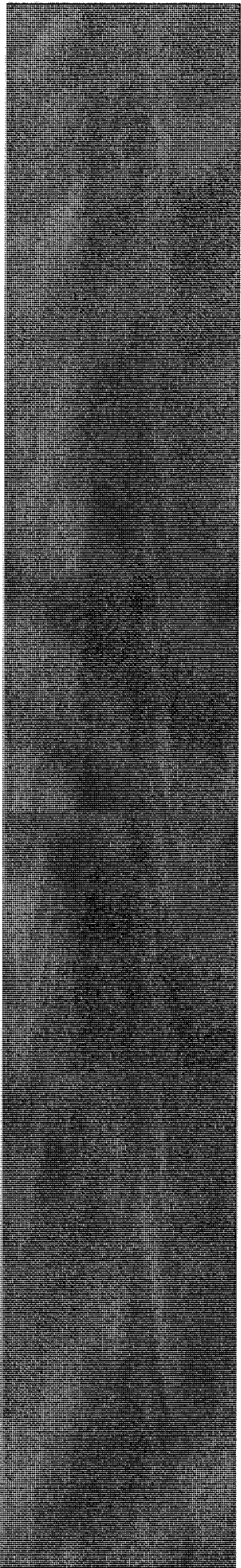
- Algebra I, Biology and American History under development
- AP, IB or AICE allowed
- ADP Algebra II exam may be used

12 States have P-20 longitudinal data systems and match student data at least once annually



P-20 Longitudinal Data Systems

- Florida is the national leader in creating a longitudinal data system that can follow each student from pre-K through postsecondary education and work



Accountability Indicators

Continuum of College- and Career-Ready Indicators

	Approaching College and Career Readiness	Meeting College and Career Readiness*	Exceeding College and Career Readiness
Course Completion and Success	Timely credit accumulation	Successful completion of college- and career-ready course of study	Participation in Advanced Placement (AP), International Baccalaureate (IB) and dual enrollment courses
Achievement	Performance or aligned assessments	Meeting standards on the college- and career ready	College-level performance on AP and/or IB exams
Attainment	Graduation	Earning a college- and career-ready diploma	Earning credits in dual enrollment courses Applying to and enrolling in postsecondary

*Metrics based on indicators of "Meeting College and Career Readiness" should be weighted most heavily.

Most Frequently Collected College- and Career-Ready Indicators

Indicator	Number of States That Include Indicators in Their Data Systems	
	YES	PLAN
Cohort Graduation Rate	28	23
College- and Career-Ready Testing	7	7
College- and Career-Ready Diploma	15	12
College Remediation Rate	22	13
Earning College Credit While Still in High School	15	7

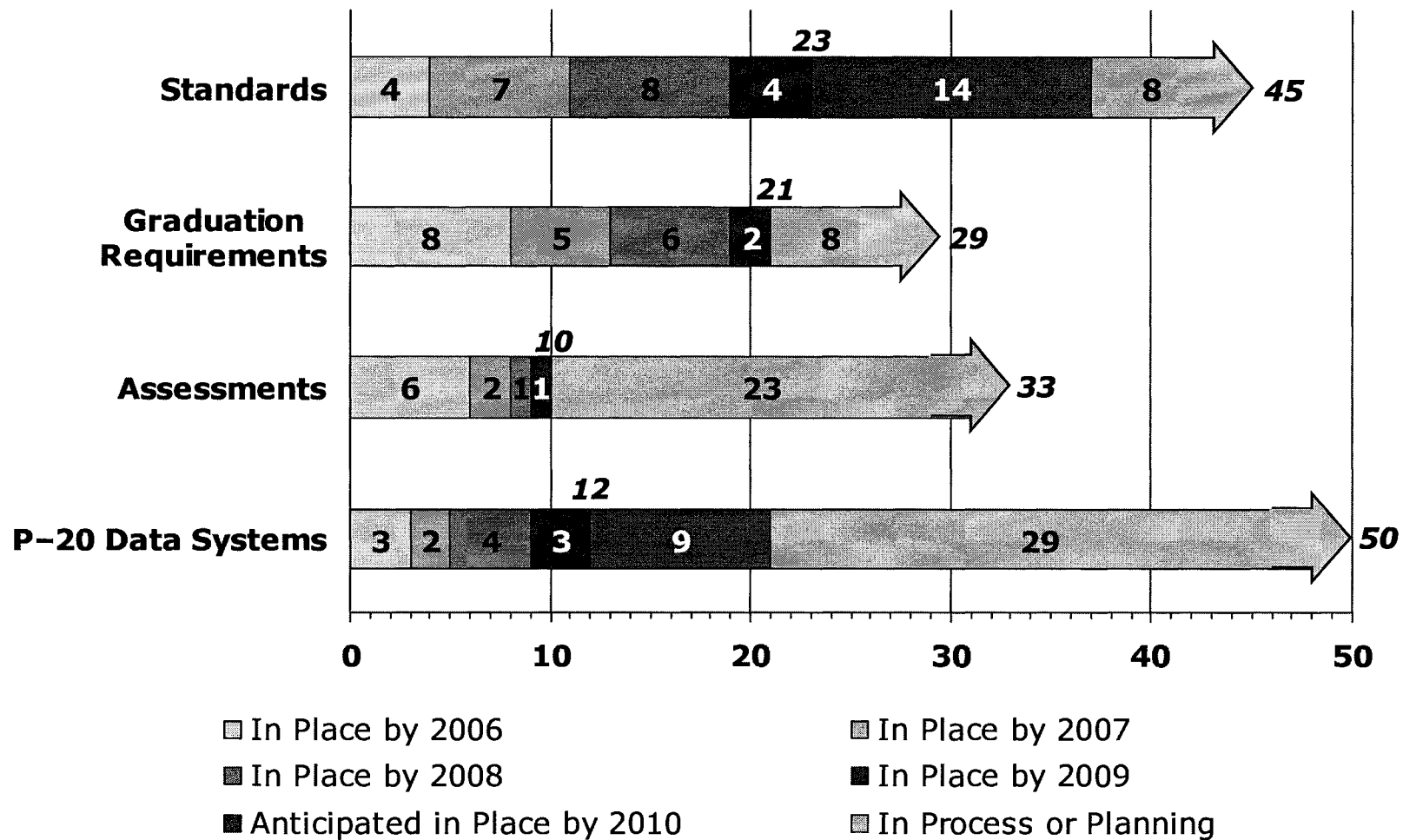
Achieve | 2009 CLOSING THE EXPECTATIONS GAP

Florida's "Next Generation" Accountability Indicators

SB 1908 provides for additional indicators:

- High school graduation rate (4-year cohort rate)
- High school graduation rate of at-risk students
- College credits earned in dual enrollment
- Industry recognized credentials earned
- Achievement on college-ready assessments (e.g., SAT, college placement exams)
- End of course exam results
- AP, IB and AICE results
- Student participation in college-level courses

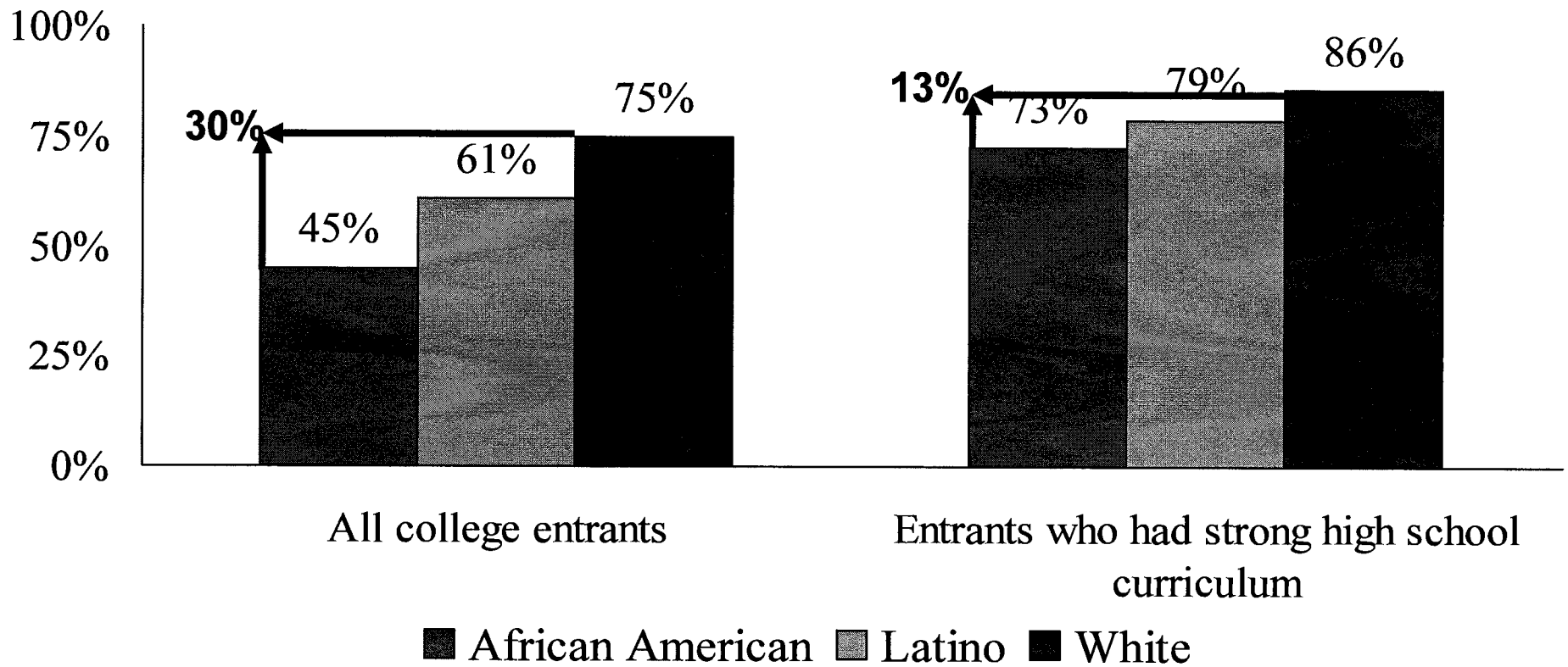
State Progress on Adopting Policies To Ensure That High School Students Graduate College and Career Ready



College- and Career-Ready High School Graduation Requirements

- Why set significantly more rigorous graduation requirements?
- Will raising graduation requirements increase the dropout rate?

A strong high school curriculum* improves college completion and narrows gaps

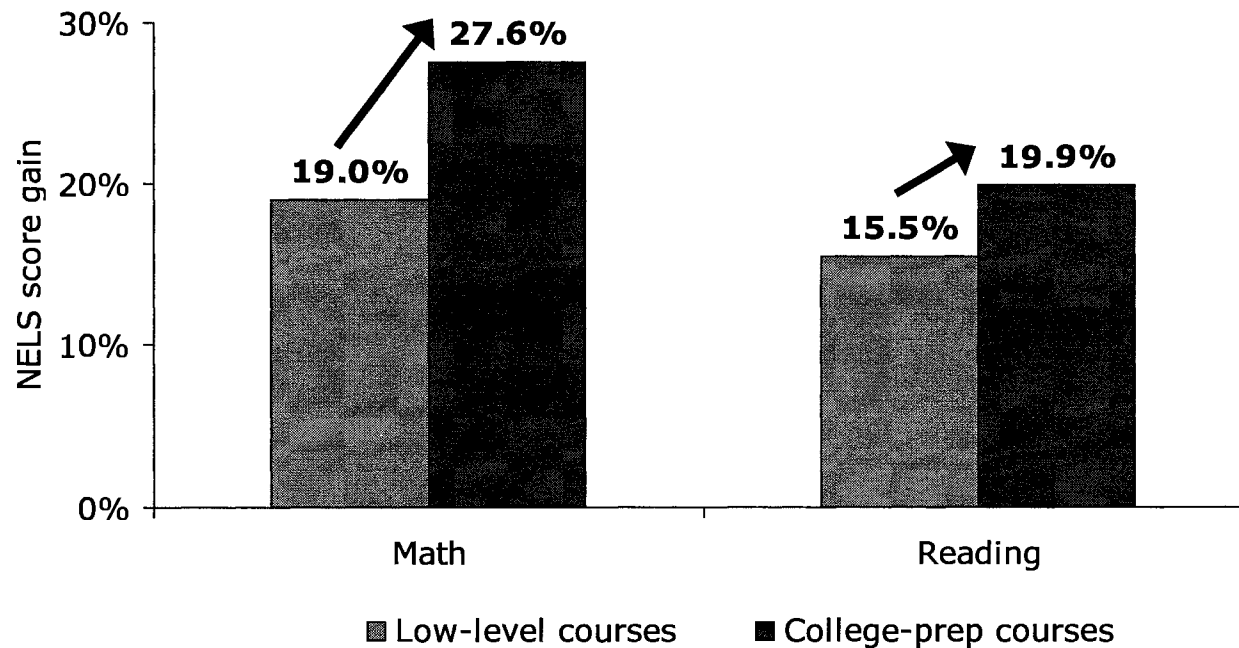


*Completing at least Algebra II plus other courses.

Source: Adapted from Adelman, Clifford, U.S. Department of Education, *Answers in the Toolbox*, 1999.

Low-achieving students learn more in rigorous courses

Gains of low-achieving students* placed in different tracks

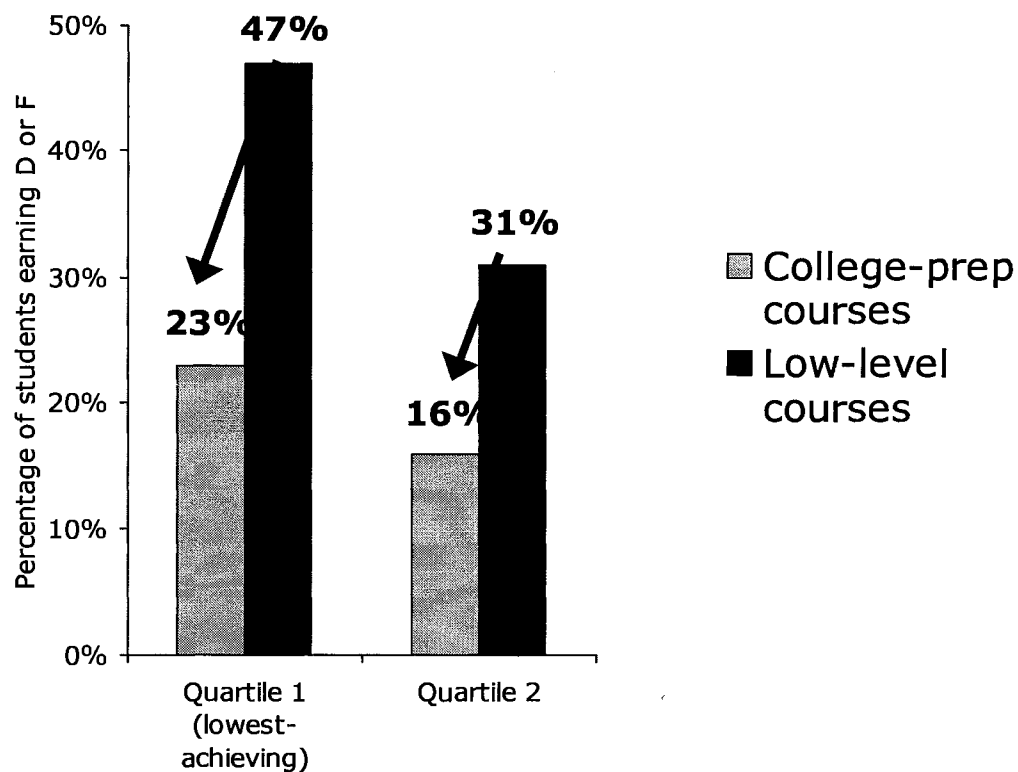


*Grades 8–12 test score gains based on 8th grade achievement.

Source: U.S. Department of Education, National Center for Education Statistics, *Vocational Education in the United States: Toward the Year 2000*, in *Issue Brief: Students Who Prepare for College and Vocation*.

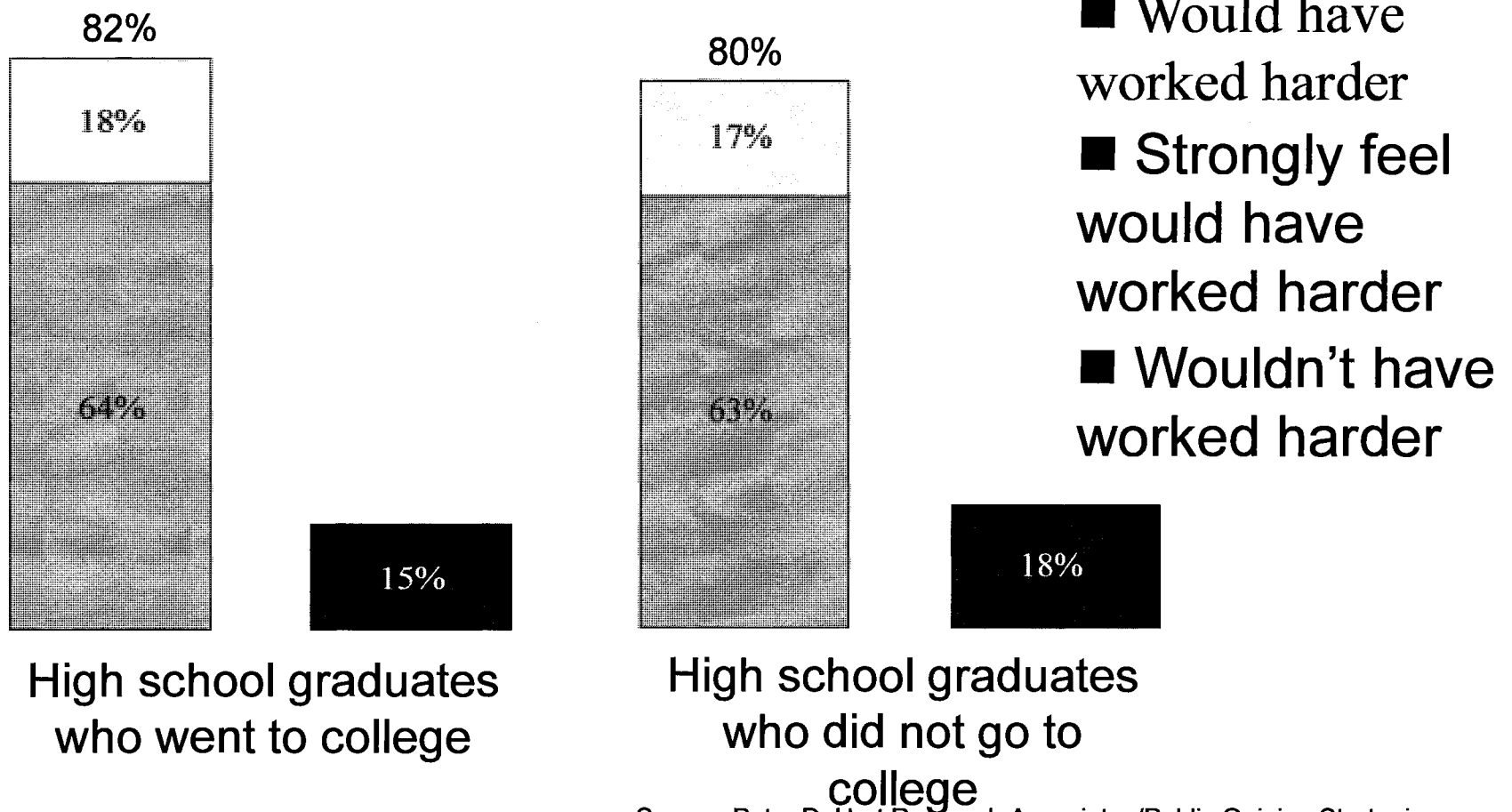
Low-achieving students *fail less often* in rigorous courses

9th grade English performance,
by 9th grade course and 8th grade reading achievement



Source: Cooney, Sondra and Gene Bottoms, Southern Regional Education Board, *Middle Grades to High School: Mending a Weak Link*, 2002, p. 9.

If high school had demanded more, graduates would have worked harder



AMERICAN DIPLOMA PROJECT

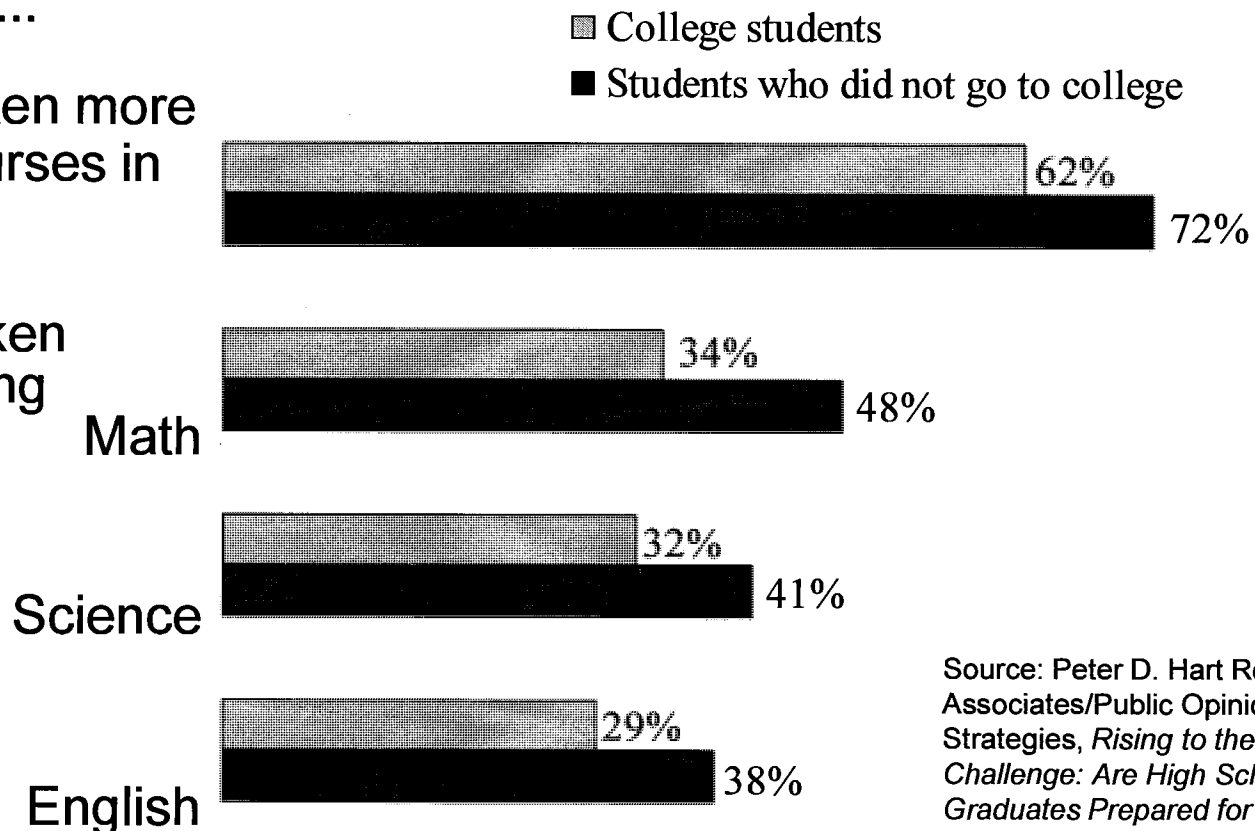
Source: Peter D. Hart Research Associates/Public Opinion Strategies, *Rising to the Challenge: Are High School Graduates Prepared for College and Work?* prepared for Achieve, Inc., 2005.

Majority of graduates would have taken harder courses

Knowing what you know today about the expectations of college/work ...

Would have taken more challenging courses in at least one area

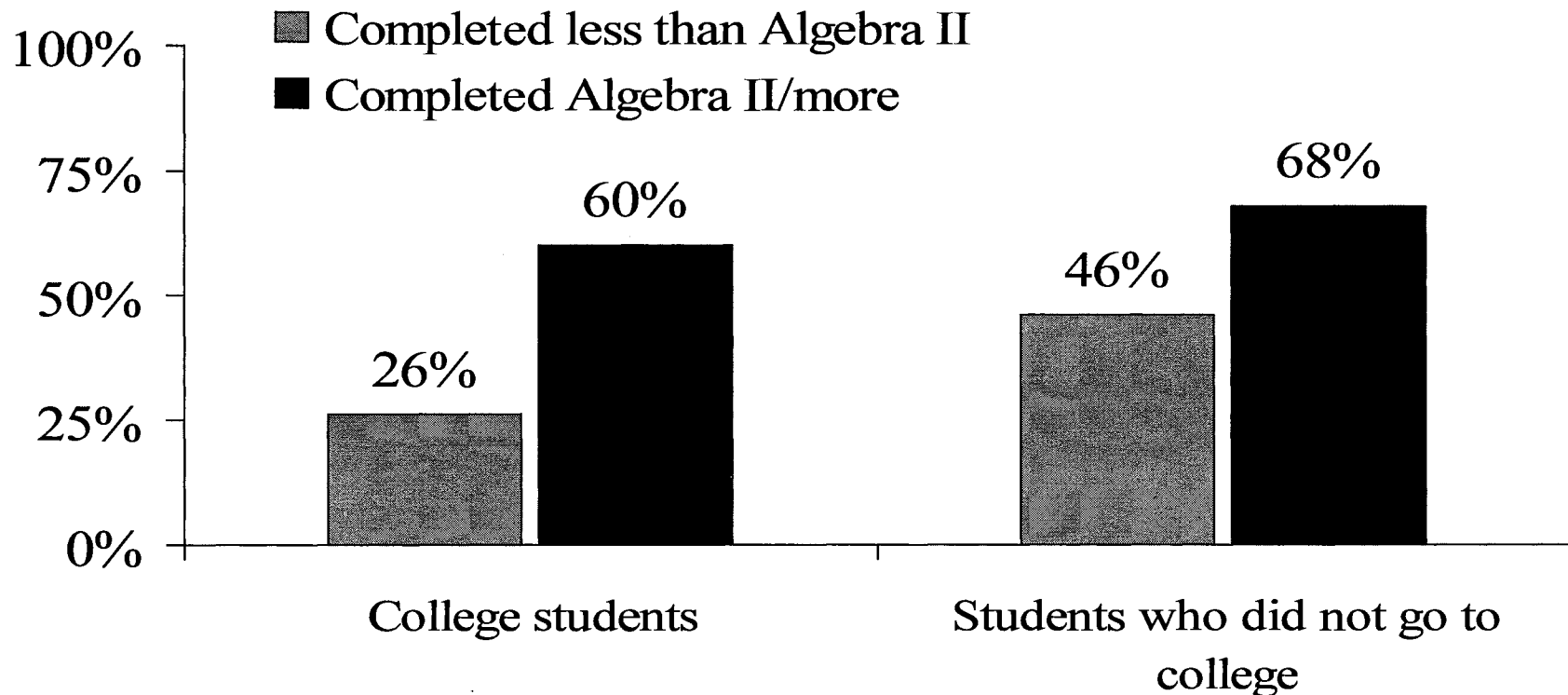
Would have taken more challenging courses in:



Source: Peter D. Hart Research Associates/Public Opinion Strategies, *Rising to the Challenge: Are High School Graduates Prepared for College and Work?* prepared for Achieve, Inc., 2005.

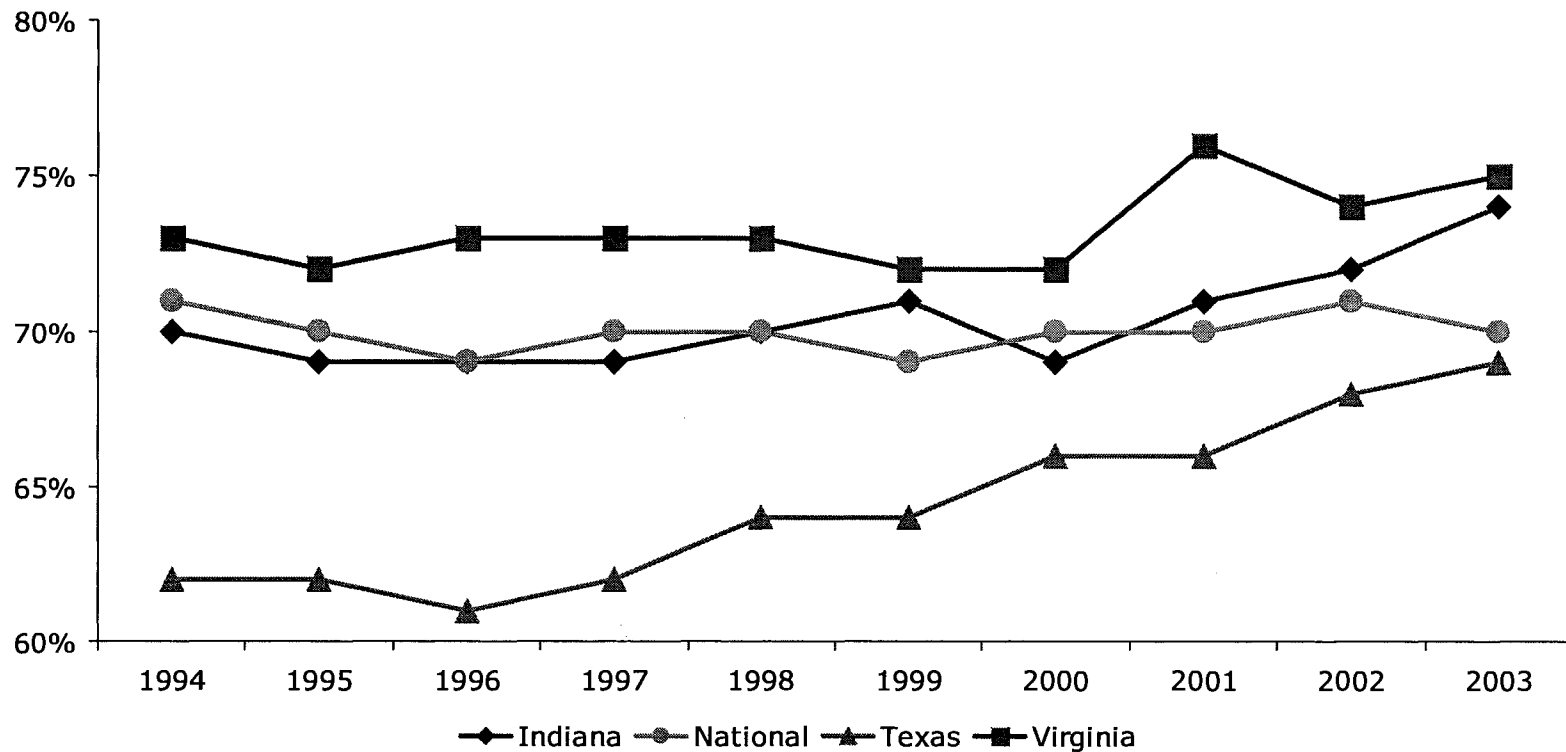
Algebra II critical for college and work

High school graduates extremely or very well prepared for expectations of college/work



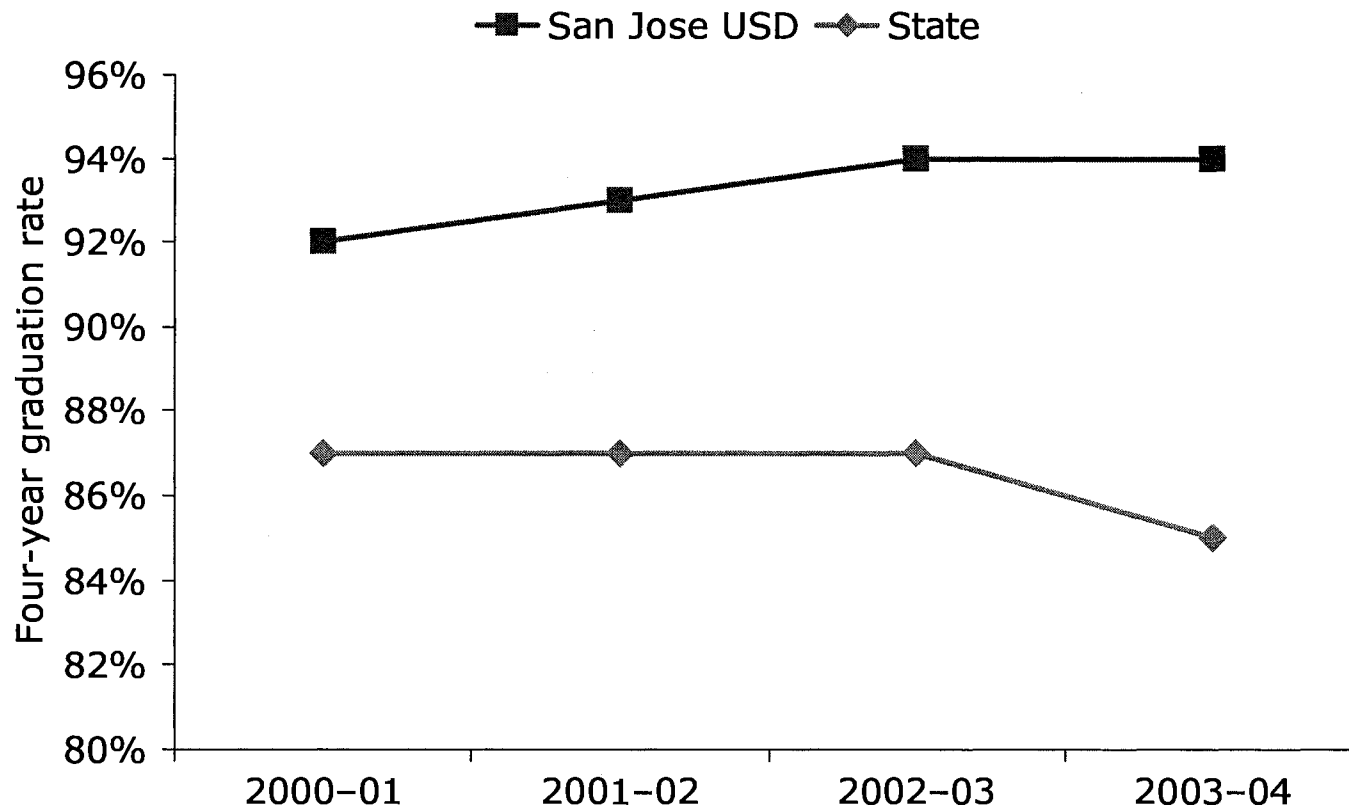
Source: Peter D. Hart Research Associates/Public Opinion Strategies, *Rising to the Challenge: Are High School Graduates Prepared for College and Work?* prepared for Achieve, Inc., 2005.

High school graduation rates generally remain steady — or rise — as states raise expectations

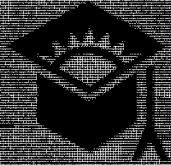


Sources: Greene, Jay P. *Leaving Boys Behind: Public High School Graduation Rates*, Manhattan Institute, Civic Report No. 48, April 2006; Greene, Jay P. *Public High School Graduation and College-Readiness Rates: 1991–2002*, Manhattan Institute, Education Working Paper No. 8, February 2005.

Implementing A-G Did Not Lead to a Decrease in Graduation Rates



Source: California Department of Education, DataQuest Web site, <http://data1.cde.ca.gov/dataquest/>.



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Corporate Income Tax Credit Scholarship Program

March 3, 2009

**Presentation to the
House PreK-12 Policy Committee**

**Jane Fletcher,
Staff Director**

Project Scope

As directed by Ch. 2008-241, Laws of Florida, this report addresses three questions:

1. What is the fiscal impact of the Corporate Income Tax Credit Scholarship Program on the State Budget?
2. What would be the effect of authorizing insurance premium tax credits as an additional source of scholarship program funding?
3. Are there strategies to encourage private schools that accept scholarship students to participate in the FCAT?

Corporate Income Tax Credit Scholarship Program

- The program provides scholarships to low-income students to assist with the cost of attending private school.
 - The scholarships are financed with corporate income tax credits.
 - The maximum scholarship amount is \$3,950.
 - Private school tuition often exceeds the maximum scholarship amount.

Corporate Income Tax Credit Scholarship Program

- Corporations make contributions to scholarship funding organizations, and receive tax credits equal to the amount of these contributions.
- The program is currently capped at \$118 million in tax credits annually.

Program Administration

- 3 scholarship funding organizations administer the application process and award scholarships
 - Florida P.R.I.D.E., Children First Florida, and the Carrie Meek Foundation, Inc.
- Step Up for Students raises scholarship and operating dollars for scholarship funding organizations
- Department of Education's Office of Independent Education and Parental Choice oversees the program

The Program's Funding Cap and Scholarship Recipients Have Increased Over Time

Fiscal Year	Program Funding Cap	Number of Students
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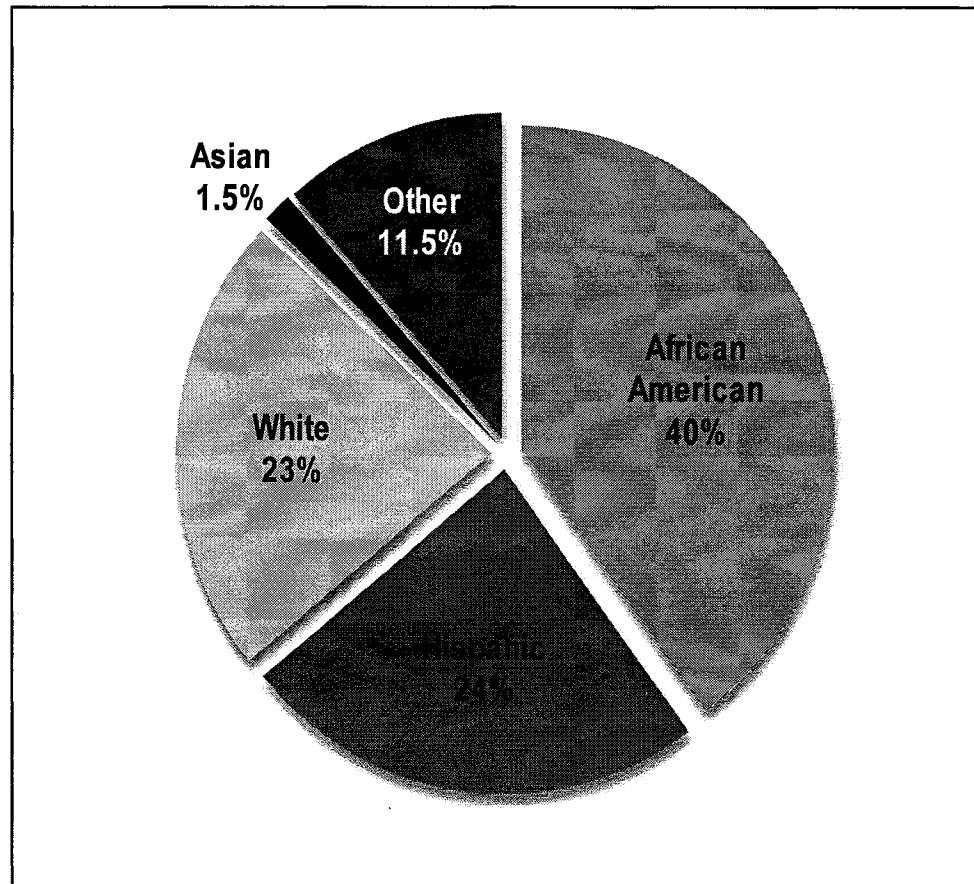
Source: Department of Education

Program Information

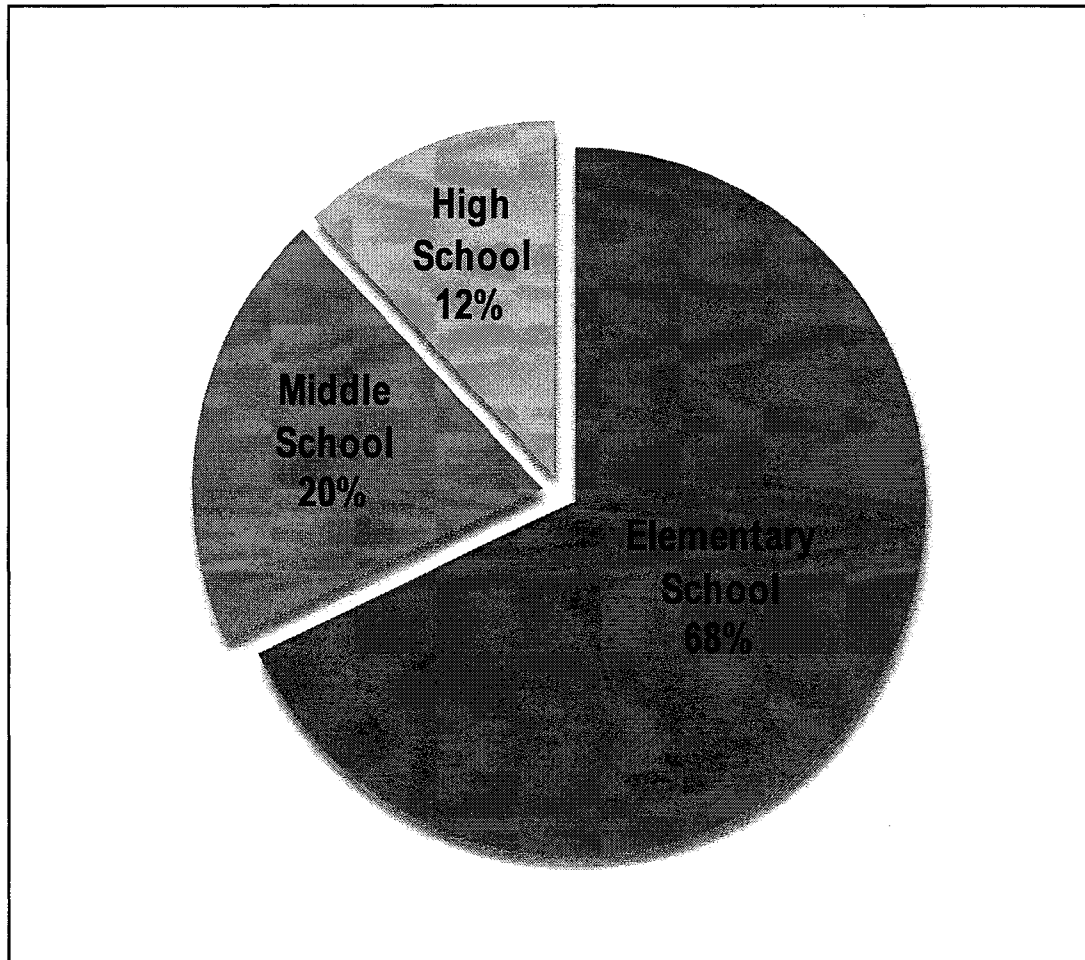
FY07-08

- **\$76.7 million scholarships awarded**
- **21,493 students received scholarships**
- **933 private schools participated**

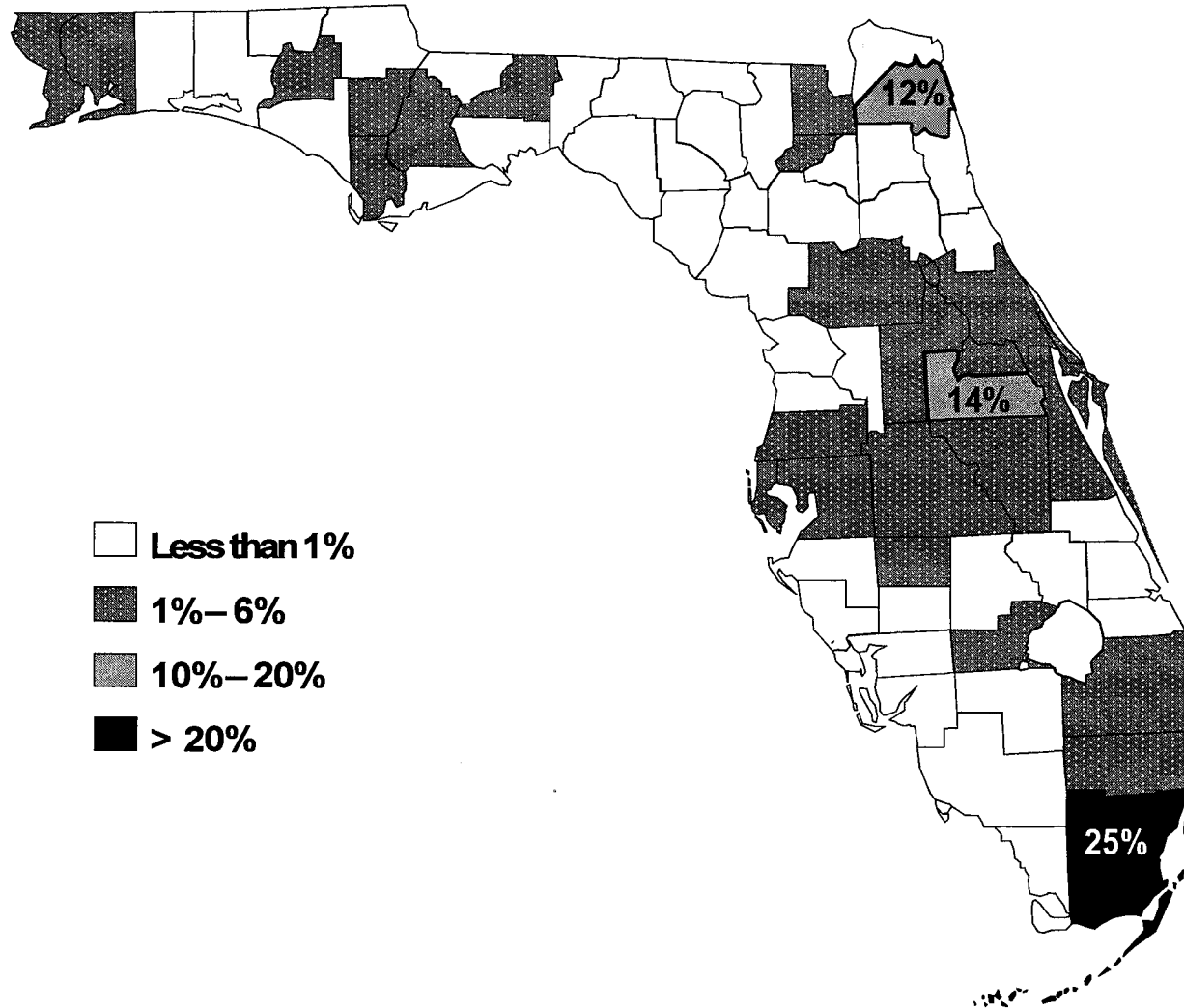
The Scholarship Program Serves a Diverse Student Population



Most Scholarship Students Are in Elementary School



Distribution of Scholarship Students



1. What is the fiscal impact of the Corporate Income Tax Credit Scholarship Program on the State Budget?

The Scholarship Program Produces a Net Savings to the State

Fiscal Year 2007-08

Education Savings

Number of scholarship recipients	21,493
90% of recipients who would have attended public school	19,344
Savings per recipient	x \$6,106
Total education savings	\$118.1 million

Revenue Lost

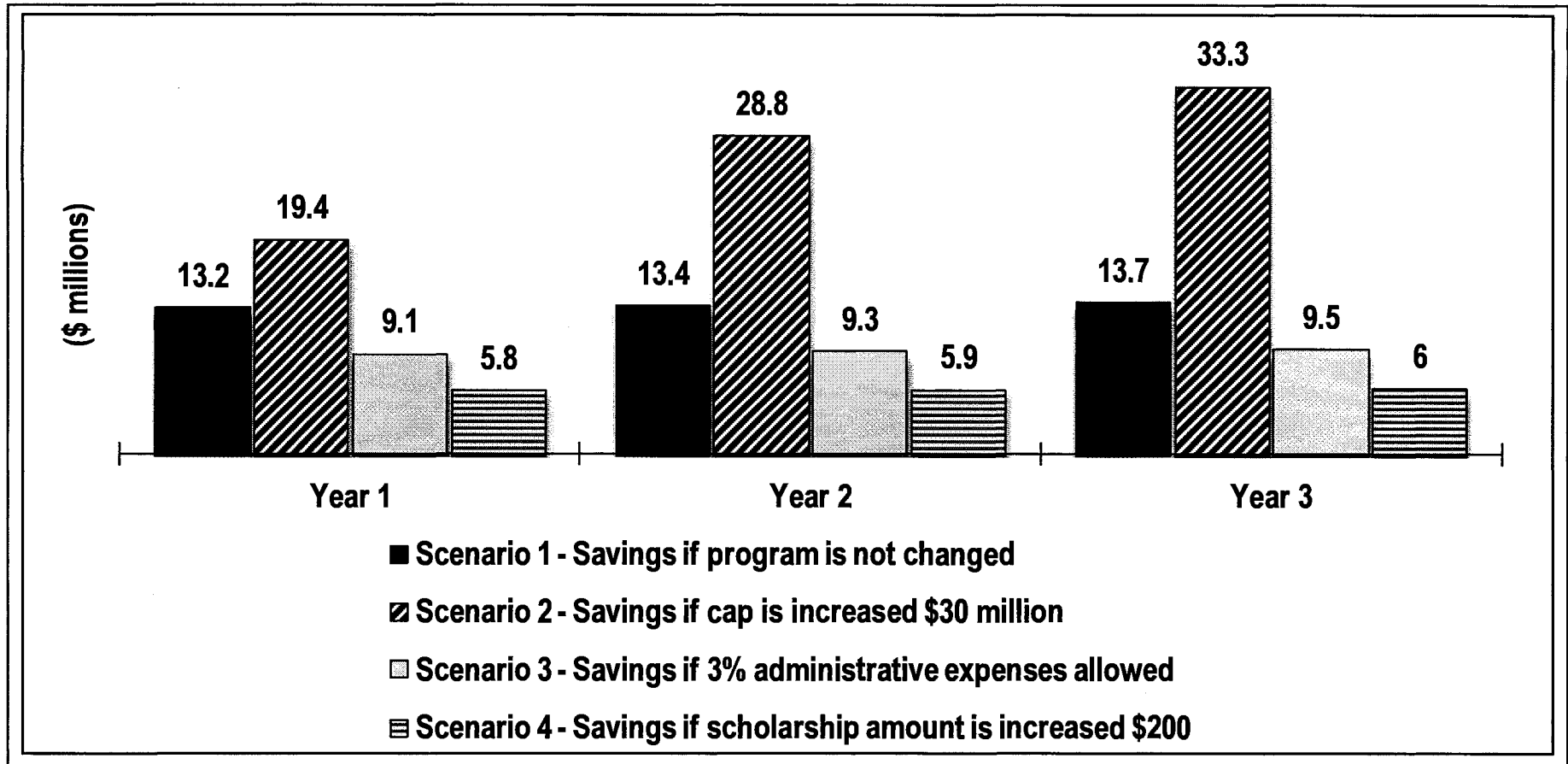
Forgone corporate income tax	\$79.2 million
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Ratio (Saves \$1.49 for each \$1.00 spent) 1.49

Net Savings \$38.9 million

Source: OPPAGA analysis

Increasing the Tax Credit Cap Can Increase Program Savings, Other Program Changes Reduce Savings



Source: OPPAGA analysis.

Questions to Consider before Increasing the Program's Funding Cap

- Has at least 95% of the cap been approved for tax credits during the two prior fiscal years?
- How many qualified students would participate at the current amount if additional funds were available?

2. What would be the effect of authorizing insurance premium tax credits as an additional source of scholarship program funding?

Insurance Premium Tax

- Broadening the program to allow Insurance Premium Tax Credits Could encourage additional companies to participate
- Currently, not all insurance companies in the state have an incentive to participate in the program.
- Authorizing insurance premium tax credits would broaden the program's funding base and increase the probability that the program's funding cap is reached.
 - This would not necessarily affect the program's overall fiscal impact, as the Legislature could continue to control the program's growth through the funding cap.

Insurance Premium Tax

- Insurance companies are assessed several inter-related taxes:
 - corporate income taxes
 - insurance premium taxes
 - retaliatory taxes (in some cases)
- For each of these taxes, varying rates apply as well as different rules governing how one tax liability can be credited against another.

Insurance Premium Tax Credits Encourage Additional Participation

	Insurance Company A		Insurance Company B	
	Has Incentive to Participate in Current Program	Does Not Have Incentive to Participate in Current Program	Would Have Incentive to Participate in an Amended Program	
NOT Participating in Scholarship Program				
Total Tax Liability – NOT participating	\$10.0 m	\$10.0 m	\$10.0 m	
Participating in Scholarship Program				
Corporate Tax Liability	\$ 8.0 m	\$ 2.0 m	\$ 2.0 m	
Scholarship Contribution	(0.5 m)	(0.5 m)		
Net Corporate Tax Liability	\$ 7.5 m	\$ 1.5 m	\$ 2.0 m	
Insurance Premium Liability	\$ 5.7 m	\$ 10.0 m	\$10.0 m	
Insurance Premium Credit for Corporate Taxes Paid	(3.7 m)	(1.5 m)	(2.0 m)	
Scholarship Contribution			(0.5 m)	
Net Insurance Premium Liability	\$ 2.0 m¹	\$ 8.5 m	\$ 7.5 m	
Total Tax Liability – Participating	\$ 9.5 m	\$10.0 m	\$ 9.5 m	

Questions to Consider Before Authorizing Insurance Premium Tax Credits

- Should insurance companies be given flexibility in receiving tax credits against either their corporate income taxes or their insurance premium taxes?
- Should out of state insurance companies be held harmless from increased Florida retaliatory taxes if they participate in the program?
- Should an insurance premium tax credit for scholarship contributions be in addition to or included in the 65% credit limitation?

Questions?

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The Corporate Income Tax Credit Scholarship Program Saves State Dollars

at a glance

The corporate income tax credit scholarship program produces a net savings to the state. We estimate that in Fiscal Year 2007-08, taxpayers saved \$1.49 in state education funding for every dollar loss in corporate income tax revenue due to credits for scholarship contributions. Expanding the cap on tax credits would produce additional savings if there is sufficient demand for the scholarships. The Legislature may wish to consider expanding the program when the level of tax credits awarded approaches the cap and there is a sufficient waiting list of students who could use the scholarships.

Including insurance premium tax credits in the scholarship program would broaden its funding base and increase the probability that the tax credit cap is reached. Currently, not all insurance companies in the state have an incentive to participate in the program.

Private school representatives indicated that incentives would not encourage their schools to have their scholarship students participate in the FCAT.

Scope

As directed by Ch. 2008-241, *Laws of Florida*, this report evaluates the fiscal impact of increasing the cap for the Corporate Income Tax Credit Scholarship Program. The report also assesses the option of using insurance premium tax credits as an additional funding source and examines options for encouraging private schools with

scholarship recipients to participate in the Florida Comprehensive Assessment Test.

Background

The Florida Legislature established the Corporate Income Tax Credit Scholarship Program in 2001 to expand educational opportunities for low-income students.¹ The program enables these students to attend private schools using scholarships financed with corporate income tax credits.

All corporations doing business in Florida must pay a corporate income tax equal to 5.5% of income earned in Florida, and these revenues are deposited to the General Revenue Fund. Corporations participating in the scholarship program make contributions to scholarship funding organizations, and receive tax credits equal to the amount of these contributions, not to exceed 75% of their corporate taxes due. The maximum amount of tax credits that may be granted under the program was capped at \$50 million for Fiscal Years 2003-04 and 2004-05, and \$88 million for Fiscal Years 2005-2006 through 2007-08. For Fiscal Year 2008-09 the Legislature raised the cap to \$118 million. Because the amount of tax credits is capped, corporations must apply and the Department of Revenue must approve the tax credits prior to companies taking credits for their contributions.

¹ Section 220.187, *F.S.*

Corporate income tax scholarship credits have accounted for approximately 5% of the state's corporate income tax revenues since the program's inception. On average over the past three fiscal years, the amount of tax credits approved were approximately 96% of the program's cap of \$88 million.

The maximum scholarship amount per student is \$3,950 and may be used for tuition and fees at a private school in Florida.² The dollar amount of scholarships awarded has been less than the amount of tax credits approved each fiscal year. As shown in Exhibit 1, over the past three years, the scholarships have equaled about 72% of the program's cap on tax credits, but reached 87% of the cap in Fiscal Year 2007-08.

**Exhibit 1
Dollar Amount of Scholarships Funded Through the Program Has Been Less Than Approved Credits**

Fiscal Year	Program Cap	Tax Credits Approved	Dollar Amount of Scholarships
2007-08	\$88 m	\$85,611,140	\$76,708,207
2006-07	88 m	87,123,000	67,189,437
2005-06	88 m	80,323,071	46,894,354

Source: The *Florida Statutes*, Department of Revenue, and Step Up for Students.

There are two reasons why scholarships have been lower than the amount of tax credits approved. First, there is a timing gap between when tax credits are approved and when scholarships are funded. The Department of Revenue approves tax credits for a state fiscal year. Since corporate fiscal years are often different from the state's fiscal year, some corporations make scholarship contributions in a different state fiscal year than the one for which their tax credits have been approved. For example, a company applied for and the Department of Revenue approved part of the 2007-08 allocation of tax credits for the scholarship program. The company's 2007-08 fiscal year is from October 2007 through September 2008.

² This amount represents a \$200 increase from the maximum scholarship amount of \$3,750 in previous fiscal years.

It can make contributions to scholarship funding organizations as late as September 2008, which falls in state Fiscal Year 2008-09. In this example, the state incurred a revenue loss in Fiscal Year 2007-08, the fiscal year for which the tax credits were approved, but gained part of the savings in Fiscal Year 2008-09, when state school spending would be lower as students switched from public to private schools. Recognizing this delay, scholarship funding organizations are authorized to carry forward 25% of the contributions they receive from one year to the next.³

A second reason why scholarship awards have been lower than approved tax credits is that the amount of these credits is based on expected corporate taxes due. When a company applies to the Department of Revenue for corporate tax credits, it estimates its tax liability based on the amount of profits it expects to earn in its fiscal year. In some cases, actual profits at the end of the corporation's fiscal year are lower than estimated, and the company may reduce the tax credit it claims and the level of contributions it makes to scholarship funding organizations. In other cases, the company may carry forward the unused credit to its next fiscal year.

Currently three scholarship funding organizations administer the application process and award scholarships: Florida P.R.I.D.E., Children First Florida, and the Carrie Meek Foundation, Inc. Step Up for Students is responsible for raising the scholarship and operating dollars for the scholarship funding organizations. Step Up for Students and Florida P.R.I.D.E. are both trade names of The Florida School Choice Fund, Inc. Until July 2008 the operations of Step Up for Students and the scholarship funding organizations were funded by private donations. The 2008 Legislature authorized the scholarship funding organizations to use 3% of their scholarship contributions for administrative purposes.⁴

³ Section 220.187, *F.S.*, requires scholarship funding organizations to return to the state treasury the net eligible contributions remaining on June 30 of each year that are in excess of the 25% that may be carried forward.

⁴ Chapter 2008-241, *Laws of Florida*.

The Department of Education's Office of Independent Education and Parental Choice oversees the program. It provides lists of approved private schools and scholarship funding organizations and publishes quarterly reports.

In Fiscal Year 2007-08 the program awarded scholarships to 21,493 students. Students are eligible for a scholarship if they qualify for free or reduced lunch and have either attended public school the previous year, received a scholarship the previous year, or are entering kindergarten or first grade.⁵ Chapter 2008-241, *Laws of Florida*, extends eligibility to students in foster care and siblings of current scholarship recipients. Students are eligible to renew their scholarship and siblings are eligible to join the program as long as their household income does not exceed 200% of the federal poverty level. The number of students receiving scholarships has nearly doubled over the past five years as shown in Exhibit 2. This growth has been accompanied by increases in the cap on tax credits.

**Exhibit 2
The Number of Scholarship Recipients Has Increased Over Time**

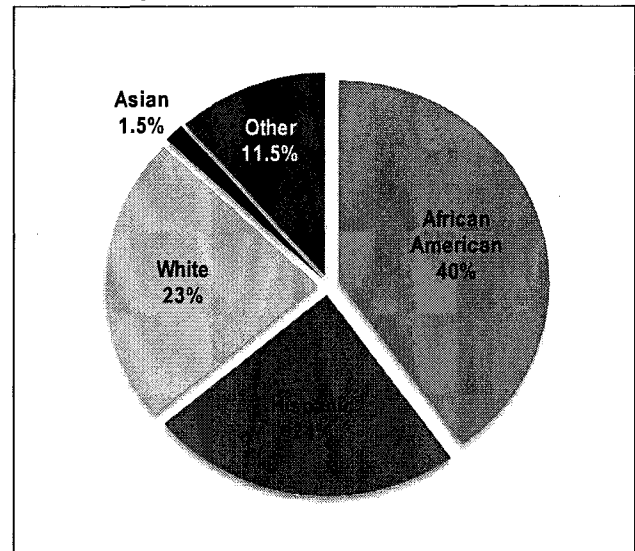
Fiscal Year	Number of Students	Number of Private Schools
2007-08	21,493	933
2006-07	17,819	948
2005-06	15,123	895
2004-05	10,549	973
2003-04	11,550	924

Source: Department of Education.

The program serves a diverse student population (see Exhibit 3). In 2007-08, 40% of scholarship recipients were African-American, while Hispanic and white students were each about a quarter. The remaining students were Asian or other ethnicities.

⁵ A student is eligible for free lunch if household income does not exceed 130% of the federal poverty level and a student is eligible for reduced lunch if household income does not exceed 185% of federal poverty level. For 2007-08, the federal poverty level for a four-person household was \$20,650 annual income. This equates to a household income of less than \$26,845 to qualify for free lunch and a household income of less than \$38,203 to qualify for reduced lunch.

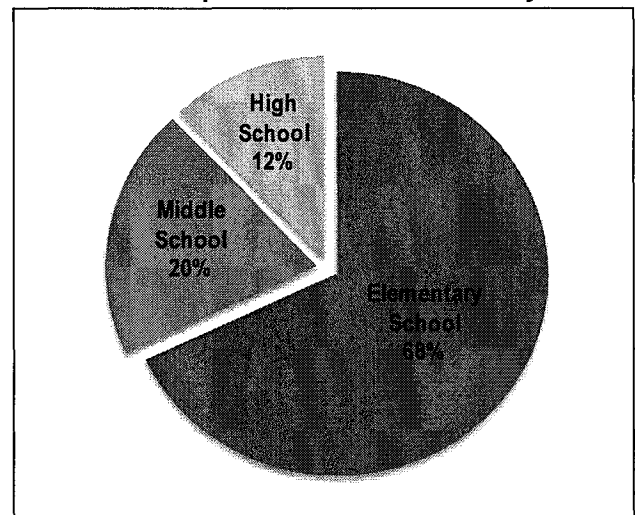
**Exhibit 3
The Scholarship Program Serves a Diverse Student Population**



Source: OPPAGA analysis of Step Up for Students data.

As shown in Exhibit 4, over two-thirds of the scholarship students were in elementary school, while a fifth were in middle school, and the remaining 12% were in high school. The typical student comes from a household with an annual income of \$24,543 and four persons. In 2007-08, most (61%) students received the maximum scholarship amount of \$3,750. The average scholarship amount was \$3,412.

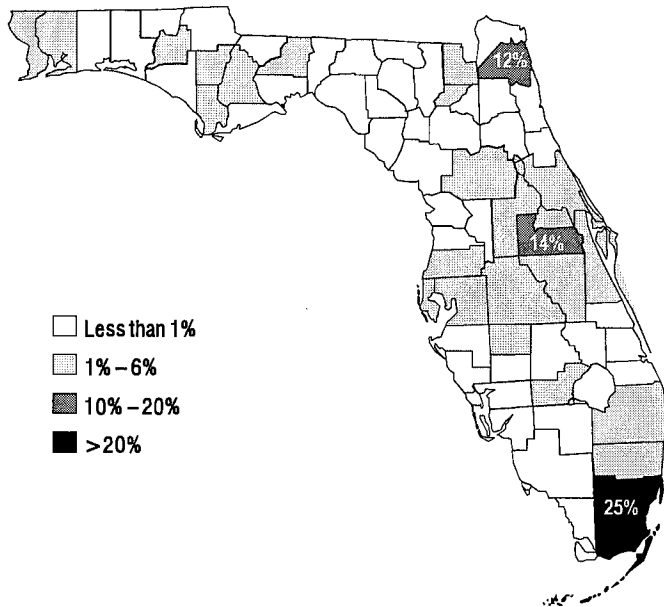
**Exhibit 4
Most Scholarship Students Are in Elementary School**



Source: OPPAGA analysis of Step Up for Students data.

In Fiscal Year 2007-08, scholarship students attended private schools in 58 out of 67 school districts (see Exhibit 5). Over half of these students attended schools in three counties—Miami-Dade (25%), Orange (14%), and Duval (12%).

**Exhibit 5
Distribution of Scholarship Students**



Source: OPPAGA analysis.

The program currently serves slightly less than 2% of low income children in Florida. The Department of Education reports that there were 1.2 million low income students eligible for free and reduced priced lunches in 2007-08, while the program served 21,493 such students in the school year.

Questions and Answers —

Our review of the Corporate Income Tax Credit Scholarship Program addressed three questions.

- What is the fiscal impact of the program?
- What would be the effect of using insurance premium tax credits as an additional source of program funding?
- Are there strategies that would encourage private schools that accept scholarship recipients to participate in the Florida Comprehensive Assessment Test (FCAT)?

To address these questions we analyzed financial and student records provided by the scholarship funding organizations, consulted with tax experts at the Department of Revenue, and conducted focus groups with representatives of private schools accepting scholarship recipients. While there is a local component to education funding, the fiscal analyses presented in this report represent the impact on state funds only. Appendix A provides details on our fiscal analyses.

What is the fiscal impact of the Corporate Income Tax Credit Scholarship Program?

The scholarship program produces a net savings to the state. While the program reduces the amount of corporate tax revenues received by the state, it produces a net fiscal benefit. This occurs because state education spending for students who receive scholarships is reduced by more than the amount of revenue lost.

The precise amount saved is difficult to estimate. Education funding is set by the Legislature in the annual appropriations act, which establishes the total per-student funding, the proportion paid by state funds, and the proportion paid through local property taxes. The Department of Education allocates the state portion of these funds through complicated formulas, based on student counts and other factors, to school districts through the Florida Education Finance Program (FEFP). As discussed in Appendix A, FEFP allocations include a base student allocation plus a declining enrollment supplement, exceptional student education allocation, supplemental academic instruction allocation, and several other adjustments.

As shown in Exhibit 6, we estimate that in Fiscal Year 2007-08, the state saved \$1.49 in education funding for every dollar loss in corporate income tax revenue due to scholarship contributions. The scholarship funding organizations collected \$79.2 million in contributions and provided scholarships to 21,493 students. We estimate that 90% of these students would have attended public school if not for the scholarship. The state avoided \$118.1 million in education spending for these students, resulting in net savings of \$38.9 million taking into account foregone corporate tax revenue.

Exhibit 6 Corporate Income Tax Scholarship Program Saves the State Money Spent on Education

Fiscal Year 2007-08	Amount
Education Savings	
Number of scholarship recipients	21,493
90% of recipients who would have attended public school	19,344
Savings per recipient	x \$6,106
Total education savings	\$118.1 million
Revenue Lost	
Pledges for current year	\$81.0
Uncollectible pledges from current year	(4.6)
Outstanding pledges beginning of the year	35.0
Outstanding pledges end of the year	+ (32.1)
Forgone corporate income tax	\$79.2 million
Ratio (Saves \$1.49 for each \$1.00 spent)	1.49
Net Savings	\$38.9 million

Source: OPPAGA analysis of financial data provided by Step Up for Students.

Beginning in Fiscal Year 2008-09, state educational savings may decline, as the 2008 Legislature authorized scholarship funding organizations to withhold up to 3% of contributions to cover their administrative expenses. As a result, the amount of contributions available for scholarships will decline and fewer students may switch from public to private schools.

Although increasing the cap on tax credits can produce greater savings for the state, other program changes can reduce savings. In recent years, the Legislature has made changes to the scholarship program, twice increasing the program's cap on tax credits and, last year, increasing the scholarship amount as well as allowing the scholarship funding organizations to use contributions for administrative expenses.

Raising the cap on tax credits increases savings in the state budget because state education spending is reduced by more than the loss in state corporate tax revenue. However, not all of the increase in savings may occur in the first year. As discussed previously, there can be a lag between when contributions are made to the scholarship fund, which reduce state corporate tax collections, and when these contributions are used by students who otherwise would attend public schools, reducing state educational expenses.

While increasing the cap on tax credits can increase savings, other changes to the program such as increasing the scholarship amount or the percentage of contributions that can be used for administrative expenses tend to decrease program savings. These changes reduce the number of scholarships that can be awarded for a given level of contributions, and thus the level of savings achieved.

Exhibit 7 provides a hypothetical analysis that shows the relative effect of individual program changes on the state budget.⁶ This analysis shows the savings achieved for new scholarship students with four scenarios—(1) no change in the program cap and scholarship amount and administrative expenses are not allowed; (2) a \$30 million increase in the program cap, which results in an incremental increase in the number of students served; (3) increasing the administrative expenses that scholarship funding organizations are allowed to retain by 3%; and (4) increasing the level of scholarship awards by \$200. The exhibit shows that raising the cap on tax credits increases state savings, with savings growing over time as more scholarship students attend private school. In contrast, increasing the level of administrative fees retained by funding organizations and increasing the scholarship amount reduces the program's savings to the state.⁷

Additional factors can affect the timing and the amount of the savings. These include

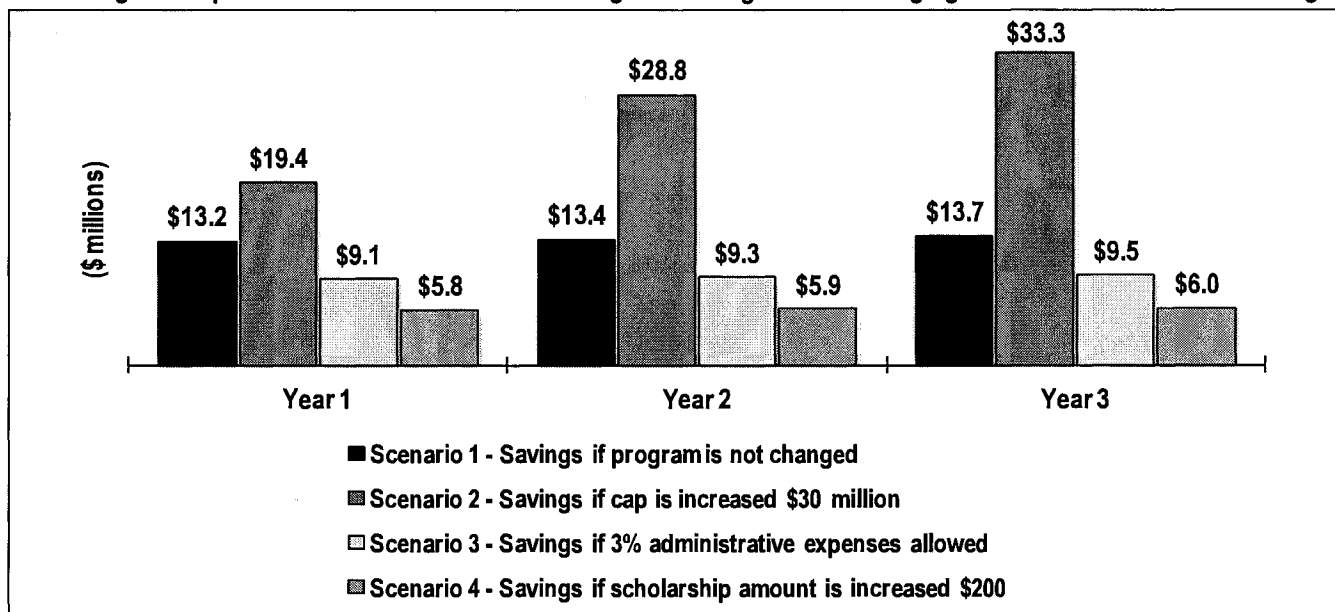
- the number of students seeking scholarships, and
- the amount of reserves scholarship funding organizations have available to spend each year.

⁶ Due to the poor economy, contributions to the program have not increased as expected. Using expected contributions for the current year in our analysis would not provide information that would be representative of a more typical year.

⁷ To determine how program changes would affect the state budget we considered the effect of the net change in scholarships from the previous year to each successive year of implementation. In this analysis only new scholarship students are considered because continuing scholarship students are already out of the base education budget. This approach is different from the one used in the previous section (Exhibit 6) estimating the program's total savings in Fiscal Year 2007-08. In that estimate both new and continuing scholarship students are considered.

Exhibit 7

Increasing the Cap on Tax Credits Can Increase Program Savings While Changing Other Factors Reduces Savings



Source: OPPAGA analysis.

Changes in the number of students who seek scholarships to attend private schools can affect how quickly students use scholarships to shift from public to private schools. In addition, if scholarship funding organizations have adequate reserves, they can use these funds to meet or increase their commitments to students for the current year even when contributions fall short of expectations. If this occurs, the level of state savings is maintained or increased because the revenue loss from tax credits would be lower while the number of scholarships and, therefore, the level of education savings, is maintained or increased.

The Legislature may wish to consider several questions before further increasing the program’s funding cap. As directed by the Legislature, we identified criteria that could be used to determine if and when future increases should be made to the cap on corporate tax credits.

- Has at least 95% of the cap been approved for tax credits during the two prior fiscal years?
- How many qualified students would participate at the current amount if additional funds were available?

These criteria would help ensure that there is sufficient demand for additional program scholarships and that the drop in tax revenues would be matched with corresponding future reductions in state public school expenditures. Reaching a 95% utilization level of the cap is a reasonable threshold indicating corporate interest in making scholarship contributions, and this level had been met in both prior instances when the Legislature increased the program’s cap on tax credits. The Legislature’s Office of Economic and Demographic Research, which manages the state’s Revenue Estimating Conferences, can provide the Legislature with estimates of the net fiscal impact of increasing the cap in specific fiscal years. The number of unfunded qualified student applicants that would participate at the current scholarship amount is a good indicator of unmet demand for program scholarships. For example, if there were 5,000 qualified applicants who did not receive a scholarship in the prior year, the cap on tax credits could be raised by enough to meet this demand at the current scholarship amount. The scholarship funding organizations would need to track the number of qualified applicants not funded each year that would participate at the current scholarship amount.

What would be the effect of authorizing insurance premium tax credits as an additional source of scholarship program funding?

Allowing insurance premium tax credits to be included in the scholarship program would broaden the base of companies likely to participate and increase the chance that higher caps set by the Legislature would be met. Currently, not all insurance companies in the state have an incentive to participate in the program.

Some insurance companies have no incentive to participate in the program. Currently, the ability of an insurance company to reduce their tax liability by participating in the program depends on their financial situation. Insurance companies must have a net corporate income tax liability greater than 65% of their insurance premium tax liability in order to reduce their tax liability by contributing to the scholarship program.⁸

⁸ Section 624.509(4)-(6), F.S., provides that corporate income taxes can be credited against insurance premium taxes, not to exceed 65% of insurance premium tax liability.

Companies that do not have such a corporate income tax liability may contribute to the program, but would not receive a reduction in tax liability for doing so.

For example, as illustrated in Exhibit 8, Insurance Company A would reduce its tax liability by participating in the program and taking a corporate income tax credit for scholarship contributions made. This company would have an initial corporate tax liability of \$8 million and a net insurance premium tax liability of \$2 million. By contributing \$500,000 to the scholarship program, the company would reduce its total tax liability from \$10 million to \$9.5 million. In contrast, Insurance Company B, with a \$2 million corporate tax liability and an \$8 million net insurance premium tax liability, would not reduce its tax liability if it contributed to the program, because its corporate income tax liability is not greater than 65% of its insurance premium tax liability. This company's total payments would be greater than its initial tax liability if it made a contribution to a scholarship funding organization.

**Exhibit 8
Broadening the Program to Allow Insurance Premium Tax Credits Could Encourage Additional Companies to Participate**

	Insurance Company A		Insurance Company B	
	Has Incentive to Participate in Current Program	Does Not Have Incentive to Participate in Current Program	Would Have Incentive to Participate in an Amended Program	
NOT Participating in Scholarship Program				
Total Tax Liability – NOT participating	\$10.0 m	\$10.0 m	\$10.0 m	\$10.0 m
Participating in Scholarship Program				
Corporate Tax Liability	\$ 8.0 m	\$ 2.0 m	\$ 2.0 m	\$ 2.0 m
Scholarship Contribution	(0.5 m)	(0.5 m)		
Net Corporate Tax Liability	\$ 7.5 m	\$ 1.5 m	\$ 2.0 m	\$ 2.0 m
Insurance Premium Liability	\$ 5.7 m	\$10.0 m	\$10.0 m	\$10.0 m
Insurance Premium Credit for Corporate Taxes Paid	(3.7 m)	(1.5 m)	(2.0 m)	(2.0 m)
Scholarship Contribution			(0.5 m)	(0.5 m)
Net Insurance Premium Liability	\$ 2.0 m¹	\$ 8.5 m	\$ 7.5 m	\$ 7.5 m
Total Tax Liability – Participating	\$ 9.5 m	\$10.0 m	\$ 9.5 m	\$ 9.5 m

¹Corporate income tax liability can be credited against the insurance premium tax liability for an amount up to 65% of the insurance premium tax liability. Because Company A's corporate tax liability exceeds 65% of its insurance premium tax liability, the entire \$7.5 million could not be credited.

Source: OPPAGA analysis.

Additional insurance companies would likely contribute to the program if the Legislature authorized them to claim a tax credit on their insurance premium tax liability for scholarship contributions. As shown in the exhibit, if this change were made, Insurance Company B would be able to reduce its tax liability by contributing \$500,000 to the program and receiving a matching insurance premium tax credit. Such a change would broaden the program's financial base but would not necessarily affect its overall fiscal impact, as the Legislature could continue to control the program's growth through the cap on total tax credits.

If the Legislature allowed insurance premium tax credits to be included in the scholarship program, insurance company participation would depend on several factors. These include the companies' profitability and tax liabilities on an annual basis. Such a change may increase the likelihood that the program would generate the maximum level of contributions by broadening the range of businesses that would receive a reduction in tax liability from participating.

Insurance companies are assessed several inter-related taxes—corporate income taxes, insurance premium taxes, and, in some cases, retaliatory taxes. For each of these taxes, varying rates apply as well as different rules governing how one tax liability can be credited against another.

If the Legislature chooses to allow insurance premium tax credits to be used for the scholarship program, it should consider three questions. First, should insurance companies be given flexibility in receiving tax credits against either their corporate income taxes or their insurance premium taxes? Allowing insurance companies this flexibility would maximize the number of companies that would make contributions to scholarship funding organizations, but would also complicate tax administration.

Second, should out-of-state insurance companies be held harmless from increased Florida retaliatory taxes if they participate in the program? All insurance companies, regardless of location, pay insurance premium taxes to Florida

on premiums sold in Florida. Retaliatory taxes are sometimes imposed on insurance companies located in other states that are doing business in Florida. Out-of-state companies are required to pay retaliatory taxes to Florida under certain circumstances. This would occur if the company's insurance premium tax burden would have been higher if they conducted the same business they conducted in Florida in their home state. Likewise, Florida companies may be required to pay retaliatory taxes to other states. Retaliatory taxes help ensure a level playing field by preventing companies from choosing to locate in one state in order to lower their insurance premium taxes. Unless otherwise provided, out-of-state insurance companies could face increased retaliatory taxes if they lowered their Florida insurance premium tax liability by taking credits for scholarship contributions. Establishing a provision that exempts these insurance companies from additional retaliatory taxes in Florida would help ensure that they have an incentive to participate in the program.⁹

Finally, should an insurance premium tax credit for scholarship contributions be in addition to or included in the 65% credit limitation? As discussed earlier, the corporate income taxes paid by an insurance company can be credited against insurance premium taxes. In addition, an employee salary credit is allowed against insurance premium tax equal to 15% of the amount of salaries paid by insurance companies to employees located in Florida.¹⁰ These two credits combined may not exceed 65% of insurance premium taxes due.¹¹ All other insurance premium tax credits may be granted in addition to the 65% credit limitation. Allowing the insurance premium tax credit for scholarship contributions to exceed the 65% credit limitation would provide more opportunity for companies to receive tax benefits than if it were included in the 65% credit limitation. However, including the scholarship

⁹ If a Florida company does business in another state and takes an insurance premium tax credit in Florida, its retaliatory taxes due in the other state may be affected depending on the other state's retaliatory tax law.

¹⁰ Section 624.509(5), *F.S.*

¹¹ Section 624.509(6), *F.S.*

credit in the 65% credit limitation would limit the tax revenue loss to the state.

Two other state programs allow insurance companies to claim an insurance premium tax credit for specified activities. The Capital Investment Tax Credit Program allows businesses that locate in targeted areas and create new jobs to receive tax credits for a percentage of capital investments made in the state.¹² Participating insurance companies may choose to apply these credits to either their corporate income or insurance premium taxes.¹³ Insurance companies participating in this program do not pay additional retaliatory taxes if they take program credits against their insurance premium taxes. Similarly, the Community Contribution Tax Credit Program allows a business to receive tax credits in an amount equal to 50% of an approved community contribution, such as an affordable housing project. Participating insurance companies may take credits against their insurance premium taxes and are not assessed additional retaliatory taxes.¹⁴ Both the Capital Investment and Community Contribution tax credits are authorized to exceed the 65% credit limitation.

Are there strategies to encourage private schools that accept scholarship students to participate in the Florida Comprehensive Assessment Test (FCAT)?

Unlike public school students funded with public funds, students who attend private schools using corporate income tax scholarships are not required to take the Florida Comprehensive Assessment Test (FCAT). Private school representatives we contacted indicated that incentives would not encourage their institutions to require that their scholarship students participate in the FCAT.¹⁵

¹² Businesses must locate in targeted areas in Florida, create at least 100 new high-wage jobs, and invest at least \$25 million in the state.

¹³ Section 220.191, *F.S.*

¹⁴ Sections 212.08(5)(p), 220.183, and 624.5105, *F.S.*

¹⁵ We conducted four focus groups with representatives from private schools that serve scholarship recipients. Three groups were composed of representative from individual private schools and one focus group was composed of representatives of the different private school associations.

Representatives from private schools cited several concerns related to FCAT testing. None of the private school representatives who participated in our focus groups supported adopting the FCAT, and they asserted that their schools would not accept financial incentives to have their scholarship students take the FCAT. Further, if required to use the FCAT, some school representatives indicated that their institutions would likely stop accepting scholarship students. The representatives cited several objections to using the FCAT.

- The FCAT does not test students' mastery of private school curricula. The FCAT is designed to measure students' mastery of the Sunshine State Standards for public schools.
- Parents who select private schools for their children do so in part because the schools offer different curricula than public schools. Thus, changing their curriculum would be counterproductive.
- At many private schools, scholarship recipients are only a small part of the student body—on average, there are 23 scholarship recipients at each private school. FCAT scores of scholarship students would not be representative of the overall academic achievement of the school's population.
- Testing only scholarship students with the FCAT would single them out, alerting others that they are low-income students.
- Private schools typically use other nationally norm-referenced tests approved by the Department of Education that are diagnostic and allow for comparison of academic performance to students nationwide. In the future, the FCAT will no longer have a norm-referenced component.

The focus group participants also noted that state law requires private schools that accept corporate tax credit scholarship students to participate in an accountability system. Florida statutes require participating private schools to annually administer or make provisions for scholarship students to take one of the nationally norm-referenced tests approved by the Department of

Education.¹⁶ The schools must report scores to an independent research organization, and the research organization reports aggregate information on year-to-year changes in test scores to the Department of Education. The Department is to conduct an analysis of matched students from public schools and calculate control group learning gains that the independent research organization can use as a comparison in its evaluation of student performance for the scholarship program. However, now that the FCAT will no longer include a norm referenced component this analysis will be more difficult because it cannot be done with current information. A concordance analysis would need to be conducted to compare the scores on the different tests.

¹⁶ Section 220.187, *F.S.*

Appendix A

Methodology Used to Calculate the Fiscal Impact of the Corporate Income Tax Scholarship Program

We calculated the program's overall fiscal impact by comparing savings in education funding and losses in corporate income tax revenue. We also created a set of scenarios to demonstrate the potential fiscal impact on the state budget of increasing the cap on tax credits for the scholarship program, increasing the scholarship amount, and increasing the allowable administrative expenses funded by contributions.

Estimating the overall fiscal impact

We estimate that the state achieved a savings of \$1.49 in education funding for each dollar loss in state corporate income tax revenue in Fiscal Year 2007-08. Table A-1 shows the calculations for this estimate. This estimate was calculated by (1) identifying the loss of tax revenue incurred during the year as the result of the program's corporate income tax credits awarded; (2) estimating the number of scholarship recipients who otherwise would have attended public schools (estimated to be 90% of the 21,493 scholarship recipients); (3) estimating the educational expenditures the state would have incurred for these students if they had attended public schools (\$6,106 each based on the Florida Educational Finance Program per student funding); and (4) dividing the amount of these savings by the level of forgone state tax revenue. In addition, net savings were calculated as the amount of total savings minus the amount of foregone corporate income tax revenue.

Table A-1

Corporate Income Tax Scholarship Program Saves the State Money Spent on Education

Fiscal Year 2007-08	Amount
Education Savings	
Number of scholarship recipients	21,493
90% of recipients who would have attended public school	19,344
Savings per recipient	x \$6,106
Total education savings	\$118.1 million
Revenue Lost	
Pledges for current year	\$81.0
Uncollectible pledges from current year	(4.6)
Outstanding pledges beginning of the year	35.0
Outstanding pledges end of the year	+ (32.1)
Forgone corporate income tax	\$79.2 million
Ratio (Saves \$1.49 for each \$1.00 spent)	1.49
Net Savings	\$38.9 million

¹ Outstanding pledges are approved tax credits for which companies have not made contributions yet. The net of outstanding pledges at the beginning and the end of the year is the amount of contributions from pledges from the prior year.

Source: OPPAGA analysis of financial data provided by Step Up for Students.

We estimated that 90% of the scholarship recipients would have attended public school if they had not received a scholarship through the program. This assumption was used by the Legislature's Office of Economic and Demographic Research in estimating the fiscal impact of the cap increase for the 2008 Legislature. It is reasonable to assume a high percentage of low income students would not be able to afford private school without a scholarship, and therefore, would attend public school in absence of the program. However, because private schools provide scholarships to a number of low income children, regardless of the program, we did not want to

assume 100% of the scholarship recipients would have attended public school in absence of the program. Because we had no information from which to estimate this percentage we applied different percentages to see how much our results changed. If 100% of the scholarship students would have attended public school in absence of the scholarship program then our estimate of the savings would have increased from \$1.49 to \$1.66 for every dollar of lost state corporate income tax revenue. Assuming 60% reduces the savings to the break-even point.

We estimated the savings per scholarship recipient for Fiscal Year 2007-08 as the per-student funding provided through the Florida Education Finance Program (FEFP). The FEFP is the state funding formula which allocates funds to districts based on the educational programs of students. We included components that fund education services to the general student population on a per student basis, such as grade level (K-3, 4-8, and 9-12), exceptional student education, English for speakers of other languages, and career education. We did not include components of the formula that have a narrow application such as discretionary funding for lab schools, supplemental funding for students at Department of Juvenile Justice facilities, the Safe schools program, the School Recognition program, or the Teachers Lead program. In addition, we did not include components, such as the declining enrollment supplement or sparsity supplement, that provide funding to only some districts to help with the increased per student costs due to declining and small enrollments. Table A-2 shows what components of the FEFP we included.

We used the fourth calculation of the FEFP for Fiscal Year 2007-08 provided to us by the Department of Education. In order to calculate base student funding for scholarship recipients, we used information about student grade level in 2007-08 and their most recent program participation in public school. If they had not previously been in a public school we assigned them based solely on their grade level in 2007-08. For the other components of the FEFP, we calculated a per-student funding amount and multiplied this by the number of scholarship recipients. For two components, the exceptional student education (ESE) guaranteed allocation and the student transportation component; we adjusted for the number of scholarship recipients in ESE categories and an estimated percentage of scholarship recipients who would have used transportation services. We did all calculations at the district level and aggregated the results to the state level.

We used funding formula worksheets and data provided by the Florida Department of Education. Step Up for Students, the entity responsible for raising the scholarship and operating dollars for the scholarship funding organizations, provided financial and student information for Fiscal Year 2007-08.

**Table A-2
Estimated Per-Student Funding Saved in Fiscal Year 2007-08**

		Per Student Funding
FEFP COMPONENTS		
	Base student funding	\$4,275.12
	0.25 mills discretionary equalization	1.88
	0.51 mills discretionary compression	51.60
	Exceptional student education guaranteed allocation	115.30
	Supplemental academic instruction	293.61
	Reading allocation	42.81
STATE DISCRETIONARY LOTTERY FUNDS		\$ 49.09
STATE CATEGORICAL FUNDS		
	Instructional materials	\$ 100.64
	Student transportation	167.13
	Class size reduction allocation	1,009.24
TOTAL STATE FUNDING (Does not include discretionary local effort funding)		\$6,106.42

Source: OPPAGA.

Demonstrating the potential fiscal impact of increasing the program’s cap on tax credits, scholarship amount, and allowable administrative expenses

We used several hypothetical scenarios to demonstrate what program changes have the greatest potential fiscal impact on the state budget. While these scenarios are based on historical program information and model the changes the 2008 Legislature made to the program, these scenarios are not intended as projections of future savings based on these recent program changes. It is problematic to project the impacts of the 2008 changes because the increase in the cap has not yet resulted in increased contributions as expected due to the current poor economic conditions. Our scenarios consider the effect of the net change in scholarships from a base year to the first, second, and third year of implementation of the change being modeled. Only new scholarships are considered for the impact on the state budget because continuing scholarships are already out of the base education budget. This approach is different from the one used for Table A-2, which estimates the program’s total savings in Fiscal Year 2007-08. That table estimates actual state savings and includes both new and continuing scholarship students.

We modeled four scenarios—(1) savings if the program cap and scholarship amount are the same as the year before and administrative expenses are not allowed; (2) a \$30 million increase in the cap that results in an incremental increase in the number of students served; (3) allowing 3% for administrative expenses that results in reducing the amount of contributions used for scholarships; and (4) a \$200 increase in the scholarship amount that results in reducing the number of scholarships awarded. Table A-3 lists our assumptions for the four scenarios. Tables A-4 through A-7 show results.

**Table A-3
Comparison of Scenario Assumptions**

Assumptions	Scenario			
	1	2	3	4
No program changes	X			
Increase in cap on tax credits of \$30 million		X		
Increase in administrative expenses from 0% to 3%			X	
Increase in average scholarship award of \$200				X
Contributions for a cap year as percentage of cap (based on historical information)				
83% in first year of change		X		
93% in other years	X	X	X	X
Distribution of contributions for a cap year (based on historical information)				
2% in fiscal year prior to cap year				
80% in fiscal year of cap year				
18% in fiscal year after cap year	X	X	X	X
Percentage of scholarship students who would have attended public school – 90%	X	X	X	X
State savings per scholarship in base year - \$6,106	X	X	X	X
Annual increase in state funding per student FTE – 2%	X	X	X	X

Source: OPPAGA.

Table A-4
Scenario 1 – Estimated State Savings Assuming No Program Changes

Cap Year	Cap	Contributions	Distribution of Contributions by Year			
			Base Year	Year 1	Year 2	Year 3
Base Year	\$88.0	\$81.6		\$14.3		
Year 1	88.0	81.6		65.4	\$14.3	
Year 2	88.0	81.6		1.9	65.4	\$14.3
Year 3	88.0	81.6			1.9	65.4
Year 4	88.0	81.6				1.9
Estimated total contributions				\$81.6	\$81.6	\$81.6
Average scholarship award			\$3,422	\$3,422	\$3,422	\$3,422
Estimated number of scholarships			21,493	23,840	23,840	23,840
90% of scholarships			19,344	21,456	21,456	21,456
Additional students over base year				2,112	2,112	2,112
Additional state savings per student			\$6,106	\$6,228	\$6,353	\$6,480
Total additional state education savings				\$13.2	\$13.4	\$13.7
Additional corporate tax revenue loss				\$0	\$0	\$0
Net state education savings				\$13.2	\$13.4	\$13.7

Source: OPPAGA analysis.

Table A-5
Scenario 2 – Estimated State Savings Assuming \$30 Million Increase in Cap on Tax Credits

Cap Year	Cap	Contributions	Distribution of Contributions by Year			
			Base Year	Year 1	Year 2	Year 3
Base Year	\$ 88.0	\$ 81.6		\$14.3		
Year 1	118.0	98.1		78.6	\$17.2	
Year 2	118.0	109.4		2.5	87.7	\$19.1
Year 3	118.0	109.4			2.5	87.7
Year 4	118.0	109.4				2.5
Estimated total contributions				\$95.4	\$107.4	\$109.4
Average scholarship award			\$3,422	\$3,422	\$3,422	\$3,422
Estimated number of scholarships			21,493	27,889	31,387	31,967
90% of scholarships			19,344	25,100	28,248	28,770
Additional students over base year				5,756	8,905	9,426
Additional state savings per student			\$6,106	\$6,228	\$6,353	\$6,480
Total additional state education savings				\$35.8	\$56.6	\$61.1
Additional corporate tax revenue loss				\$16.5	\$27.8	\$27.8
Net state education savings				\$19.4	\$28.8	\$33.3

Source: OPPAGA analysis.

Table A-6
Scenario 3 – Estimated State Savings Assuming Allowing Three Percent Administrative Expenses

Cap Year	Cap	Contributions	Distribution of Contributions by Year			
			Base Year	Year 1	Year 2	Year 3
Base Year	\$88.0	\$81.6		\$14.3		
Year 1	88.0	81.6		65.4	\$14.3	
Year 2	88.0	81.6		1.9	65.4	\$14.3
Year 3	88.0	81.6			1.9	65.4
Year 4	88.0	81.6				1.9
Estimated total contributions				\$81.6	\$81.6	\$81.6
Contributions used for scholarships (97%)				\$79.1	\$79.1	\$79.1
Average scholarship award			\$3,422	\$3,422	\$3,422	\$3,422
Estimated number of scholarships			21,493	23,125	23,125	23,125
90% of scholarships			19,344	20,813	20,813	20,813
Additional students over base year				1,469	1,469	1,469
Additional state savings per student			\$6,106	\$6,228	\$6,353	\$6,480
Total additional state education savings				\$9.1	\$9.3	\$9.5
Additional corporate tax revenue loss				\$0	\$0	\$0
Net state education savings				\$9.1	\$9.3	\$9.5

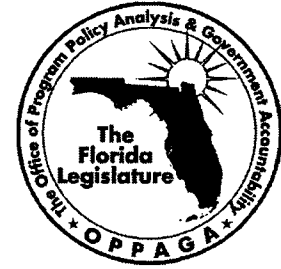
Source: OPPAGA analysis.

Table A-7
Scenario 4 – Estimated State Savings Assuming a \$200 Increase in the Scholarship Amount

Cap Year	Cap	Contributions	Distribution of Contributions by Year			
			Base Year	Year 1	Year 2	Year 3
Base Year	\$88.0	\$81.6		\$14.3		
Year 1	88.0	81.6		65.4	\$14.3	
Year 2	88.0	81.6		1.9	65.4	\$14.3
Year 3	88.0	81.6			1.9	65.4
Year 4	88.0	81.6				1.9
Estimated total contributions				\$81.6	\$81.6	\$81.6
Average scholarship award			\$3,422	\$3,622	\$3,622	\$3,622
Estimated number of scholarships			21,493	22,523	22,523	23,523
90% of scholarships			19,344	20,271	20,271	20,271
Additional students over base year				927	927	927
Additional state savings per student			\$6,106	\$6,228	\$6,353	\$6,480
Total additional state education savings				\$5.8	\$5.9	\$6.0
Additional corporate tax revenue loss				\$0	\$0	\$0
Net state education savings				\$5.8	\$5.9	\$6.0

Source: OPPAGA analysis.

The Florida Legislature
Office of Program Policy Analysis
and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

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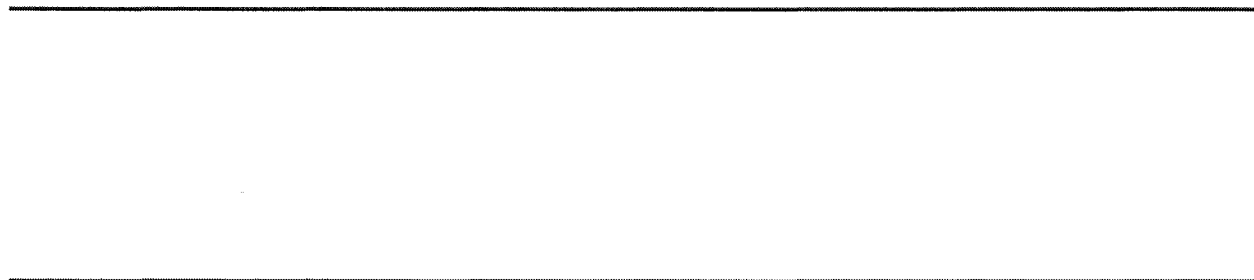
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CHAMBER ACTION

Senate

House

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1 Representative(s) Weatherford offered the following:

2

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Subsection (2) of section 220.186, Florida
6 Statutes, is amended to read:

7 220.186 Credit for Florida alternative minimum tax.—

8 (2) The credit pursuant to this section shall be the amount
9 of the excess, if any, of the tax paid based upon taxable income
10 determined pursuant to s. 220.13(2)(k) over the amount of tax
11 which would have been due based upon taxable income without
12 application of s. 220.13(2)(k), before application of this
13 credit and without application of credit under s. 220.187.

14 Section 2. Subsections (2) and (3), and paragraphs (b) and
15 (i) of subsection (6) of section 220.187, Florida Statutes, are
16 amended, and a new paragraph (e) is added to subsection (5) of
17 that section, and a new subsection (9) is added to that section,

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18 and paragraphs (a), (b), (l), and (n) of a new subsection (10)
19 are amended, and a new paragraph (o) is added to that subsection
20 to read:

21 220.187 Credits for contributions to nonprofit
22 scholarship-funding organizations.--

23 (2) DEFINITIONS.--As used in this section, the term:

24 (a) "Department" means the Department of Revenue.

25 (b) "Direct certification list" means the certified list
26 of children who qualify for the Food Stamp Program, the
27 Temporary Assistance to Needy Families Program, or the Food
28 Distribution Program on Indian Reservations provided to the
29 Department of Education by the Department of Children and Family
30 Services.

31 (c) ~~(b)~~ "Eligible contribution" means a monetary
32 contribution from a taxpayer, subject to the restrictions
33 provided in this section, to an eligible nonprofit scholarship-
34 funding organization. The taxpayer making the contribution may
35 not designate a specific child as the beneficiary of the
36 contribution.

37 (d) ~~(e)~~ "Eligible nonprofit scholarship-funding
38 organization" means a charitable organization that:

39 1. Is exempt from federal income tax pursuant to s.

40 501(c)(3) of the Internal Revenue Code;

41 2. Is a Florida entity formed under chapter 607, chapter
42 608, or chapter 617 and whose principal office is located in the
43 state; and

44 3. Complies with the provisions of subsection (6).

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45 (e) ~~(d)~~ "Eligible private school" means a private school,
46 as defined in s. 1002.01(2), located in Florida which offers an
47 education to students in any grades K-12 and that meets the
48 requirements in subsection (8).

49 (f) ~~(e)~~ "Owner or operator" includes:

50 1. An owner, president, officer, or director of an
51 eligible nonprofit scholarship-funding organization or a person
52 with equivalent decisionmaking authority over an eligible
53 nonprofit scholarship-funding organization.

54 2. An owner, operator, superintendent, or principal of an
55 eligible private school or a person with equivalent
56 decisionmaking authority over an eligible private school.

57 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.--The Florida
58 ~~Corporate Income Tax Credit~~ Scholarship Program is established.
59 A student is eligible for a Florida corporate income tax credit
60 scholarship under this section or s. 624.51055 if the student
61 qualifies for free or reduced-price school lunches under the
62 National School Lunch Act or is on the direct certification list
63 and:

64 (a) Was counted as a full-time equivalent student during
65 the previous state fiscal year for purposes of state per-student
66 funding;

67 (b) Received a scholarship from an eligible nonprofit
68 scholarship-funding organization or from the State of Florida
69 during the previous school year;

70 (c) Is eligible to enter kindergarten or first grade; or

71 (d) Is currently placed, or during the previous state
72 fiscal year was placed, in foster care as defined in s. 39.01.

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73

74 Contingent upon available funds, a student may continue in the
75 scholarship program as long as the student's household income
76 level does not exceed 200 percent of the federal poverty level.
77 A sibling of a student who is continuing in the program and
78 resides in the same household as the student shall also be
79 eligible as a first-time ~~corporate income~~ tax credit scholarship
80 recipient as long as the student's and sibling's household
81 income level does not exceed 200 percent of the federal poverty
82 level. Household income for purposes of a student who is
83 currently in foster care as defined in s. 39.01 shall consist
84 only of the income that may be considered in determining whether
85 he or she qualifies for free or reduced-price school lunches
86 under the National School Lunch Act.

87 (5) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX
88 CREDITS; LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.--

89 (b) For each state fiscal year, the ~~The total~~ amount of tax
90 credits and carryforward of tax credits which may be granted
91 ~~each state fiscal year~~ under this section and under s. 624.51055
92 is \$118 million in total ÷

93 1. ~~Through June 30, 2008, \$88 million.~~

94 2. ~~Beginning July 1, 2008, and thereafter, \$118 million.~~

95 (e) A taxpayer who is eligible to receive the credit
96 provided for in s. 624.51055 is not eligible to receive the
97 credit provided by this section.

98 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING
99 ORGANIZATIONS.--An eligible nonprofit scholarship-funding
100 organization:

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101 (b) Must comply with the following background check
102 requirements:

103 1. All owners and operators as defined in subparagraph
104 (2) ~~(f)~~ ~~(e)~~ 1. are, upon employment or engagement to provide
105 services, subject to level 2 background screening as provided
106 under chapter 435. The fingerprints for the background screening
107 must be electronically submitted to the Department of Law
108 Enforcement and can be taken by an authorized law enforcement
109 agency or by an employee of the eligible nonprofit scholarship-
110 funding organization or a private company who is trained to take
111 fingerprints. However, the complete set of fingerprints of an
112 owner or operator may not be taken by the owner or operator. The
113 results of the state and national criminal history check shall
114 be provided to the Department of Education for screening under
115 chapter 435. The cost of the background screening may be borne
116 by the eligible nonprofit scholarship-funding organization or
117 the owner or operator.

118 2. Every 5 years following employment or engagement to
119 provide services or association with an eligible nonprofit
120 scholarship-funding organization, each owner or operator must
121 meet level 2 screening standards as described in s. 435.04, at
122 which time the nonprofit scholarship-funding organization shall
123 request the Department of Law Enforcement to forward the
124 fingerprints to the Federal Bureau of Investigation for level 2
125 screening. If the fingerprints of an owner or operator are not
126 retained by the Department of Law Enforcement under subparagraph
127 3., the owner or operator must electronically file a complete
128 set of fingerprints with the Department of Law Enforcement. Upon

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129 submission of fingerprints for this purpose, the eligible
130 nonprofit scholarship-funding organization shall request that
131 the Department of Law Enforcement forward the fingerprints to
132 the Federal Bureau of Investigation for level 2 screening, and
133 the fingerprints shall be retained by the Department of Law
134 Enforcement under subparagraph 3.

135 3. Beginning July 1, 2007, all fingerprints submitted to
136 the Department of Law Enforcement as required by this paragraph
137 must be retained by the Department of Law Enforcement in a
138 manner approved by rule and entered in the statewide automated
139 fingerprint identification system authorized by s. 943.05(2)(b).
140 The fingerprints must thereafter be available for all purposes
141 and uses authorized for arrest fingerprint cards entered in the
142 statewide automated fingerprint identification system pursuant
143 to s. 943.051.

144 4. Beginning July 1, 2007, the Department of Law
145 Enforcement shall search all arrest fingerprint cards received
146 under s. 943.051 against the fingerprints retained in the
147 statewide automated fingerprint identification system under
148 subparagraph 3. Any arrest record that is identified with an
149 owner's or operator's fingerprints must be reported to the
150 Department of Education. The Department of Education shall
151 participate in this search process by paying an annual fee to
152 the Department of Law Enforcement and by informing the
153 Department of Law Enforcement of any change in the employment,
154 engagement, or association status of the owners or operators
155 whose fingerprints are retained under subparagraph 3. The
156 Department of Law Enforcement shall adopt a rule setting the

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157 amount of the annual fee to be imposed upon the Department of
158 Education for performing these services and establishing the
159 procedures for the retention of owner and operator fingerprints
160 and the dissemination of search results. The fee may be borne by
161 the owner or operator of the nonprofit scholarship-funding
162 organization.

163 5. A nonprofit scholarship-funding organization whose
164 owner or operator fails the level 2 background screening shall
165 not be eligible to provide scholarships under this section.

166 6. A nonprofit scholarship-funding organization whose
167 owner or operator in the last 7 years has filed for personal
168 bankruptcy or corporate bankruptcy in a corporation of which he
169 or she owned more than 20 percent shall not be eligible to
170 provide scholarships under this section.

171 (i)1. May use up to 3 percent of eligible contributions
172 received during the state fiscal year in which such
173 contributions are collected for administrative expenses if the
174 organization has operated under this section for at least 3
175 state fiscal years and did not have any negative financial
176 findings in its most recent audit under paragraph (1). Such
177 administrative expenses must be reasonable and necessary for the
178 organization's management and distribution of eligible
179 contributions under this section. No more than one-third of the
180 funds authorized for administrative expenses under this
181 subparagraph may be used for expenses related to the recruitment
182 of contributions from ~~corporate~~ taxpayers.

183 2. Must expend for annual or partial-year scholarships an
184 amount equal to or greater than 75 percent of the net eligible

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185 contributions remaining after administrative expenses during the
186 state fiscal year in which such contributions are collected. No
187 more than 25 percent of such net eligible contributions may be
188 carried forward to the following state fiscal year. Any amounts
189 carried forward shall be expended for annual or partial-year
190 scholarships in the following state fiscal year. Net eligible
191 contributions remaining on June 30 of each year that are in
192 excess of the 25 percent that may be carried forward shall be
193 returned to the State Treasury for deposit in the General
194 Revenue Fund.

195 3. Must, before granting a scholarship for an academic
196 year, document each scholarship student's eligibility for that
197 academic year. A scholarship-funding organization may not grant
198 multiyear scholarships in one approval process.

199

200 Any and all information and documentation provided to the
201 Department of Education and the Auditor General relating to the
202 identity of a taxpayer that provides an eligible contribution
203 under this section shall remain confidential at all times in
204 accordance with s. 213.053.

205 (9) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.--Upon
206 the request of any eligible nonprofit scholarship-funding
207 organization, a school district shall inform all households
208 within the district receiving free or reduced-priced meals under
209 the National School Lunch Act of their eligibility to apply for
210 a tax credit scholarship. The form of such notice shall be
211 provided by the eligible nonprofit scholarship-funding
212 organization, and the district shall include the provided form,

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213 if requested by the organization, in any normal correspondence
214 with eligible households. If an eligible nonprofit scholarship-
215 funding organization requests a special communication to be
216 issued to households within the district receiving free or
217 reduced-price lunch under the National School Lunch Act, the
218 organization shall reimburse the district for the cost of
219 postage. Such notice is limited to once a year in each district.

220 (10)(9) DEPARTMENT OF EDUCATION OBLIGATIONS.--The
221 Department of Education shall:

222 (a) Annually submit to the department, by March 15, a list
223 of eligible nonprofit scholarship-funding organizations that
224 meet the requirements of paragraph (2) (d) ~~(e)~~.

225 (b) Annually verify the eligibility of nonprofit
226 scholarship-funding organizations that meet the requirements of
227 paragraph (2) (d) ~~(e)~~.

228 (l) Notify an eligible nonprofit scholarship-funding
229 organization of any of the organization's identified students
230 who are receiving ~~corporate-income~~ tax credit scholarships from
231 other eligible nonprofit scholarship-funding organizations.

232 (n)1. Conduct random site visits to private schools
233 participating in the Florida Corporate Tax Credit Scholarship
234 Program. The purpose of the site visits is solely to verify the
235 information reported by the schools concerning the enrollment
236 and attendance of students, the credentials of teachers,
237 background screening of teachers, and teachers' fingerprinting
238 results. The Department of Education may not make more than
239 seven random site visits each year and may not make more than
240 one random site visit each year to the same private school.

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241 2. Annually, by December 15, report to the Governor, the
242 President of the Senate, and the Speaker of the House of
243 Representatives the Department of Education's actions with
244 respect to implementing accountability in the scholarship
245 program under this section and s. 1002.421, any substantiated
246 allegations or violations of law or rule by an eligible private
247 school under this program concerning the enrollment and
248 attendance of students, the credentials of teachers, background
249 screening of teachers, and teachers' fingerprinting results and
250 the corrective action taken by the Department of Education.

251 (o) Provide a process to match the direct certification
252 list with the scholarship application data submitted by any
253 nonprofit scholarship-funding organization eligible to receive
254 the 3-percent administrative allowance under paragraph (6)(i).

255 Section 3. Section 624.51055, Florida Statutes, is created
256 to read:

257 624.51055 Credit for contributions to eligible nonprofit
258 scholarship-funding organizations.--

259 (1) There is allowed a credit of 100 percent of an
260 eligible contribution made to an eligible nonprofit scholarship-
261 funding organization as provided in s. 220.187 against any net
262 tax due for a taxable year under s. 624.509(1). However, such a
263 credit may not exceed 75 percent of the net tax due under s.
264 624.509(1) after deducting from such tax due the taxes paid by
265 the insurer under ss. 175.101 and 185.08 and any assessments
266 pursuant to s. 440.51. An insurer claiming a credit against
267 premium tax liability under this section shall not be required
268 to pay any additional retaliatory tax levied pursuant to s.

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269 624.5091 as a result of claiming such credit. Section 624.5091
270 does not limit such credit in any manner.

271 (2) The provisions of s. 220.187 apply to the credit
272 authorized by this section.

273 Section 4. Paragraph (b) of subsection (6) of section
274 1002.20, Florida Statutes, is amended to read:

275 1002.20 K-12 student and parent rights.--Parents of public
276 school students must receive accurate and timely information
277 regarding their child's academic progress and must be informed
278 of ways they can help their child to succeed in school. K-12
279 students and their parents are afforded numerous statutory
280 rights including, but not limited to, the following:

281 (6) EDUCATIONAL CHOICE.--

282 (b) Private school choices.--Parents of public school
283 students may seek private school choice options under certain
284 programs.

285 1. Under the Opportunity Scholarship Program, the parent
286 of a student in a failing public school may request and receive
287 an opportunity scholarship for the student to attend a private
288 school in accordance with the provisions of s. 1002.38.

289 2. Under the McKay Scholarships for Students with
290 Disabilities Program, the parent of a public school student with
291 a disability who is dissatisfied with the student's progress may
292 request and receive a McKay Scholarship for the student to
293 attend a private school in accordance with the provisions of s.
294 1002.39.

295 3. Under the Florida ~~corporate income~~ Tax Credit
296 Scholarship Program, the parent of a student who qualifies for

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297 free or reduced-price school lunch may seek a scholarship from
298 an eligible nonprofit scholarship-funding organization in
299 accordance with the provisions of s. 220.187.

300 Section 5. Paragraph (e) of subsection (2) of section
301 1002.23, Florida Statutes, is amended to read:

302 1002.23 Family and School Partnership for Student
303 Achievement Act.--

304 (2) To facilitate meaningful parent and family
305 involvement, the Department of Education shall develop
306 guidelines for a parent guide to successful student achievement
307 which describes what parents need to know about their child's
308 educational progress and how they can help their child to
309 succeed in school. The guidelines shall include, but need not be
310 limited to:

311 (e) Educational choices, as provided for in s. 1002.20(6),
312 and Florida ~~corporate income~~ tax credit scholarships, as
313 provided for in s. 220.187;

314 Section 6. Paragraph (b) of subsection (3) of section
315 1002.39, Florida Statutes, is amended to read:

316 1002.39 The John M. McKay Scholarships for Students with
317 Disabilities Program.--There is established a program that is
318 separate and distinct from the Opportunity Scholarship Program
319 and is named the John M. McKay Scholarships for Students with
320 Disabilities Program.

321 (3) JOHN M. MCKAY SCHOLARSHIP PROHIBITIONS.--A student is
322 not eligible for a John M. McKay Scholarship while he or she is:

323 (b) Receiving a Florida ~~corporate income~~ tax credit
324 scholarship under s. 220.187;

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325 Section 7. Subsection (1) of section 1002.421, Florida
326 Statutes, is amended to read:

327 1002.421 Accountability of private schools participating
328 in state school choice scholarship programs.--

329 (1) A Florida private school participating in the Florida
330 ~~Corporate Income~~ Tax Credit Scholarship Program established
331 pursuant to s. 220.187 or an educational scholarship program
332 established pursuant to this chapter must comply with all
333 requirements of this section in addition to private school
334 requirements outlined in s. 1002.42, specific requirements
335 identified within respective scholarship program laws, and other
336 provisions of Florida law that apply to private schools.

337 Section 8. If any provision of this act or the application
338 thereof to any person or circumstance is held invalid, the
339 invalidity shall not affect other provisions or applications of
340 the act which can be given effect without the invalid provision
341 or application, and to this end the provisions of this act are
342 declared severable.

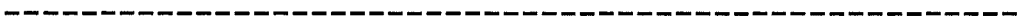
343 Section 9. This act shall take effect July 1, 2009.

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T I T L E A M E N D M E N T

348 Remove the entire title and insert:

349 A bill to be entitled

350 An act relating to tax credits for contributions to
351 nonprofit scholarship-funding organizations; amending s.
352

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353 220.186, F.S.; providing that the credit authorized under
354 the tax credit scholarship program does not apply to the
355 credit for the Florida alternative minimum tax; amending
356 s. 220.187, F.S.; defining the term "direct certification
357 list"; expanding the Corporate Income Tax Credit
358 Scholarship Program to include insurance premium tax
359 credits; revising credits for contributions to nonprofit
360 scholarship-funding organizations; providing that a
361 taxpayer eligible to receive a credit against the
362 insurance premium tax is not eligible to receive a credit
363 against the corporate income tax; specifying school
364 district tax credit scholarship notification requirements;
365 specifying notice requirements and limitations; imposing
366 additional requirement upon the Department of Education;
367 conforming cross-references; creating s. 624.51055, F.S.;
368 providing for credits against the insurance premium tax
369 for contributions to certain eligible nonprofit
370 scholarship-funding organizations; providing application;
371 amending ss. 1002.20, 1002.23, 1002.39, and 1002.421,
372 F.S.; providing conforming revisions; providing a
373 severability clause; providing an effective date.

374

375

A bill to be entitled

An act relating to tax credits for contributions to nonprofit scholarship-funding organizations; creating s. 212.099, F.S.; providing for credits against the sales and use tax for contributions to certain eligible nonprofit scholarship-funding organizations; providing application; amending s. 220.187, F.S.; defining the term "direct certification list"; expanding the Corporate Income Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits; revising credits for contributions to nonprofit scholarship-funding organizations; specifying that a taxpayer's use of the credit doesn't reduce alternative minimum tax credits; providing that certain taxes are not state funds or revenues of the state or held in trust for the state; specifying Department of Education tax credit scholarship notification requirements; specifying notice requirements and limitations; imposing additional requirement upon the Department of Education; conforming cross-references; creating s. 624.51055, F.S.; providing for credits against the insurance premium tax for contributions to certain eligible nonprofit scholarship-funding organizations; providing application; amending ss. 1002.20, 1002.23, 1002.39, and 1002.421, F.S.; providing conforming revisions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

29 Section 1. Section 212.099, Florida Statutes, is created
 30 to read:

31 212.099 Credit for contributions to eligible nonprofit
 32 scholarship-funding organizations.--

33 (1) Persons who are registered with the department under
 34 s. 212.18 to collect or remit sales or use tax and who must make
 35 estimated tax payments under s. 212.11(4)(a) and who make an
 36 eligible contribution to an eligible nonprofit scholarship-
 37 funding organization as provided in under s. 220.187 are allowed
 38 a credit of 100 percent of the eligible contribution against any
 39 estimated state sales tax payment. However, such a credit may
 40 not exceed 75 percent of the tax due. This credit shall be taken
 41 on the return for the month following the month in which the
 42 eligible contribution is received by the nonprofit scholarship-
 43 funding organization.

44 (2) The provisions of s. 220.187 apply to the credit
 45 authorized by this section.

46 Section 2. Subsections (2) and (3), paragraphs (b) and (i)
 47 of subsection (6), and paragraphs (a), (b), (l), and (n) of
 48 subsection (9) of section 220.187, Florida Statutes, are
 49 amended, paragraphs (e) and (f) are added to subsection (5) of
 50 that section, and paragraphs (o) and (p) are added to subsection
 51 (9) of that section, to read:

52 220.187 Credits for contributions to nonprofit
 53 scholarship-funding organizations.--

54 (2) DEFINITIONS.--As used in this section, the term:

55 (a) "Department" means the Department of Revenue.

56 (b) "Direct certification list" means the certified list
 57 of children who qualify for the Food Stamp Program, the
 58 Temporary Assistance to Needy Families Program, or the Food
 59 Distribution Program on Indian Reservations provided to the
 60 Department of Education by the Department of Children and Family
 61 Services.

62 (c)~~(b)~~ "Eligible contribution" means a monetary
 63 contribution from a taxpayer, subject to the restrictions
 64 provided in this section, to an eligible nonprofit scholarship-
 65 funding organization. The taxpayer making the contribution may
 66 not designate a specific child as the beneficiary of the
 67 contribution.

68 (d)~~(e)~~ "Eligible nonprofit scholarship-funding
 69 organization" means a charitable organization that:

- 70 1. Is exempt from federal income tax pursuant to s.
- 71 501(c)(3) of the Internal Revenue Code;
- 72 2. Is a Florida entity formed under chapter 607, chapter
- 73 608, or chapter 617 and whose principal office is located in the
- 74 state; and
- 75 3. Complies with the provisions of subsection (6).

76 (e)~~(d)~~ "Eligible private school" means a private school,
 77 as defined in s. 1002.01(2), located in Florida which offers an
 78 education to students in any grades K-12 and that meets the
 79 requirements in subsection (8).

80 (f)~~(e)~~ "Owner or operator" includes:

- 81 1. An owner, president, officer, or director of an
- 82 eligible nonprofit scholarship-funding organization or a person

83 with equivalent decisionmaking authority over an eligible
 84 nonprofit scholarship-funding organization.

85 2. An owner, operator, superintendent, or principal of an
 86 eligible private school or a person with equivalent
 87 decisionmaking authority over an eligible private school.

88 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.--The Florida
 89 ~~Corporate Income~~ Tax Credit Scholarship Program is established.
 90 A student is eligible for a Florida corporate income tax credit
 91 scholarship under this section, s. 212.099, or s. 624.51055 if
 92 the student qualifies for free or reduced-price school lunches
 93 under the National School Lunch Act or is on the direct
 94 certification list and:

95 (a) Was counted as a full-time equivalent student during
 96 the previous state fiscal year for purposes of state per-student
 97 funding;

98 (b) Received a scholarship from an eligible nonprofit
 99 scholarship-funding organization or from the State of Florida
 100 during the previous school year;

101 (c) Is eligible to enter kindergarten or first grade; or

102 (d) Is currently placed, or during the previous state
 103 fiscal year was placed, in foster care as defined in s. 39.01.

104
 105 Contingent upon available funds, a student may continue in the
 106 scholarship program as long as the student's household income
 107 level does not exceed 200 percent of the federal poverty level.

108 A sibling of a student who is continuing in the program and
 109 resides in the same household as the student shall also be
 110 eligible as a first-time ~~corporate income~~ tax credit scholarship

111 recipient as long as the student's and sibling's household
 112 income level does not exceed 200 percent of the federal poverty
 113 level. Household income for purposes of a student who is
 114 currently in foster care as defined in s. 39.01 shall consist
 115 only of the income that may be considered in determining whether
 116 he or she qualifies for free or reduced-price school lunches
 117 under the National School Lunch Act.

118 (5) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX
 119 CREDITS; LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.--

120 (e) A taxpayer's use of the credit granted pursuant to
 121 this section does not reduce the amount of any credit available
 122 to such taxpayer under s. 220.186.

123 (f) Notwithstanding the provisions of ss. 212.15 and
 124 212.06 or any other provision of chapter 212, taxes remitted
 125 pursuant to chapter 212 against which a credit is taken pursuant
 126 to this section are not state funds or revenue of the state or
 127 otherwise held in trust for the state.

128 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING
 129 ORGANIZATIONS.--An eligible nonprofit scholarship-funding
 130 organization:

131 (b) Must comply with the following background check
 132 requirements:

133 1. All owners and operators as defined in subparagraph
 134 (2) ~~(f)~~(e)1. are, upon employment or engagement to provide
 135 services, subject to level 2 background screening as provided
 136 under chapter 435. The fingerprints for the background screening
 137 must be electronically submitted to the Department of Law
 138 Enforcement and can be taken by an authorized law enforcement

139 agency or by an employee of the eligible nonprofit scholarship-
 140 funding organization or a private company who is trained to take
 141 fingerprints. However, the complete set of fingerprints of an
 142 owner or operator may not be taken by the owner or operator. The
 143 results of the state and national criminal history check shall
 144 be provided to the Department of Education for screening under
 145 chapter 435. The cost of the background screening may be borne
 146 by the eligible nonprofit scholarship-funding organization or
 147 the owner or operator.

148 2. Every 5 years following employment or engagement to
 149 provide services or association with an eligible nonprofit
 150 scholarship-funding organization, each owner or operator must
 151 meet level 2 screening standards as described in s. 435.04, at
 152 which time the nonprofit scholarship-funding organization shall
 153 request the Department of Law Enforcement to forward the
 154 fingerprints to the Federal Bureau of Investigation for level 2
 155 screening. If the fingerprints of an owner or operator are not
 156 retained by the Department of Law Enforcement under subparagraph
 157 3., the owner or operator must electronically file a complete
 158 set of fingerprints with the Department of Law Enforcement. Upon
 159 submission of fingerprints for this purpose, the eligible
 160 nonprofit scholarship-funding organization shall request that
 161 the Department of Law Enforcement forward the fingerprints to
 162 the Federal Bureau of Investigation for level 2 screening, and
 163 the fingerprints shall be retained by the Department of Law
 164 Enforcement under subparagraph 3.

165 3. Beginning July 1, 2007, all fingerprints submitted to
 166 the Department of Law Enforcement as required by this paragraph

167 | must be retained by the Department of Law Enforcement in a
 168 | manner approved by rule and entered in the statewide automated
 169 | fingerprint identification system authorized by s. 943.05(2)(b).
 170 | The fingerprints must thereafter be available for all purposes
 171 | and uses authorized for arrest fingerprint cards entered in the
 172 | statewide automated fingerprint identification system pursuant
 173 | to s. 943.051.

174 | 4. Beginning July 1, 2007, the Department of Law
 175 | Enforcement shall search all arrest fingerprint cards received
 176 | under s. 943.051 against the fingerprints retained in the
 177 | statewide automated fingerprint identification system under
 178 | subparagraph 3. Any arrest record that is identified with an
 179 | owner's or operator's fingerprints must be reported to the
 180 | Department of Education. The Department of Education shall
 181 | participate in this search process by paying an annual fee to
 182 | the Department of Law Enforcement and by informing the
 183 | Department of Law Enforcement of any change in the employment,
 184 | engagement, or association status of the owners or operators
 185 | whose fingerprints are retained under subparagraph 3. The
 186 | Department of Law Enforcement shall adopt a rule setting the
 187 | amount of the annual fee to be imposed upon the Department of
 188 | Education for performing these services and establishing the
 189 | procedures for the retention of owner and operator fingerprints
 190 | and the dissemination of search results. The fee may be borne by
 191 | the owner or operator of the nonprofit scholarship-funding
 192 | organization.

193 5. A nonprofit scholarship-funding organization whose
 194 owner or operator fails the level 2 background screening shall
 195 not be eligible to provide scholarships under this section.

196 6. A nonprofit scholarship-funding organization whose
 197 owner or operator in the last 7 years has filed for personal
 198 bankruptcy or corporate bankruptcy in a corporation of which he
 199 or she owned more than 20 percent shall not be eligible to
 200 provide scholarships under this section.

201 (i)1. May use up to 3 percent of eligible contributions
 202 received during the state fiscal year in which such
 203 contributions are collected for administrative expenses if the
 204 organization has operated under this section for at least 3
 205 state fiscal years and did not have any negative financial
 206 findings in its most recent audit under paragraph (1). Such
 207 administrative expenses must be reasonable and necessary for the
 208 organization's management and distribution of eligible
 209 contributions under this section. No more than one-third of the
 210 funds authorized for administrative expenses under this
 211 subparagraph may be used for expenses related to the recruitment
 212 of contributions from ~~corporate~~ taxpayers.

213 2. Must expend for annual or partial-year scholarships an
 214 amount equal to or greater than 75 percent of the net eligible
 215 contributions remaining after administrative expenses during the
 216 state fiscal year in which such contributions are collected. No
 217 more than 25 percent of such net eligible contributions may be
 218 carried forward to the following state fiscal year. Any amounts
 219 carried forward shall be expended for annual or partial-year
 220 scholarships in the following state fiscal year. Net eligible

221 contributions remaining on June 30 of each year that are in
 222 excess of the 25 percent that may be carried forward shall be
 223 returned to the State Treasury for deposit in the General
 224 Revenue Fund.

225 3. Must, before granting a scholarship for an academic
 226 year, document each scholarship student's eligibility for that
 227 academic year. A scholarship-funding organization may not grant
 228 multiyear scholarships in one approval process.

229
 230 Any and all information and documentation provided to the
 231 Department of Education and the Auditor General relating to the
 232 identity of a taxpayer that provides an eligible contribution
 233 under this section shall remain confidential at all times in
 234 accordance with s. 213.053.

235 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.--The Department
 236 of Education shall:

237 (a) Annually submit to the department, by March 15, a list
 238 of eligible nonprofit scholarship-funding organizations that
 239 meet the requirements of paragraph (2) (d) ~~(e)~~.

240 (b) Annually verify the eligibility of nonprofit
 241 scholarship-funding organizations that meet the requirements of
 242 paragraph (2) (d) ~~(e)~~.

243 (1) Notify an eligible nonprofit scholarship-funding
 244 organization of any of the organization's identified students
 245 who are receiving ~~corporate income~~ tax credit scholarships from
 246 other eligible nonprofit scholarship-funding organizations.

247 (n)1. Conduct random site visits to private schools
 248 participating in the Florida ~~Corporate~~ Tax Credit Scholarship

249 Program. The purpose of the site visits is solely to verify the
 250 information reported by the schools concerning the enrollment
 251 and attendance of students, the credentials of teachers,
 252 background screening of teachers, and teachers' fingerprinting
 253 results. The Department of Education may not make more than
 254 seven random site visits each year and may not make more than
 255 one random site visit each year to the same private school.

256 2. Annually, by December 15, report to the Governor, the
 257 President of the Senate, and the Speaker of the House of
 258 Representatives the Department of Education's actions with
 259 respect to implementing accountability in the scholarship
 260 program under this section and s. 1002.421, any substantiated
 261 allegations or violations of law or rule by an eligible private
 262 school under this program concerning the enrollment and
 263 attendance of students, the credentials of teachers, background
 264 screening of teachers, and teachers' fingerprinting results and
 265 the corrective action taken by the Department of Education.

266 (o) Upon the request of any nonprofit scholarship-funding
 267 organization eligible to receive the 3-percent administrative
 268 allowance under paragraph (6)(i), the Department of Education
 269 shall inform all households receiving free or reduced-priced
 270 meals under the National School Lunch Act of their eligibility
 271 to apply for a tax credit scholarship. The form of such notice
 272 shall be provided by the eligible nonprofit scholarship-funding
 273 organization and the department shall include the provided form,
 274 if requested by the organization, in any normal correspondence
 275 with eligible households. If an eligible nonprofit scholarship-
 276 funding organization requests a special communication to be

277 issued, the organization shall reimburse the department for the
 278 cost of postage. Such notice is limited to once a year.

279 (p) Provide the direct certification list to any nonprofit
 280 scholarship-funding organization eligible to receive the 3-
 281 percent administrative allowance under paragraph (6)(i) upon
 282 request.

283 Section 3. Section 624.51055, Florida Statutes, is created
 284 to read:

285 624.51055 Credit for contributions to eligible nonprofit
 286 scholarship-funding organizations.--

287 (1) There is allowed a credit of 100 percent of an
 288 eligible contribution made to an eligible nonprofit scholarship-
 289 funding organization as provided in s. 220.187 against any tax
 290 due for a taxable year under this chapter. However, such a
 291 credit may not exceed 75 percent of the tax due under s.
 292 624.509(1) after deducting from such tax due the taxes paid by
 293 the insurer under ss. 175.101 and 185.08 and any assessments
 294 pursuant to s. 440.51. An insurer claiming a credit against
 295 premium tax liability under this section shall not be required
 296 to pay any additional retaliatory tax levied pursuant to s.
 297 624.509(1) as a result of claiming such credit. Section
 298 624.509(1) does not limit such credit in any manner.

299 (2) The provisions of s. 220.187 apply to the credit
 300 authorized by this section.

301 Section 4. Paragraph (b) of subsection (6) of section
 302 1002.20, Florida Statutes, is amended to read:

303 1002.20 K-12 student and parent rights.--Parents of public
 304 school students must receive accurate and timely information

305 regarding their child's academic progress and must be informed
 306 of ways they can help their child to succeed in school. K-12
 307 students and their parents are afforded numerous statutory
 308 rights including, but not limited to, the following:

309 (6) EDUCATIONAL CHOICE.--

310 (b) Private school choices.--Parents of public school
 311 students may seek private school choice options under certain
 312 programs.

313 1. Under the Opportunity Scholarship Program, the parent
 314 of a student in a failing public school may request and receive
 315 an opportunity scholarship for the student to attend a private
 316 school in accordance with the provisions of s. 1002.38.

317 2. Under the McKay Scholarships for Students with
 318 Disabilities Program, the parent of a public school student with
 319 a disability who is dissatisfied with the student's progress may
 320 request and receive a McKay Scholarship for the student to
 321 attend a private school in accordance with the provisions of s.
 322 1002.39.

323 3. Under the Florida corporate income Tax Credit
 324 Scholarship Program provided in s. 220.187, the parent of a
 325 student who qualifies for free or reduced-price school lunch may
 326 seek a scholarship from an eligible nonprofit scholarship-
 327 funding organization in accordance with the provisions of s.
 328 220.187.

329 Section 5. Paragraph (e) of subsection (2) of section
 330 1002.23, Florida Statutes, is amended to read:

331 1002.23 Family and School Partnership for Student
 332 Achievement Act.--

333 (2) To facilitate meaningful parent and family
 334 involvement, the Department of Education shall develop
 335 guidelines for a parent guide to successful student achievement
 336 which describes what parents need to know about their child's
 337 educational progress and how they can help their child to
 338 succeed in school. The guidelines shall include, but need not be
 339 limited to:

340 (e) Educational choices, as provided for in s. 1002.20(6),
 341 and Florida ~~corporate income~~ tax credit scholarships, as
 342 provided for in s. 220.187;

343 Section 6. Paragraph (b) of subsection (3) of section
 344 1002.39, Florida Statutes, is amended to read:

345 1002.39 The John M. McKay Scholarships for Students with
 346 Disabilities Program.--There is established a program that is
 347 separate and distinct from the Opportunity Scholarship Program
 348 and is named the John M. McKay Scholarships for Students with
 349 Disabilities Program.

350 (3) JOHN M. MCKAY SCHOLARSHIP PROHIBITIONS.--A student is
 351 not eligible for a John M. McKay Scholarship while he or she is:

352 (b) Receiving a Florida ~~corporate income~~ tax credit
 353 scholarship under s. 220.187;

354 Section 7. Subsection (1) of section 1002.421, Florida
 355 Statutes, is amended to read:

356 1002.421 Accountability of private schools participating
 357 in state school choice scholarship programs.--

358 (1) A Florida private school participating in the Florida
 359 ~~Corporate Income~~ Tax Credit Scholarship Program established
 360 pursuant to s. 220.187 or an educational scholarship program

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361 established pursuant to this chapter must comply with all
362 requirements of this section in addition to private school
363 requirements outlined in s. 1002.42, specific requirements
364 identified within respective scholarship program laws, and other
365 provisions of Florida law that apply to private schools.

366 Section 8. This act shall take effect July 1, 2009.

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:

Background:

Corporate Income Tax Credit Program

The Corporate Income Tax Credit Scholarship Program (CITC Program), a Florida school choice program created in 2001¹, was established to encourage taxpayers to make private, voluntary contributions to nonprofit scholarship-funding organizations (SFOs) that award scholarships to children from low-income families.² Through this source of funding, children in grades K-12 are provided an opportunity to attend sectarian or non-sectarian private schools that meet the state's eligibility requirements.³ A corporation is allowed a corporate income tax credit of 100% of its contribution; however, the credit may not exceed 75% of taxes owed during the year of the contribution. Currently, the maximum amount of tax credits that may be granted per state fiscal year under the CITC Program is \$118 million.⁴

SFOs are responsible for the receipt and distribution of the program funds. The funds are used to pay for the cost of tuition and fees for an eligible private school, or for transportation to a public school outside the district in which the student lives or to a developmental research (lab) school. An eligible scholarship-funding organization (SFO) that has operated under the program for at least three years without any negative financial findings in its most recent audit is authorized to use up to 3% of the eligible contributions for administrative expenses incurred for the operation of the program, of which no more than 1/3rd may be spent to recruit contributions from corporations.⁵

SFOs must *expend* at least 75% of the net eligible contributions remaining after administrative expenses on annual or partial-year scholarships during the fiscal year in which the contributions are collected. Up to 25% of net eligible contributions may be carried forward by an SFO to the succeeding fiscal year. Contributions carried forward must be expended for annual or partial-year scholarships.

¹ Ch. 2001-225, s. 5, L.O.F.

² s. 220.187(2) and (5), F.S.

³ s. 220.187(2), F.S.

⁴ s. 220.187(5), F.S.

⁵ s. 220.187(6)(i), F.S.

Any net contributions that are in excess of the 25% carryforward must be returned to the State Treasury for deposit in the General Revenue Fund.⁶

When the program began in 2002, \$50 million was the maximum amount of tax credits that could be granted each fiscal year and tax credits were not permitted to be carried forward.⁷ Approximately \$47.6 million of tax credits were granted.⁸

Beginning July 1, 2003, the maximum amount of tax credits and carryforward tax credits (tax credits) that could be granted each fiscal year was increased to \$88 million.⁹ In 2003, approximately \$47.5 million of tax credits were granted; in 2004, approximately \$47.5 million of tax credits were granted; in 2005, approximately \$80.3 million of tax credits were granted; in 2006, approximately \$87.1 million of tax credits were granted; and in 2007, approximately \$85.4 million of tax credits were granted.¹⁰

Effective July 1, 2008, the maximum amount of tax credits that could be granted each fiscal year was increased to \$118 million.¹¹ As of February 2009, approximately \$88.4 million of tax credits have been granted.¹²

Student Eligibility

A student is eligible for a first-time CITC Program scholarship if he or she qualifies for free or reduced-price school lunches under the National School Lunch Program,¹³ and:

- Was counted as a full-time student during the previous state fiscal year for purposes of state per-student funding;
- Received a scholarship from an eligible SFO or the State of Florida during the previous school year;
- Is eligible to enter kindergarten or first grade; or
- Is currently placed, or during the previous Fiscal Year was placed, in foster care.¹⁴

The SFO must document each scholarship student's eligibility before granting a scholarship for an academic year.¹⁵ In subsequent years, a scholarship recipient may be eligible for a renewal scholarship, contingent upon available funds, if the student's parents document that their household income does not exceed 200% of the Federal Poverty Level.¹⁶

Scholarships

During the 2007-2008 school year, \$73.5 million in scholarships was awarded to more than 21,493 students.¹⁷ As of February 2009, 23,259 scholarship recipients are enrolled in 988 participating private schools. Eighty-one percent of participating private schools are religious, and 19% are non-religious.¹⁸

⁶ s. 220.187(6)(i)2., F.S.

⁷ Ch. 2001-225, s. 5, L.O.F.

⁸ Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

⁹ s. 220.187, F.S. was amended to permit a corporation to, for no more than 3 years, carry forward an unused amount of tax credit because of insufficient tax liability on the part of the corporation. The carryforward provision applied to all approved contributions made after January 1, 2002. See Ch. 2003-391, s. 9, L.O.F.

¹⁰ Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

¹¹ Ch. 2008-241, s.1, L.O.F.

¹² Revenue Estimating Conference (Impact Conference), Description of Data and Sources, HB 453/SB 1310, February 18, 2009.

¹³ <http://www.fns.usda.gov/cnd/lunch/default.htm> Program Fact Sheet, U.S. Department of Agriculture, Food and Nutrition Service, July 2008. The National School Lunch Program is administered by the Food and Nutrition Service within the U.S. Department of Agriculture.

¹⁴ s. 220.187(3), F.S.

¹⁵ s. 220.187(6)(i)3., F.S.

¹⁶ s. 220.187(3), F.S.

¹⁷ <http://www.floridaschoolchoice.org/Information/ctc/> Florida Department of Education, August 2008.

Scholarship award amounts provided to a student in any single school year by an eligible SFO must not exceed:

- \$3,950 for a scholarship awarded to a student enrolled in an eligible private school beginning in the 2008-2009 state fiscal year and each year thereafter.
- \$500 for a scholarship for transportation awarded to a student enrolled in a Florida public school that is located outside the district in which the student resides or in a developmental research (lab) school.¹⁹

Florida School Meals Program

Florida's School Lunch and School Breakfast Programs are administered by the Food and Nutrition Management Division in the Florida Department of Education (DOE).²⁰ In the 2007-2008 school year, approximately 1.2 million PreK-12 students were eligible²¹ for free or reduced-price lunch.²²

The Food Stamp Program, Temporary Assistance for Needy Families, and the Food Distribution Program on Indian Reservations

Food Stamp Program

Administered by the Florida Department of Children and Family Services (DCF), the Food Stamp Program helps low-income households purchase nutritious foods. Households must have monthly gross income less than or equal to 130% of the federal poverty level and net income less than or equal to 100% of the federal poverty level.²³ Households containing individuals age 60 or older or disabled must only meet the net monthly income limit.²⁴

Temporary Assistance for Needy Families

The Temporary Assistance for Needy Families (TANF) block grant provides federal funding to states for a wide range of benefits and services. The DCF, the Department of Health, and the Agency for Workforce Innovation are the three state agencies in Florida responsible for administering the TANF State Plan.²⁵

The DCF is the recipient of the TANF block grant and is responsible for determining eligibility for TANF and Temporary Cash Assistance (TCA). Eligibility for TANF-funded services for families who are not receiving cash assistance is generally set at 200% of the poverty level.²⁶ Individuals eligible to receive TCA are defined as needy by having an income below 185% of the federal poverty level. Specific categories of people, such as victims of domestic violence, families at risk of welfare dependency, and

¹⁸ http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports.asp, Florida Department of Education, February 2009.

¹⁹ s. 220.187(11)(a), F.S.

²⁰ <http://www.fldoe.org/FNM/natschoollunch/descriptions.asp>, Program Description and Requirements, Florida Department of Education, Food and Nutrition Management.

²¹ Children from families with incomes at or below 130% of the poverty level are eligible for free meals. Those with incomes between 130% and 185% of the poverty level are eligible for reduced-price meals for which students can be charged no more than 40 cents. For the period July 1, 2008 through June 30, 2009, 130 % of the poverty level is \$27,560 for a family of four; 185% is \$39,220. Children from families with incomes over 185% of poverty pay a full price, but their meals are still subsidized.

<http://www.fns.usda.gov/cnd/lunch/> National School Lunch Program Fact Sheet, U.S. Department of Agriculture, July 2008.

²² <http://www.fldoe.org/eias/eiaspubs/> Free/Reduced Price Lunch Eligibility, Florida Department of Education, Series 2009-03F, August 2008.

²³ See *supra* note 14.

²⁴ <http://www.dcf.state.fl.us/ess/foodstamps.shtml>

²⁵ http://www.dcf.state.fl.us/ess/tanf_moe_resources.shtml Temporary Assistance to Needy Families, An Overview of Program Requirements, Florida Department of Children and Families, October 2006.

²⁶ *Id.*

families with children at risk of abuse or neglect, with an income below 200% of the federal poverty level are eligible for TANF-funded benefits.²⁷

Food Distribution Program on Indian Reservations

The Food Distribution Program on Indian Reservations (FDPIR) provides foods to low-income households living on Indian reservations, and to American Indian households residing in approved areas near reservations or in Oklahoma. The program is administered by the Food and Nutrition Service, an agency of the U.S. Department of Agriculture. Households are certified based on income and resource standards set by the Federal government, and must be recertified at least every 12 months. Households may not participate in the FDPIR and the Food Stamp Program in the same month.²⁸ For Federal Fiscal Years 2004 – 2008, no American Indians in Florida have participated in the program.²⁹

Direct Certification

In general, an adult is required to complete an application for a child to receive a free or reduced-price school meal. However, if a child is a member of a household participating in the Food Stamp Program, the TANF Program, or the FDPIR, then the agency administering such program is authorized to certify the household's participation in lieu of an application. This process of authorization is referred to as direct certification.³⁰

As stated earlier, the DCF administers the Food Stamp Program and TANF Program. Three times a year, the DCF transmits a computer file containing eligibility information and documentation for those households participating in either program to the DOE. DOE acts as a clearinghouse and only retains the information until a local school district downloads the information as part of the direct certification process. The DCF and the DOE have entered into a Memorandum of Understanding to carry out this function.³¹

Taxes

Sales and Use Taxes

The State of Florida levies a 6% sales and use tax on most sales of tangible personal property and on a limited number of services.³² The taxes imposed become state funds at the moment of collection³³ with the exception of funds held in trust for the benefit of a cooperating state for mail order sales.³⁴ Use tax complements and is applied in the same manner as sales tax. The "use" component of the sales and use tax provides uniform taxation on items that are purchased outside Florida but are used or stored in the state.³⁵ Dealers³⁶ are required to register with the Department of Revenue (DOR)³⁷ and those who

²⁷ [http://www.myflorida.com/cf_web/ Temporary Assistance for Needy Families State Plan Renewal October 1, 2005 – September 30, 2008](http://www.myflorida.com/cf_web/Temporary%20Assistance%20for%20Needy%20Families%20State%20Plan%20Renewal%20October%201,%202005%20-%20September%2030,%202008), Florida Department of Children and Families.

²⁸ [http://www.fns.usda.gov/fdd/programs/fdpiir/ Program Fact Sheet](http://www.fns.usda.gov/fdd/programs/fdpiir/Program%20Fact%20Sheet), U.S. Department of Agriculture, Food and Nutrition Service, Food Distribution Fact Sheet, July 2008.

²⁹ <http://www.fns.usda.gov/pd/21irpart.htm> Food Distribution Program on Indian Reservations: Persons Participating, U.S. Department of Agriculture, Food and Nutrition Service, Food Distribution Program on Indian Reservations, January 28, 2009.

³⁰ 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

³¹ Telephone conferences with DCF and DOE staff on February 19, 2009.

³² Chapter 212, F.S.

³³ s. 212.15 (1), F.S.

³⁴ s. 212.06(5)(a)2.e., F.S.

³⁵ http://www.dor.myflorida.com/dor/taxes/sales_tax.html, Florida Sales and Use Tax, Florida Department of Revenue.

paid \$200,000 or more in sales or use tax for the preceding state fiscal year are required to calculate the amount of their estimated tax liability for any month and remit the tax due to the DOR as prescribed by law.³⁸

Insurance Premium Taxes

The insurance premium tax is imposed on insurance premiums written in Florida and paid by insurance companies to the DOR.³⁹ Under certain circumstances, out of state insurance companies are required to pay retaliatory taxes to the state.⁴⁰ Retaliatory taxes help ensure a level playing field by preventing companies from choosing to locate in one state in order to lower their insurance premium taxes.⁴¹ Insurance companies are permitted to receive a corporate income tax credit against insurance premium taxes.⁴² In addition, a credit is allowed against the net insurance premium tax equal to 15% of the amount of salaries paid by insurance companies to employees located or based in Florida.⁴³ The total of the credit granted for the taxes paid by the insurer cannot exceed 65% of the insurance premiums due.⁴⁴

OPPAGA Report on the Corporate Income Tax Credit Scholarship Program and the Use of Credits for the Insurance Premium Taxes

In 2008, the Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor and Legislature by December 1, 2008, addressing, in part, the use of credits for insurance premium taxes under chapter 624, F.S.,⁴⁵ as an additional source of funding for the scholarship program.

OPPAGA reported the following:

- Allowing insurance premium tax credits to be included in the scholarship program would broaden the base of companies likely to participate and increase the chance that higher caps set by the Legislature would be met.
- Insurance companies must have a net corporate income tax liability greater than 65% of their insurance premium tax liability in order to reduce their tax liability by contributing to the scholarship program. Companies that do not have such a corporate income tax liability may contribute to the program, but would not receive a reduction in tax liability for doing so.
- Allowing insurance companies the flexibility of receiving tax credits against either their corporate income taxes or their insurance premium taxes would maximize the number of companies that would make contributions to scholarship funding organizations, *but would also complicate tax administration*.
- Out-of-state insurance companies could face increased retaliatory taxes if they lowered their Florida insurance premium tax liability by taking credits for scholarship contributions. Establishing a provision that exempts these insurance companies from additional retaliatory taxes in Florida would help ensure that they have an incentive to participate in the program.

³⁶ s. 212.06(2), F.S., provides a definition for “dealers.”

³⁷ s. 212.18 (3), F.S., requires every person desiring to engage in or conduct business in the state as a dealer to file an application for a certificate of registration.

³⁸ s. 212.11(4), F.S.

³⁹ s. 624.509, F.S.

⁴⁰ s. 624.5091, F.S.

⁴¹ <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

⁴² s. 624.509(4), F.S.

⁴³ s. 624.509(5), F.S.

⁴⁴ s. 624.409(6), F.S.

⁴⁵ Chapter 624, F.S., relates to Florida’s Insurance Code.

- Allowing the insurance premium tax credit for scholarship contributions to exceed the 65% credit limitation would provide more opportunity for companies to receive tax benefits than if it were included in the 65% credit limitation. However, including the scholarship credit in the 65% credit limitation would limit the tax revenue loss to the state.
- The Capital Investment Program and the Community Contribution Tax Credit Program permit insurance companies to claim an insurance premium tax credit for certain activities. While the participating insurance companies may take tax credits, they are not assessed additional retaliatory taxes. Both the Capital Investment and Community Contribution tax credits are authorized to exceed the 65% credit limitation.⁴⁶

Effect of Proposed Changes

Program Administration

The bill renames the program the Florida Tax Credit Scholarship Program to reflect the addition of the insurance premium tax credit and the sales and use tax credit as eligible contributions. Thus, references made to the "Corporate Income Tax Credit Scholarship Program" are replaced with "Florida Tax Credit Scholarship Program" throughout the bill.

The bill authorizes scholarship-funding organizations (SFOs), eligible to receive the 3% administrative allowance,⁴⁷ to request the Department of Education (DOE) to inform all households participating in the National School Lunch Program that they are eligible to apply for a tax credit scholarship. An eligible scholarship-funding organization (SFO) making the request will determine the notice's form and the DOE must include the form in any normal correspondence with eligible households. Once a year an SFO may request a special communication to be issued; however, the SFO must reimburse the DOE for the cost of postage.

The bill further modifies the program to require the DOE, upon request by an SFO, to provide the direct certification list to any SFO eligible to receive the 3% administrative allowance.⁴⁸ The bill defines "direct certification list" to mean a certified list of children who qualify for the Food Stamp Program, the Temporary Assistance for Needy Families (TANF) program, or the Food Distribution Program on Indian Reservations (FDPIR). The list would be provided to the DOE by the Department of Children and Families Services (DCF), and children receiving these services would also be eligible to receive a scholarship under the Florida Tax Credit Scholarship Program. Currently, any child on the direct certification list would be eligible to participate in the National School Lunch Program.

Confidentiality and privacy issues are raised by this provision. It does not appear that federal law envisions direct certification information regarding students being shared with private entities. The release of certain information may require parental consent.⁴⁹ The DOE, as the administrator of the National School Lunch Program for the state, is authorized to receive all eligibility information, but it does not access the information. Only the school districts download the data.

Sales Tax Credit

The bill provides that a person who is registered with the Department of Revenue (DOR) to collect or remit sales or use tax, who makes estimated tax payments, and who makes an eligible contribution to an eligible SFO is allowed a credit against any estimated sales tax payment. The taxpayer is allowed a

⁴⁶ <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

⁴⁷ See *supra* note 5 and accompanying text.

⁴⁸ s. 220.187(6)(i), F.S.

⁴⁹ <http://www.fns.usda.gov/cnd/lunch/default.htm> Eligibility Manual for School Meals, U.S. Department of Agriculture, Food and Nutrition Service, Child and Nutrition Programs, January 2008.

credit of 100% of the eligible contribution; however, the credit may not exceed 75% of the "tax due." It is not clear as to whether the phrase "tax due" refers to the tax due with the return or the amount of estimated sales tax payment due with the return.

The bill provides that the credit is to be taken on the sales tax return for the month following the month in which the eligible contribution is received by the eligible SFO.

The bill provides that a taxpayer's use of the credit taken under the Florida Tax Credit Scholarship Program does not reduce the amount of credit available to the taxpayer under the provisions of law governing the credit for the Florida alternative minimum tax.⁵⁰

The bill states that a sales and use tax credit taken under the provisions of the program is not state funds or revenue or otherwise held in trust for the state. Issues arise regarding this provision. If the sales and use tax credits are not the state's revenue for the purposes of the program, then to whom does the revenue belong? If the revenue is considered income to the dealer collecting the sales or use tax, then tax implications may arise.

Insurance Premium Tax Credits

The bill 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 under the provisions of the state's insurance code. However, the credit may not exceed 75% of the tax due. In addition, the insurance premium tax credit may be taken after the insurer has paid the required excise (premium) taxes to the firefighters' pension trust fund and the police officers' retirement trust fund.⁵¹ This provision may be difficult to implement as the state's insurance code contains many fee and tax provisions which are managed by more than one state agency.

The bill further provides that an insurer claiming a credit against premium tax liability is not required to pay any additional retaliatory tax.

B. SECTION DIRECTORY:

Section 1: Creates s. 212.099, F.S., authorizing credits against the sales and use tax for contributions to certain eligible SFOs.

Section 2: Amends s. 220.187, F.S., defining the term "direct certification"; expanding the Corporate Income Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits; renaming the scholarship program the Florida Tax Credit Scholarship Program; specifying that a taxpayer's use of the credit does not reduce alternative minimum tax credits; providing that certain funds are not state funds or revenues of the state or held in trust for the state; specifying DOE notification requirements; and conforming cross-references.

Section 3: Creates s. 624.51055, F.S., authorizing an insurance premium tax credit to eligible SFOs participating in the scholarship program.

Section 4: Amends s. 1002.20, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits.

Section 5: Amends s. 1002.23, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits.

Section 6: Amends s. 1002.39, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits.

⁵⁰ s. 220.186, F.S. and s. 220.13(2)(k), F.S.

⁵¹ Firefighter and police pension plan funding comes from a number of sources, including the net proceeds from an excise tax levied upon property and casualty insurance companies. See s. 175.101, F.S., and s. 185.08, F.S.

Section 7: Amends s. 1002.421, F.S., reflecting the expansion of the Florida Tax Credit Scholarship Program to include sales and use tax credits and insurance premium tax credits.

Section 8: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

The DOR estimates that implementing the provisions of the bill will cost the agency \$39,932.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

The bill appears to have no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance companies and certain taxpayers will have an opportunity to receive a credit against insurance premium taxes and sales and use taxes and provide children from low-income families an opportunity to receive a scholarship to attend a private school.

D. FISCAL COMMENTS:

The maximum amount of tax credits that may be granted each fiscal year pursuant to the scholarship program remains at \$118 million. By expanding the program to include insurance premium tax credits and sales and use tax credits, there is an increased probability that the \$118 million tax credit cap will be reached and as a result less monies will be available to the general revenue fund.

However, the CITC Program produces a net savings to the state. It is estimated that during the 2007-2008 fiscal year, taxpayers saved \$1.49 in state education funding for every dollar loss in corporate income tax revenue due to credits for scholarship contributions.⁵²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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.

⁵² <http://www.oppaga.state.fl.us/reports/educ/r08-68s.html>. The Corporate Income Tax Credit Scholarship Program Saves the State Dollars, OPPAGA, Report No. 08-68, December 2008.

2. Other:

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program (OSP) violated Article IX, s. 1(a) of the State Constitution, which requires the state to provide "a uniform, efficient, safe, secure, and high quality system of free public schools." The court found that the OSP was inconsistent with the constitutional requirement **in part** because it transferred tax money "earmarked for public schools that provide basic primary education" and thus, the OSP "diverts funds that would otherwise be provided to the system of free public schools."⁵³

State sales tax is collected by a dealer or retailer on behalf of the state and, at the moment of collection, sales taxes become state funds. However, the revenue generated by the sales tax has not been earmarked specifically for public education.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The statutory reference to the retaliatory tax needs to be corrected. The reference should be changed from "624.509(1)" to "s. 624.5091."

It is unclear as to whether a taxpayer receives a sales tax credit, corporate income tax credit, and an insurance premium tax credit for the same contribution.

The \$118 million cap on tax credits authorized under the Florida Tax Credit Scholarship Program is the total amount of corporate income tax credits, sales tax credits, and insurance premium tax credits that may be granted each state fiscal year. This point needs to be clarified in the bill.

The bill appears to allow insurance companies the option of taking a corporate income tax credit or an insurance premium tax credit. As discussed in the OPPAGA report, this provision may increase the number of insurance companies making contributions to the scholarship program, but this would also complicate tax administration.

The bill creates s. 624.51055, F.S., which provides a credit against all taxes due under Chapter 624, F.S. The DOR comments that it is unclear how reconciliation of the credit will be made when the credit can be claimed against numerous taxes that are collected by at least two different agencies.

Other DOR comments include:

Section 212.099, F.S., as created, authorizes a credit against any estimated state sales tax payment for up to 100% of contributions to an eligible nonprofit scholarship-funding organization. The amount of the credit is prohibited from exceeding 75% of the "tax due." It is not clear whether this is the "tax due" with the return or the amount of the estimated sales tax payment due with the return. It is recommended that on line 40, page 2, replace "tax due." with "estimated state sales tax payment due with the return."

When a dealer collects sales tax from a customer, those taxes are state funds at the moment they are collected. Section 2 of the bill provides that "taxes remitted pursuant to chapter 212 against which a credit is taken...are not state funds or revenue of the state or otherwise held in trust for the state." As the bill is written, it is unclear whether the department would be authorized to audit and enforce the taxes since these taxes "are not state funds." Additionally, sales and use taxes, including estimated taxes, are subject to penalties and interest for failure to collect or for failure to timely remit the taxes due. As the bill is written, it is not clear whether the state's penalty and interest provisions for failure to pay or for

⁵³ *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

late payment and to audit for the proper collection and remittance of these taxes would apply.

The sponsor may wish to consider changing the calculation of the alternative minimum tax in s. 220.186, F.S., instead of providing an exception or different calculation for that tax in a section that is unrelated to the alternative minimum tax. One option is to remove lines 120 – 122 on page 5, insert the following as a new section 2. and renumber the remaining sections.

Section 2. Section 220.186(2), Florida Statutes, is amended to read:

220.186 Credit for Florida alternative minimum tax.—

(2) The credit pursuant to this section shall be the amount of the excess, if any, of the tax paid based upon taxable income determined pursuant to s. 220.13(2)(k) over the amount of tax which would have been due based upon taxable income without application of s. 220.13(2)(k), before application of this credit and without application of credit under s. 220.187.

The bill's effective date is July 1, 2009. Additional time is needed to implement the provisions in this bill which include computer programming, notifying taxpayers, and developing forms. Therefore, an effective date of January 1, 2010 is recommended.

DOE comments:

The bill requires the Department of Education to provide the direct certification list to an eligible nonprofit SFO upon request. The direct certification list that the Department of Education receives from the Department of Children and Family Services includes student names, but does not include contact information. Federal and Florida laws give individuals receiving public assistance the right of confidentiality and limit the disclosure of the information. See Title 7 USC s. 2020(e)(8), 7 CFR s. 272.91(c) and Section 414.295 (Food Stamp Program) and 42 USC s. 602(a)(1)(A)(iv), 45 C.F.R. s. 205.50 and Section 414.106, Florida Statutes (Cash Assistance Programs) and 7 CFR s 253 (Food Distribution Program to Indian Reservations). It does not appear that this type of disclosure to an SFO would be allowed under federal regulations. Upon receipt of the direct certification list by the Department of Education for purposes of the Free and Reduced Price Lunch Program, such list would be confidential and protected from disclosure by the National School Lunch Act as well.

Upon the request of an eligible SFO, the Department of Education is required to inform all households receiving free or reduced-priced meals under the National School Lunch Act of their eligibility to apply for a scholarship. However, the department does not normally send correspondence directly to these eligible households, as it does not currently have address information for these eligible individuals. The school districts are responsible for communicating with households that are eligible for free or reduced-price meals.

Depending on the language used in the scholarship funding organization's notice form, parents might interpret the notice form to mean that the department is requiring the parents to go through the SFO to obtain the scholarship. As the notice is being mailed to the parents by the department, perhaps the notice could be mutually-agreed upon by the department and SFO, or otherwise subject to department review and/or approval.

The scholarship funding organization reimburses the Department of Education for the cost of postage. Is the reimbursement deposited into gross revenue or a Department of Education trust fund? If the latter, this should be clarified.

OPPAGA Comment:

Section 1 of the bill expands the program to include sales tax credits. This provision is a material change in the nature of the program because it would alter the linkage between tax liabilities and decisions to contribute to scholarship funding organizations. In the current program, the corporate entity that incurs a state tax liability makes the decision on whether to pay these funds to the state or to a scholarship funding organization. This would continue to be true if the program were extended to insurance taxes. However, sales taxes are incurred and paid by individual consumers, and corporations simply act as the collection agent when remitting these funds to the Department of Revenue. As a result, citizens who opposed the program would not have the ability to have a voice in directing how their tax payments were to be used; currently they can do so through the electoral process. As a result, this provision may become controversial.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A