

Council Substitute for  
Committee Substitute for House Bill No. 453

An act relating to tax credits for contributions to nonprofit scholarship-funding organizations; amending s. 220.186, F.S.; providing that the credit authorized under the Florida Tax Credit Scholarship Program does not apply to the credit for the Florida alternative minimum tax; amending s. 220.187, F.S.; defining the term “direct certification list”; expanding the Corporate Income Tax Credit Scholarship Program to include insurance premium tax credits; revising credits for contributions to nonprofit scholarship-funding organizations; providing that a taxpayer eligible to receive a credit against the insurance premium tax is not eligible to receive a credit against the corporate income tax; imposing an additional requirement on the Department of Education; specifying school district tax credit scholarship notification requirements and limitations; 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; authorizing certain insurers that made past contributions to the Florida Tax Credit Scholarship Program to claim the credits against future corporate income tax liability; requiring the insurer to apply to the Department of Revenue for the tax credits; requiring such insurers to file amended corporate income tax and insurance premium tax returns; providing severability; providing an effective date.

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

Section 1. Subsection (2) of section 220.186, 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 without application of any credit under s. 220.187.

Section 2. Subsections (2) and (3), paragraph (b) of subsection (5), paragraphs (b) and (i) of subsection (6), and paragraphs (a), (b), (l), and (n) of subsection (9) of section 220.187, Florida Statutes, are amended, paragraph (e) is added to subsection (5) of that section, paragraph (o) is added to subsection (9) of that section, subsections (10) through (14) of that section are renumbered as subsections (11) through (15), respectively, and a new subsection (10) is added to that section, to read:

220.187 Credits for contributions to nonprofit scholarship-funding organizations.—

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

(a) “Department” means the Department of Revenue.

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

~~(c)~~<sup>(b)</sup> “Eligible contribution” means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible nonprofit scholarship-funding organization. The taxpayer making the contribution may not designate a specific child as the beneficiary of the contribution.

~~(d)~~<sup>(e)</sup> “Eligible nonprofit scholarship-funding organization” means a charitable organization that:

1. Is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code;

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

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

~~(e)~~<sup>(d)</sup> “Eligible private school” means a private school, as defined in s. 1002.01(2), located in Florida which offers an education to students in any grades K-12 and that meets the requirements in subsection (8).

~~(f)~~<sup>(e)</sup> “Owner or operator” includes:

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

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

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

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

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

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

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

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

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

(b) For each state fiscal year, the total amount of tax credits and carryforward of tax credits which may be granted ~~each state fiscal year~~ under this section and s. 624.51055 is:

1. ~~Through June 30, 2008, \$88 million.~~
2. ~~Beginning July 1, 2008, and thereafter, \$118 million.~~

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

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

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

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

2. Every 5 years following employment or engagement to provide services or association with an eligible nonprofit scholarship-funding organization, each owner or operator must meet level 2 screening standards as described in s. 435.04, at which time the nonprofit scholarship-funding organization

shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for level 2 screening. If the fingerprints of an owner or operator are not retained by the Department of Law Enforcement under subparagraph 3., the owner or operator must electronically file a complete set of fingerprints with the Department of Law Enforcement. Upon submission of fingerprints for this purpose, the eligible nonprofit scholarship-funding organization shall request that the Department of Law Enforcement forward the fingerprints to the Federal Bureau of Investigation for level 2 screening, and the fingerprints shall be retained by the Department of Law Enforcement under subparagraph 3.

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

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

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

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

(i)1. May use up to 3 percent of eligible contributions received during the state fiscal year in which such contributions are collected for administrative expenses if the organization has operated under this section for at least 3 state fiscal years and did not have any negative financial findings in its most recent audit under paragraph (l). Such administrative expenses must be reasonable and necessary for the organization's management and distribution of eligible contributions under this section. No more than one-third of

the funds authorized for administrative expenses under this subparagraph may be used for expenses related to the recruitment of contributions from ~~corporate~~ taxpayers.

2. Must expend for annual or partial-year scholarships an amount equal to or greater than 75 percent of the net eligible contributions remaining after administrative expenses during the state fiscal year in which such contributions are collected. No more than 25 percent of such net eligible contributions may be carried forward to the following state fiscal year. Any amounts carried forward shall be expended for annual or partial-year scholarships in the following state fiscal year. Net eligible contributions remaining on June 30 of each year that are in excess of the 25 percent that may be carried forward shall be returned to the State Treasury for deposit in the General Revenue Fund.

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

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

(9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of Education shall:

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

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

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

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

2. Annually, by December 15, report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the Department of Education's actions with respect to implementing accountability in the scholarship program under this section and s. 1002.421, any substantiated

allegations or violations of law or rule by an eligible private school under this program concerning the enrollment and attendance of students, the credentials of teachers, background screening of teachers, and teachers' fingerprinting results and the corrective action taken by the Department of Education.

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

(10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.— Upon the request of any eligible nonprofit scholarship-funding organization, a school district shall inform all households within the district receiving free or reduced-priced meals under the National School Lunch Act of their eligibility to apply for a tax credit scholarship. The form of such notice shall be provided by the eligible nonprofit scholarship-funding organization and the district shall include the provided form, if requested by the organization, in any normal correspondence with eligible households. If an eligible nonprofit scholarship-funding organization requests a special communication to be issued to households within the district receiving free or reduced-price meals under the National School Lunch Act, the organization shall reimburse the district for the cost of postage. Such notice is limited to once a year.

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

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

(1) There is allowed a credit of 100 percent of an eligible contribution made to an eligible nonprofit scholarship-funding organization as provided in s. 220.187 against any tax due for a taxable year under s. 624.509(1). However, such a credit may not exceed 75 percent of the tax due under s. 624.509(1) after deducting from such tax deductions for assessments made pursuant to s. 440.51; credits for taxes paid under ss. 175.101 and 185.08; credits for income taxes paid under chapter 220; credits for the emergency excise tax paid under chapter 221; and the credit allowed under s. 624.509(5), as such credit is limited by s. 624.509(6). An insurer claiming a credit against premium tax liability under this section shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Section 624.5091 does not limit such credit in any manner.

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

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

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child

to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(6) EDUCATIONAL CHOICE.—

(b) Private school choices.—Parents of public school students may seek private school choice options under certain programs.

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

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

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

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

1002.23 Family and School Partnership for Student Achievement Act.—

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

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

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

1002.39 The John M. McKay Scholarships for Students with Disabilities Program.—There is established a program that is separate and distinct from the Opportunity Scholarship Program and is named the John M. McKay Scholarships for Students with Disabilities Program.

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

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

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

1002.421 Accountability of private schools participating in state school choice scholarship programs.—

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

Section 8. If an insurance company that filed corporate income tax returns under chapter 220, Florida Statutes, on a separate-company basis and made an eligible contribution under s. 220.187, Florida Statutes, for its tax year that began during the calendar year 2006, 2007, or 2008, but did not receive a dollar-for-dollar benefit for making the contribution, taking into account its net corporate income tax liability and corresponding insurance premium tax liability, the insurance company may apply to the Department of Revenue by July 31, 2009, to apply the credits against its 2009 corporate income tax liability and carry over unused credit amounts as allowed by s. 220.187, Florida Statutes. An insurer's scholarship credit amounts from 2006, 2007, and 2008 that are applied in 2009 shall be treated as corporate income taxes paid for the purposes of computing the amount of insurance premium taxes owed by the insurance company. Notwithstanding ss. 95.091 and 215.26, Florida Statutes, the insurer must file amended corporate income tax returns as part of its application for its tax years that began during the calendar years 2006, 2007, and 2008 in order to remove all credits claimed under s. 220.187, Florida Statutes, for those years and correct the amount of corporate income taxes paid. The insurer must also file amended insurance premium tax returns as part of its application. This section does not increase the annual cap per fiscal year on total tax credits and carryforwards of tax credits set forth in s. 220.187(5)(b), Florida Statutes.

Section 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 10. This act shall take effect July 1, 2009.

Approved by the Governor June 1, 2009.

Filed in Office Secretary of State June 1, 2009.