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# Finance and Tax Subcommittee

Thursday, March 6, 2014

1:30 p.m. – 4:30 p.m.

Morris Hall

MEETING PACKET

# The Florida House of Representatives

## Finance and Tax Subcommittee



**Will Weatherford**  
Speaker

**Ritch Workman**  
Chair

### AGENDA

March 6, 2014  
1:30 p.m. – 4:30 p.m.  
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. **Consideration of the following proposed committee bill(s):**  
PCB FTSC 14-02 -- Relating to Tax Credit Scholarship Programs
- IV. **Consideration of the following bill(s):**  
CS/HB 155 Defense Contracting by Economic Development & Tourism Subcommittee, Smith  
HB 231 Admissions Tax by Brodeur  
HB 567 Hurricane Preparedness by Gaetz  
HB 943 Department of Revenue's Certified Audit Program by Raulerson
- V. Closing Remarks and Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

### SUMMARY ANALYSIS

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

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

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

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

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

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

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

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb02.FTSC

DATE: 2/25/2014

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### ***History of the Florida Tax Credit Scholarship Program***

The Florida Tax Credit Scholarship Program (program) provides private school scholarships to students from families that meet specified income levels.<sup>1</sup> The program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine, and spirits.<sup>2</sup> The tax credit is equal to 100 percent of the eligible contributions made.<sup>3</sup>

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

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

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

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

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<sup>1</sup> Section 1002.395(3), F.S.

<sup>2</sup> Section 1002.395(1) and (5), F.S.

<sup>3</sup> Sections 220.1875 and 1002.395(5), F.S.

<sup>4</sup> Section 5, ch. 2001-225, L.O.F.

<sup>5</sup> Section 9, ch. 2003-391, L.O.F.

<sup>6</sup> Section 1, ch. 2008-241, L.O.F.

<sup>7</sup> See s. 3, ch. 2009-108, L.O.F.

<sup>8</sup> *Id.*; a premium tax pursuant to s. 624.509, F.S.

<sup>9</sup> Section 211.0251, F.S.

<sup>10</sup> Section 212.1831, F.S.

<sup>11</sup> Sections 211.0251, 212.1831, and 561.1211, F.S., direct DOR and the Department of Business and Professional Regulation to disregard tax credits accordingly for purposes of the distributions of tax revenue under ss. 211.06, 212.20, 561.12(1)(a) and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced.

<sup>12</sup> Section 1, ch. 2010-24, L.O.F.

<sup>13</sup> Florida Department of Education, *Fast Facts and Program Statistics*, available at,

[http://www.floridaschoolchoice.org/Information/CTC/files/Fast\\_Facts\\_FTC.pdf](http://www.floridaschoolchoice.org/Information/CTC/files/Fast_Facts_FTC.pdf) (last accessed February 14, 2014)

## **Scholarship Funding Organizations**

SFOs are charitable organizations exempt from federal income tax<sup>14</sup> that administer the receipt of contributions and distribution of scholarship awards.<sup>15</sup> Scholarships must be provided for eligible students on a first-come, first-serve basis, unless the student qualifies for priority consideration. An SFO may not restrict or reserve scholarships for use at a particular private school or for the child of an operator or owner of a private school or SFO.<sup>16</sup> Similarly, a taxpayer making a contribution may not designate a specific child or group of children as the beneficiaries of the scholarship.<sup>17</sup> If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may use up to three percent of the contributions received for reasonable and necessary administrative expenses. No more than one-third of the funds available for administrative expense may be used for expenses related to recruitment of contributions.<sup>18</sup>

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

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

## **Participating Private Schools**

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

## **Student Eligibility**

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

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

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<sup>14</sup> Section 1002.395(2)(f), F.S.; s. 501(c)(3) of the Internal Revenue Code.

<sup>15</sup> Section 1002.395(6), F.S.

<sup>16</sup> Section 1002.395(6), F.S.

<sup>17</sup> Section 1002.395(2)(e), F.S.

<sup>18</sup> Section 1002.395(6), F.S.

<sup>19</sup> Section 1002.421, F.S.

<sup>20</sup> Section 1002.395(8), F.S.

<sup>21</sup> Section 1002.395(9), F.S.

<sup>22</sup> United States Department of Agriculture (USDA), *National School Lunch Program Fact Sheet* (Oct. 2011), available at <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf>.

<sup>23</sup> "Direct certification list" is the certified list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations provided to the Department of Education by the Department of Children and Family Services. Section 1002.395(2)(c), F.S.

<sup>24</sup> Children from households that receive benefits under the supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program, Temporary Assistance to Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR), and children placed in foster care are deemed "categorically eligible" for free school meals, thereby eliminating the need for households to submit an application for meal benefits. USDA, *Eligibility Manual for School Meals*, at 11-13 (Oct. 2011), available at <http://www.fns.usda.gov/cnd/Guidance/EliMan.pdf>.

- Is eligible to enter kindergarten through fifth grade; or
- Received a scholarship under the program or from the state the previous school year;

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

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

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

### **Student Scholarship Amounts**

The maximum scholarship award to each individual student is set at a percentage of the unweighted Florida Education Finance Program (FEFP) student funding in the General Appropriations Act. The percentage for FY 2013-2014 is 72 percent, or \$4,880 per student. Thereafter, the scholarship amount increases by four percentage points each fiscal year the tax credit amounts meet or exceed 90 percent of the tax credit cap. The percentage will stop increasing upon reaching 80 percent, and from that year forward, the scholarship limit will be 80 percent of the unweighted FEFP funding amount.<sup>27</sup> The maximum limit for a scholarship awarded to a student for enrollment in a Florida public school that is located outside the district in which the student resides or in a lab school as defined in s. 1002.32, F.S., is \$500.

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

The following table shows the history of the program and historical tax credit information.<sup>28</sup>

	<b>Award Per Student</b>	<b>Student Scholarships</b>	<b>Awarded Scholarships</b>	<b>Maximum Tax Credit Cap</b>	<b>Tax Credits Approved<sup>29</sup></b>
FY 2001-02	\$3,500			\$50,000,000	
FY 2002-03	\$3,500	15,585	\$50,000,000	\$50,000,000	\$47,686,000
FY 2003-04	\$3,500	11,550	\$40,000,000	\$88,000,000	\$47,579,000
FY 2004-05	\$3,500	10,549	\$36,655,500	\$88,000,000	\$47,560,000
FY 2005-06	\$3,500	15,123	\$46,745,482	\$88,000,000	\$80,323,071
FY 2006-07	\$3,750	17,819	\$59,300,655	\$88,000,000	\$87,123,000
FY 2007-08	\$3,750	21,493	\$73,450,691	\$88,000,000	\$85,611,140
FY 2008-09	\$3,950	24,871	\$88,626,463	\$118,000,000	\$97,415,847

<sup>25</sup> Section 1002.395(3)(b)2., F.S.

<sup>26</sup> Section 1002.395(3)(b)3., F.S.

<sup>27</sup> Section 1002.395(12)(a), F.S.

<sup>28</sup> Florida Department of Education, *Fast Facts and Program Statistics*, available at,

[http://www.floridaschoolchoice.org/Information/CTC/files/ctc\\_fast\\_facts.pdf](http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf). (last accessed 2/14/2014)

<sup>29</sup> Email from Department of Revenue on file with House Finance and Tax

	<b>Award Per Student</b>	<b>Student Scholarships</b>	<b>Awarded Scholarships</b>	<b>Maximum Tax Credit Cap</b>	<b>Tax Credits Approved<sup>29</sup></b>
FY 2009-10	\$3,950	28,927	\$106,049,940	\$118,000,000	\$111,773,617
FY 2010-11	\$4,106	34,550	\$129,474,868	\$140,000,000	\$136,321,200
FY 2011-12	\$4,011	40,248	\$147,481,308	\$175,000,000	\$174,459,107
FY 2012-13	\$4,335	51,075	\$206,974,102	\$229,000,000	\$229,000,000

## **Proposed Changes**

### ***Student Eligibility***

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

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

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

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

### ***Student Scholarship Amounts***

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

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

### ***Scholarship Funding Organization Accountability***

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

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



basis thereafter to equal the amount of undispersed donations based on annual audits reviewed by the Department of Education.

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

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

The bill strengthens the background check requirement for owners and operators of SFOs by adding a number of additional disqualifying offenses.<sup>31</sup>

### ***Tax Credits***

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

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

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

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

### ***Notification***

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

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

<sup>31</sup> The new offenses include any felony and numerous misdemeanor-level financial crimes

## **Rulemaking**

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

### **B. SECTION DIRECTORY:**

- Section 1. Amends s. 212.1831, F.S., allowing credits to be granted against sales and use tax liability under the new Sales Tax Credit Scholarship Program.
- Section 2. Amends s. 213.053, F.S., revising confidentiality requirements for the Department of Revenue.
- Section 3. Amends s. 1002.395, F.S., making various changes to the Tax Credit Scholarship Program.
- Section 4. Creates s. 1002.396, F.S., creating the Sales Tax Scholarship Program.
- Section 5. Creates s. 1002.397, F.S., creating a new combined cap for tax credits approved under the two scholarship programs.
- Section 6. Amending s. 1002.421, F.S., conforming a cross reference.
- Section 7. Providing that any scholarship funding organization approved prior to July 1, 2014, shall have until August 1, 2014, to comply with the new requirements for maintaining a surety bond or letter of credit.
- Section 8. Granting emergency rulemaking authority to the Department of Revenue and Department of Education.
- Section 9. Providing an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

See FISCAL COMMENTS.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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

	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Table 1: Total Program Impacts—Current Law (\$ in millions)</b>					
Revenue Impact	(\$357.8)	(\$447.3)	(\$559.1)	(\$698.9)	(\$873.6)
FEFP Savings	\$415.0	\$489.6	\$608.7	\$758.4	\$944.8
Net State Savings	\$57.2	\$42.3	\$49.6	\$59.5	\$71.3

<b>Table 2: Total Program Impacts—Proposed Law</b>					
Revenue Impact	(\$390.0)	(\$475.0)	(\$590.0)	(\$730.0)	(\$873.6)
FEFP savings	\$450.8	\$515.4	\$603.7	\$741.2	\$882.1
Net State Savings	\$60.8	\$40.4	\$13.7	\$11.2	\$8.5

<b>Table 3: Change in Total Program Impacts</b>					
Revenue Impact	(\$32.2)	(\$27.7)	(\$30.9)	(\$31.1)	\$0.0
FEFP Savings	\$35.9	\$25.8	(\$4.9)	(\$17.1)	(\$62.8)
Net State Savings	\$3.7	(\$1.9)	(\$35.9)	(\$48.3)	(\$62.8)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The Florida Sales Tax Scholarship Program created by this bill allows for dealers of sales and use tax to receive credits against their tax liability in exchange for donations to scholarship-funding

organizations which may in turn provide scholarships to students who choose to attend sectarian schools. Sales and use tax collections by dealers become state funds at the moment of collection.<sup>32</sup>

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>32</sup> Section 212.15(1), F.S.  
**STORAGE NAME:** pcb02.FTSC  
**DATE:** 2/25/2014



27 that scholarship-funding organizations approved for  
 28 participation prior to July 1, 2014, must provide a  
 29 copy of a surety bond or letter of credit by August 1,  
 30 2014; providing rulemaking authority; providing an  
 31 effective date.

32  
 33 Be It Enacted by the Legislature of the State of Florida:

34  
 35 Section 1. Section 212.1831, Florida Statutes, is amended  
 36 to read:

37 212.1831 Credit for contributions to eligible nonprofit  
 38 scholarship-funding organizations.—

39 (1) There is allowed a credit of 100 percent of an eligible  
 40 contribution made to an eligible nonprofit scholarship-funding  
 41 organization under s. 1002.395 against any tax imposed by the  
 42 state and due under this chapter from a direct pay permit holder  
 43 as a result of the direct pay permit held pursuant to s.  
 44 212.183. For purposes of the distributions of tax revenue under  
 45 s. 212.20, the department shall disregard any tax credits  
 46 allowed under this subsection to ensure that any reduction in  
 47 tax revenue received that is attributable to the tax credits  
 48 results only in a reduction in distributions to the General  
 49 Revenue Fund. The provisions of ss. 1002.395 and 1002.397 apply  
 50 to the credit authorized by this subsection.

51 (2) There is allowed a credit of 100 percent of an  
 52 eligible contribution made to an eligible nonprofit scholarship-

53 funding organization under s. 1002.396 against any tax imposed  
 54 by the state and due under this chapter. For purposes of the  
 55 distributions of tax revenue under s. 212.20, the department  
 56 shall disregard any tax credits allowed under this subsection to  
 57 ensure that any reduction in tax revenue received that is  
 58 attributable to the tax credits results only in a reduction in  
 59 distributions to the General Revenue Fund. The credits against  
 60 the state sales tax authorized pursuant to s. 1002.396 shall be  
 61 deducted from any sales and use tax remitted by the dealer to  
 62 the department by electronic funds transfer and may only be  
 63 deducted on a sales and use tax return initiated through  
 64 electronic data interchange. The dealer shall separately state  
 65 the credit on the electronic return. The net amount of tax due  
 66 and payable must be remitted by electronic funds transfer. A  
 67 dealer may only obtain a credit using the method described in  
 68 this subparagraph. A dealer is not authorized to obtain a credit  
 69 by applying for a refund. The provisions of ss. 1002.396 and  
 70 1002.397 apply to credits granted under this subsection.

71 Section 2. Paragraph (cc) is added to subsection (8) of  
 72 section 213.053, Florida Statutes, to read:

73 213.053 Confidentiality and information sharing.—

74 (8) Notwithstanding any other provision of this section,  
 75 the department may provide:

76 (cc) For purposes of notification that a tax credit has  
 77 been reserved, a copy of a letter of approval issued by the  
 78 department to a taxpayer for an allocation of a tax credit to

79 the eligible nonprofit scholarship-funding organization selected  
 80 by the taxpayer in an application for a tax credit authorized  
 81 under ss. 1002.395 or 1002.396.

82  
 83 Disclosure of information under this subsection shall be  
 84 pursuant to a written agreement between the executive director  
 85 and the agency. Such agencies, governmental or nongovernmental,  
 86 shall be bound by the same requirements of confidentiality as  
 87 the Department of Revenue. Breach of confidentiality is a  
 88 misdemeanor of the first degree, punishable as provided by s.  
 89 775.082 or s. 775.083.

90 Section 3. Paragraph (f) of subsection (2), paragraph (b)  
 91 of subsection (3), paragraph (b) of subsection (4), paragraphs  
 92 (a), (b), (c), and (d) of subsection (5), paragraphs (b), (c),  
 93 (e), and (i) of subsection (6), paragraph (e) of subsection (8),  
 94 paragraphs (d) and (o) of subsection (9), and paragraph (a) of  
 95 subsection (12) of section 1002.395, Florida Statutes, are  
 96 amended, and paragraph (h) is added to subsection (2),  
 97 paragraphs (h) and (p) are added to subsection (6), paragraph  
 98 (g) is added to subsection (7), paragraph (q) is added to  
 99 subsection (9), and subsection (16) of that section are created  
 100 to read:

101 1002.395 Florida Tax Credit Scholarship Program.—

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

103 (f) "Eligible nonprofit scholarship-funding organization"  
 104 means a charitable organization that:



- 105 1. Is exempt from federal income tax pursuant to s.  
 106 501(c)(3) of the Internal Revenue Code;  
 107 2. Is a Florida entity formed under chapter 607, chapter  
 108 608, or chapter 617 and whose principal office is located in the  
 109 state; and  
 110 3. Complies with the provisions of subsections (6) and  
 111 (16).

112 (h) "Household income" has the same meaning as provided in  
 113 the Eligibility Guidelines for free and reduced price meals for  
 114 the National School Lunch Program in 7 C.F.R. Part 210.

115 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

116 (b) Contingent upon available funds, a student is eligible  
 117 for a Florida tax credit scholarship under this section if the  
 118 student meets one or more of the following criteria:

119 1. For the 2014-2015 and 2015-2016 school years, the  
 120 student qualifies for free or reduced-price school lunches under  
 121 the National School Lunch Act or is on the direct certification  
 122 list ~~and:~~

123 ~~a. Was counted as a full time equivalent student during~~  
 124 ~~the previous state fiscal year for purposes of state per student~~  
 125 ~~funding;~~

126 ~~b. Received a scholarship from an eligible nonprofit~~  
 127 ~~scholarship funding organization or from the State of Florida~~  
 128 ~~during the previous school year; or~~

129 ~~c. Is eligible to enter kindergarten through fifth grade.~~

130 2. The student is currently placed, or during the previous

131 state fiscal year was placed, in foster care or in out-of-home  
 132 care as defined in s. 39.01. A student eligible for a  
 133 scholarship under this subparagraph remains eligible until the  
 134 student graduates from high school or turns 21 years of age,  
 135 whichever occurs later.

136 3. For the 2014-2015 and 2015-2016 school years, the  
 137 student continues in the scholarship program as long as the  
 138 student's household income level does not exceed 230 percent of  
 139 the federal poverty level.

140 4. For the 2016-2017 school year and thereafter, the  
 141 student is on the direct certification list or the student's  
 142 household income does not exceed 185 percent of the federal  
 143 poverty level.

144 5. For the 2016-2017 school year and thereafter, the  
 145 student's household income is greater than 185 percent but does  
 146 not exceed 260 percent of the federal poverty level and:

147 a. the student spent the prior school year in attendance at  
 148 a public school in the state and was enrolled and reported by  
 149 the school district for funding during October and February for  
 150 purposes of the Florida Education Finance Program membership  
 151 surveys; or

152 b. the student is eligible to enter kindergarten or first  
 153 grade. ~~The student, who is a first time tax credit scholarship~~  
 154 ~~recipient, is a sibling of a student who is continuing in the~~  
 155 ~~scholarship program and who resides in the same household as the~~  
 156 ~~student if the sibling meets one or more of the criteria~~

157 ~~specified in subparagraphs 1. and 2. and as long as the~~  
 158 ~~student's and sibling's household income level does not exceed~~  
 159 ~~230 percent of the federal poverty level.~~

160 (4) SCHOLARSHIP PROHIBITIONS.—A student is not eligible  
 161 for a scholarship while he or she is:

162 (b) Receiving a scholarship from another eligible  
 163 nonprofit scholarship-funding organization under this section or  
 164 under s. 1002.396;

165 (5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

166 (a)1. The tax credit cap is as provided in s. 1002.397. is  
 167 \$229 million in the 2012-2013 state fiscal year.:

168 ~~2. In the 2013-2014 state fiscal year, and for each state~~  
 169 ~~fiscal year thereafter, the tax credit cap amount is the tax~~  
 170 ~~credit cap amount in the prior state fiscal year. However, in~~  
 171 ~~any state fiscal year when the annual tax credit amount for the~~  
 172 ~~prior state fiscal year is equal to or greater than 90 percent~~  
 173 ~~of the tax credit cap amount applicable to that state fiscal~~  
 174 ~~year, the tax credit cap amount shall increase by 25 percent.~~  
 175 ~~The department shall publish on its website information~~  
 176 ~~identifying the tax credit cap amount when it is increased~~  
 177 ~~pursuant to this subparagraph.~~

178 (b) A taxpayer may submit an application to the department  
 179 for a tax credit or credits under one or more of s. 211.0251, s.  
 180 212.1831(1), s. 220.1875, s. 561.1211, or s. 624.51055.

181 1. The taxpayer shall specify in the application each tax  
 182 for which the taxpayer requests a credit and the applicable

183 taxable year for a credit under s. 220.1875 or s. 624.51055 or  
 184 the applicable state fiscal year for a credit under s. 211.0251,  
 185 s. 212.1831(1), or s. 561.1211. The department shall approve tax  
 186 credits on a first-come, first-served basis and must obtain the  
 187 division's approval prior to approving a tax credit under s.  
 188 561.1211.

189 2. Within 10 days after approving an application, the  
 190 department must provide a copy of its approval letter to the  
 191 eligible nonprofit scholarship funding organization specified by  
 192 the taxpayer in the application.

193 (c) If a tax credit approved under paragraph (b) is not  
 194 fully used within the specified state fiscal year for credits  
 195 under s. 211.0251, s. 212.1831(1), or s. 561.1211 or against  
 196 taxes due for the specified taxable year for credits under s.  
 197 220.1875 or s. 624.51055 because of insufficient tax liability  
 198 on the part of the taxpayer, the unused amount may be carried  
 199 forward for a period not to exceed 5 years. However, any  
 200 taxpayer that seeks to carry forward an unused amount of tax  
 201 credit must submit an application to the department for approval  
 202 of the carryforward tax credit in the year that the taxpayer  
 203 intends to use the carryforward. The department must obtain the  
 204 division's approval prior to approving the carryforward of a tax  
 205 credit under s. 561.1211.

206 (d) A taxpayer may not convey, assign, or transfer an  
 207 approved tax credit or a carryforward tax credit to another  
 208 entity unless all of the assets of the taxpayer are conveyed,

209 assigned, or transferred in the same transaction. However, a tax  
 210 credit may be conveyed, transferred, or assigned between the  
 211 members of an affiliated group of corporations if the type of  
 212 tax credit under s. 211.0251, s. 212.1831(1), s. 220.1875, s.  
 213 561.1211, or s. 624.51055 remains the same. A taxpayer must  
 214 notify the department of the intent to convey, transfer, or  
 215 assign a tax credit to another member within an affiliated group  
 216 of corporations. The amount conveyed, transferred, or assigned  
 217 is available to another member of the affiliated group of  
 218 corporations upon approval by the department. The department  
 219 must obtain the division's approval before approving the  
 220 conveyed, transferred, or assigned tax credit under s. 561.1211.

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

224 (a) Must comply with the antidiscrimination provisions of  
 225 42 U.S.C. s. 2000d.

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

228 1. All owners and operators as defined in subparagraph  
 229 (2) ~~(i)-(h)~~1. are, prior to ~~upon~~ employment or engagement to  
 230 provide services, subject to level 2 background screening as  
 231 provided under chapter 435. The fingerprints for the background  
 232 screening must be electronically submitted to the Department of  
 233 Law Enforcement and can be taken by an authorized law  
 234 enforcement agency or by an employee of the eligible nonprofit

235 scholarship-funding organization or a private company who is  
 236 trained to take fingerprints. However, the complete set of  
 237 fingerprints of an owner or operator may not be taken by the  
 238 owner or operator. The results of the state and national  
 239 criminal history check shall be provided to the Department of  
 240 Education for screening under chapter 435. The cost of the  
 241 background screening may be borne by the eligible nonprofit  
 242 scholarship-funding organization or the owner or operator.

243 2. Every 5 years following employment or engagement to  
 244 provide services or association with an eligible nonprofit  
 245 scholarship-funding organization, each owner or operator must  
 246 meet level 2 screening standards as described in s. 435.04, at  
 247 which time the nonprofit scholarship-funding organization shall  
 248 request the Department of Law Enforcement to forward the  
 249 fingerprints to the Federal Bureau of Investigation for level 2  
 250 screening. If the fingerprints of an owner or operator are not  
 251 retained by the Department of Law Enforcement under subparagraph  
 252 3., the owner or operator must electronically file a complete  
 253 set of fingerprints with the Department of Law Enforcement. Upon  
 254 submission of fingerprints for this purpose, the eligible  
 255 nonprofit scholarship-funding organization shall request that  
 256 the Department of Law Enforcement forward the fingerprints to  
 257 the Federal Bureau of Investigation for level 2 screening, and  
 258 the fingerprints shall be retained by the Department of Law  
 259 Enforcement under subparagraph 3.

260 3. All fingerprints submitted to the Department of Law

261 Enforcement as required by this paragraph must be retained by  
 262 the Department of Law Enforcement in a manner approved by rule  
 263 and entered in the statewide automated biometric identification  
 264 system authorized by s. 943.05(2)(b). The fingerprints must  
 265 thereafter be available for all purposes and uses authorized for  
 266 arrest fingerprints entered in the statewide automated biometric  
 267 identification system pursuant to s. 943.051.

268 4. The Department of Law Enforcement shall search all  
 269 arrest fingerprints received under s. 943.051 against the  
 270 fingerprints retained in the statewide automated biometric  
 271 identification system under subparagraph 3. Any arrest record  
 272 that is identified with an owner's or operator's fingerprints  
 273 must be reported to the Department of Education. The Department  
 274 of Education shall participate in this search process by paying  
 275 an annual fee to the Department of Law Enforcement and by  
 276 informing the Department of Law Enforcement of any change in the  
 277 employment, engagement, or association status of the owners or  
 278 operators whose fingerprints are retained under subparagraph 3.  
 279 The Department of Law Enforcement shall adopt a rule setting the  
 280 amount of the annual fee to be imposed upon the Department of  
 281 Education for performing these services and establishing the  
 282 procedures for the retention of owner and operator fingerprints  
 283 and the dissemination of search results. The fee may be borne by  
 284 the owner or operator of the nonprofit scholarship-funding  
 285 organization.

286 5. A nonprofit scholarship-funding organization whose

287 owner or operator fails the level 2 background screening is  
 288 ~~shall not be ineligible~~ to provide scholarships under this  
 289 section.

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

295 7. In addition to the offenses listed in s. 435.04, all  
 296 persons required to undergo background screening pursuant to  
 297 this part or authorizing statutes must not have an arrest  
 298 awaiting final disposition for, must not have been found guilty  
 299 of, regardless of adjudication, or entered a plea of nolo  
 300 contendere or guilty to, and must not have been adjudicated  
 301 delinquent and the record not have been sealed or expunged for  
 302 any of the following offenses or any similar offense of another  
 303 jurisdiction:

- 304 a. Any authorizing statutes, if the offense was a felony.
- 305 b. This chapter, if the offense was a felony.
- 306 c. Section 409.920, relating to Medicaid provider fraud.
- 307 d. Section 409.9201, relating to Medicaid fraud.
- 308 e. Section 741.28, relating to domestic violence.
- 309 f. Section 817.034, relating to fraudulent acts through  
 310 mail, wire, radio, electromagnetic, photoelectronic, or  
 311 photooptical systems.
- 312 g. Section 817.234, relating to false and fraudulent



- 313 insurance claims.
- 314 h. Section 817.505, relating to patient brokering.
- 315 i. Section 817.568, relating to criminal use of personal
- 316 identification information.
- 317 j. Section 817.60, relating to obtaining a credit card
- 318 through fraudulent means.
- 319 k. Section 817.61, relating to fraudulent use of credit
- 320 cards, if the offense was a felony.
- 321 l. Section 831.01, relating to forgery.
- 322 m. Section 831.02, relating to uttering forged instruments.
- 323 n. Section 831.07, relating to forging bank bills, checks,
- 324 drafts, or promissory notes.
- 325 o. Section 831.09, relating to uttering forged bank bills,
- 326 checks, drafts, or promissory notes.
- 327 p. Section 831.30, relating to fraud in obtaining medicinal
- 328 drugs.
- 329 q. Section 831.31, relating to the sale, manufacture,
- 330 delivery, or possession with the intent to sell, manufacture, or
- 331 deliver any counterfeit controlled substance, if the offense was
- 332 a felony.
- 333 (c) Must not have an owner or operator who owns or
- 334 operates an eligible private school that is participating in the
- 335 scholarship program or the scholarship program established in s.
- 336 1002.396.
- 337 (e) Must give first priority to eligible students who
- 338 received a scholarship from an eligible nonprofit scholarship-

339 funding organization or from the State of Florida during the  
 340 previous school year. Beginning in 2016-2017, an eligible  
 341 nonprofit scholarship-funding organization must give priority to  
 342 new applicants whose household incomes do not exceed 185 percent  
 343 of the federal poverty level or who are in foster care or out-  
 344 of-home care.

345 (h) Must allow a student in foster care or out-of-home care  
 346 to apply for a scholarship at any time.

347 (j) ~~(i)~~1. May use up to 3 percent of eligible  
 348 contributions received during the state fiscal year in which  
 349 such contributions are collected for administrative expenses if  
 350 the organization has operated under this section for at least 3  
 351 state fiscal years and did not have any negative financial  
 352 findings in its most recent audit under paragraph (1). Such  
 353 administrative expenses must be reasonable and necessary for the  
 354 organization's management and distribution of eligible  
 355 contributions under this section. Administrative expenses may  
 356 also include professional development to support participating  
 357 schools. No more than one-third of the funds authorized for  
 358 administrative expenses under this subparagraph may be used for  
 359 expenses related to the recruitment of contributions from  
 360 taxpayers.

361 2. Must expend for annual or partial-year scholarships an  
 362 amount equal to or greater than 75 percent of the net eligible  
 363 contributions remaining after administrative expenses during the  
 364 state fiscal year in which such contributions are collected. No

365 more than 25 percent of such net eligible contributions may be  
 366 carried forward to the following state fiscal year. Any amounts  
 367 carried forward shall be expended for annual or partial-year  
 368 scholarships in the following state fiscal year. Net eligible  
 369 contributions remaining on June 30 of each year that are in  
 370 excess of the 25 percent that may be carried forward shall be  
 371 returned to the State Treasury for deposit in the General  
 372 Revenue Fund.

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

377 (p) Each scholarship funding organization must maintain  
 378 the surety bond or letter of credit required by subparagraph  
 379 (16) (a)3. and adjust the bond or letter of credit annually to  
 380 equal the amount of undisbursed donations as required by the  
 381 Department of Education pursuant to paragraph (9) (q).

382  
 383 Any and all information and documentation provided to the  
 384 Department of Education and the Auditor General relating to the  
 385 identity of a taxpayer that provides an eligible contribution  
 386 under this section shall remain confidential at all times in  
 387 accordance with s. 213.053.

388 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM  
 389 PARTICIPATION.—

390 (g) The parent must authorize the scholarship funding

391 organization to access information needed for income eligibility  
 392 determination and verification held by other federal or state  
 393 agencies, including the Department of Revenue, Department of  
 394 Children and Family Services, Department of Education,  
 395 Department of Economic Opportunity and the Agency for Health  
 396 Care Administration.

397 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An  
 398 eligible private school may be sectarian or nonsectarian and  
 399 must:

400 (e) Annually contract with an independent certified public  
 401 accountant to perform the agreed-upon procedures developed under  
 402 paragraph (6) (o) ~~(n)~~ and produce a report of the results if the  
 403 private school receives more than \$250,000 in funds from  
 404 scholarships awarded under this section in the 2010-2011 state  
 405 fiscal year or a state fiscal year thereafter. A private school  
 406 subject to this paragraph must submit the report by September  
 407 15, 2011, and annually thereafter to the scholarship-funding  
 408 organization that awarded the majority of the school's  
 409 scholarship funds. The agreed-upon procedures must be conducted  
 410 in accordance with attestation standards established by the  
 411 American Institute of Certified Public Accountants.

412  
 413 The inability of a private school to meet the requirements of  
 414 this subsection shall constitute a basis for the ineligibility  
 415 of the private school to participate in the scholarship program  
 416 as determined by the Department of Education.

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

419 (d) Annually verify the eligibility of expenditures as  
420 provided in paragraph (6) (d) using the audit required by  
421 paragraph (6) ~~(l)~~ (m).

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

427 (q) On an annual basis, require each scholarship funding  
428 organization to adjust surety bond or letter of credit amounts  
429 to equal the amount of undisbursed donations held by that  
430 organization based on the annual audit provided pursuant to  
431 paragraph (6) (m).

432 (12) SCHOLARSHIP AMOUNT AND PAYMENT.—

433 (a) ~~1-~~ Except as provided in subparagraph 2., the amount of  
434 a scholarship provided to any student for any single school year  
435 by an eligible nonprofit scholarship-funding organization from  
436 eligible contributions shall be for total costs authorized under  
437 paragraph (6) (d), not to exceed annual limits, which shall be  
438 determined as follows:

439 1. a. For a scholarship awarded to a student enrolled in  
440 an eligible private school-

441 ~~(I) For the 2009-2010 state fiscal year, the limit shall~~  
442 ~~be \$3,950.~~

443 ~~(II) For the 2010-2011 state fiscal year, the limit shall~~  
 444 ~~be 60 percent of the unweighted FTE funding amount for that~~  
 445 ~~year.~~

446 ~~(III) For the 2011-2012 state fiscal year and thereafter,~~  
 447 the limit shall be determined by multiplying the unweighted FTE  
 448 funding amount in that state fiscal year by the percentage used  
 449 to determine the limit in the prior state fiscal year. However,  
 450 in each state fiscal year that the tax credit cap amount  
 451 increases pursuant to s. 1002.397 ~~subparagraph (5)(a)2.~~, the  
 452 prior year percentage shall be increased by 4 percentage points  
 453 and the increased percentage shall be used to determine the  
 454 limit for that state fiscal year. If the percentage so  
 455 calculated reaches 84 ~~80~~ percent in a state fiscal year, no  
 456 further increase in the percentage is allowed and the limit  
 457 shall be 84 ~~80~~ percent of the unweighted FTE funding amount for  
 458 that state fiscal year and thereafter.

459 b. For a scholarship awarded to a student enrolled in a  
 460 Florida public school that is located outside the district in  
 461 which the student resides or in a lab school as defined in s.  
 462 1002.32, the limit shall be \$500.

463 2. For the 2014-2015 and 2015-2016 state fiscal years, the  
 464 annual limit for a scholarship under sub-subparagraph 1.a. shall  
 465 be reduced by:

466 a. Twenty-five percent if the student's household income  
 467 level is equal to or greater than 200 percent, but less than 215  
 468 percent, of the federal poverty level.

469           b. Fifty percent if the student's household income level  
 470 is equal to or greater than 215 percent, but equal to or less  
 471 than 230 percent, of the federal poverty level.

472           3. For the 2016-2017 state fiscal year and thereafter, the  
 473 annual limit for a scholarship under sub-subparagraph 1.a. shall  
 474 be reduced by:

475           a. Twelve percent if the student's household income level  
 476 is greater than or equal to 200 percent, but less than 215  
 477 percent, of the federal poverty level.

478           b. Twenty-six percent if the student's household income  
 479 level is greater than or equal to 215 percent, but less than 230  
 480 percent, of the federal poverty level.

481           c. Forty percent if the student's household income level is  
 482 greater than or equal to 230 percent, but less than 245 percent,  
 483 of the federal poverty level.

484           d. Fifty percent if the student's household income level is  
 485 greater than or equal to 245 percent, but less than or equal to  
 486 260 percent, of the federal poverty level.

487           (16) NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS.- In  
 488 order to participate in the scholarship programs created by this  
 489 section or s. 1002.396, a nonprofit scholarship-funding  
 490 organization must submit an application for initial approval or  
 491 renewal to the Office of Independent Education and Parental  
 492 Choice no later than September 1 each year, prior to the year  
 493 the scholarship funding organization intends to offer the  
 494 scholarships.

495 (a) An application for initial approval must, at a minimum,  
 496 include:

497 1. A copy of the organization's incorporation documents and  
 498 registration with the Florida Division of Corporations, Office  
 499 of the Secretary of State.

500 2. A copy of the organization's IRS Determination Letter as  
 501 a 501(c)3.

502 2. A description of the financial plan that demonstrates  
 503 sufficient funds to operate through the school year.

504 3. A copy of a surety bond or letter of credit in an amount  
 505 equal to 25 percent of the scholarship funds anticipated for  
 506 each school year.

507 4. A description of the geographic region the scholarship  
 508 funding organization intends to serve and an analysis of the  
 509 demand and unmet need for eligible students in that area.

510 5. The scholarship funding organization's organizational  
 511 chart.

512 6. A description of the criteria and methodology that will  
 513 be used to evaluate scholarship eligibility.

514 8. A description of the application process, including  
 515 deadlines and any associated fees.

516 9. A description of the deadlines for attendance  
 517 verification and scholarship payments.

518 10. A copy of the scholarship funding organization's  
 519 policies on conflict of interest and whistleblowers.

520 (b) In addition to the information required by paragraph



521 (a), an application for renewal must, at a minimum, include:

522 1. The organization's completed IRS Form 990 shall be  
 523 submitted no later than November 30 of the year prior to the  
 524 year the scholarship-funding organization intends to offer the  
 525 scholarships, notwithstanding the September 1 application  
 526 deadline.

527 2. A copy of the statutorily required audit to the  
 528 Department of Education and Auditor General.

529 3. An annual report that includes:

530 a. the number of students who completed applications, by  
 531 county and by grade;

532 b. the number of students who were approved for  
 533 scholarships, by county and by grade;

534 c. the number of students who received funding for  
 535 scholarships within each funding category as defined in sub-sub-  
 536 subparagraph (12)(a)1.a.III, by county and by grade;

537 d. the amount of funds received, the amount of funds  
 538 distributed in scholarships, and an accounting of remaining  
 539 funds and the obligation of those funds; and

540 e. a detailed accounting of how the scholarship funding  
 541 organization spent the administrative funds allowable under  
 542 paragraph (6)(j).

543 (c) In consultation with the Department of Revenue and the  
 544 Chief Financial Officer, the Office of Independent Education and  
 545 Parental Choice shall review the application. The Department of  
 546 Education shall notify the scholarship funding organization, in

547 writing, of any deficiencies within 30 days after receipt of the  
 548 application, and allow the scholarship funding organization 30  
 549 days to correct any deficiencies.

550 (d) Within 30 days after receipt of the finalized  
 551 application by the Office of Independent Education and Parental  
 552 Choice, the Commissioner of Education shall recommend approval  
 553 or disapproval of the application to the state board. The state  
 554 board shall consider the recommendation and the application at  
 555 the next scheduled meeting, adhering to appropriate meeting  
 556 notice requirements. If the state board disapproves the  
 557 scholarship funding organization's application, it shall provide  
 558 the organization with a written explanation for that  
 559 determination. The state board's action is not subject to the  
 560 provisions of the Administrative Procedure Act.

561 (e) If the State Board of Education disapproves the renewal  
 562 of a scholarship funding organization, the scholarship funding  
 563 organization must notify the affected eligible students and  
 564 parents of the decision within 15 calendar days of the  
 565 disapproval. An eligible student affected by a disapproval of a  
 566 scholarship funding organization's participation remains  
 567 eligible under this section until the end of the school year in  
 568 which the scholarship funding organization was disapproved. The  
 569 student must apply and be accepted by another eligible  
 570 scholarship funding organization for the upcoming school year.  
 571 Such student shall be given priority in accordance with  
 572 paragraph (7) (f).

573 (f) All funds remaining held by a scholarship funding  
 574 organization that is disapproved for participation shall revert  
 575 to the Department of Revenue for redistribution to other  
 576 eligible scholarship funding organizations.

577 (g) A scholarship funding organization is considered a  
 578 renewing organization if it maintains continuous approval and  
 579 participation in the program. An organization that chooses not  
 580 to participate for one year or is disapproved to participate for  
 581 one year must submit an application for initial approval in  
 582 order to participate in the program again.

583 (h) The state board shall adopt rules providing guidelines  
 584 for receiving, reviewing, and approving applications for new and  
 585 renewing scholarship funding organizations. The rules shall  
 586 include a process for compiling input and recommendations from  
 587 the Chief Financial Officer, the Department of Revenue and the  
 588 Department of Education. The rules shall also require that the  
 589 scholarship funding organization make a brief presentation to  
 590 assist the state board in its decision.

591 Section 4. Section 1002.396, Florida Statutes, is created  
 592 to read:

593 1002.396 Florida Sales Tax Credit Scholarship Program.—

594 (1) FINDINGS AND PURPOSE.—

595 (a) The Legislature finds that:

596 1. It has the inherent power to determine subjects of  
 597 taxation for general or particular public purposes.

598 2. Expanding educational opportunities and improving the

599 quality of educational services within the state are valid  
 600 public purposes that the Legislature may promote using its  
 601 sovereign power to determine subjects of taxation and exemptions  
 602 from taxation.

603 3. Ensuring that all parents regardless of means may  
 604 exercise and enjoy their basic right to educate their children  
 605 as they see fit is a valid public purpose that the Legislature  
 606 may promote using its sovereign power to determine subjects of  
 607 taxation and exemptions from taxation.

608 4. Expanding educational opportunities and the healthy  
 609 competition they promote are critical to improving the quality  
 610 of education in the state and to ensuring that all children  
 611 receive the high-quality education to which they are entitled.

612 (b) The purpose of this section is to:

613 1. Enable taxpayers to make private, voluntary  
 614 contributions to nonprofit scholarship-funding organizations in  
 615 order to promote the general welfare.

616 2. Provide taxpayers who wish to help parents with limited  
 617 resources exercise their basic right to educate their children  
 618 as they see fit with a means to do so.

619 3. Promote the general welfare by expanding educational  
 620 opportunities for children of families that have limited  
 621 financial resources.

622 4. Enable children in this state to achieve a greater level  
 623 of excellence in their education.

624 5. Improve the quality of education in this state, both by

625 expanding educational opportunities for children and by creating  
 626 incentives for schools to achieve excellence.

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

628 (a) "Annual tax credit amount" means, for any state fiscal  
 629 year, the sum of the amount of tax credits approved under  
 630 paragraph (5) (b) .

631 (b) "Department" means the Department of Revenue.

632 (c) "Direct certification list" means the certified list  
 633 of children who qualify for the food assistance program, the  
 634 Temporary Assistance to Needy Families Program, or the Food  
 635 Distribution Program on Indian Reservations provided to the  
 636 Department of Education by the Department of Children and Family  
 637 Services.

638 (d) "Eligible contribution" means a monetary contribution  
 639 from a taxpayer, subject to the restrictions provided in this  
 640 section, to an eligible nonprofit scholarship-funding  
 641 organization. The taxpayer making the contribution may not  
 642 designate a specific child as the beneficiary of the  
 643 contribution.

644 (e) "Eligible nonprofit scholarship-funding organization"  
 645 means a charitable organization that:

646 1. Is exempt from federal income tax pursuant to s.  
 647 501(c)(3) of the Internal Revenue Code;

648 2. Is a Florida entity formed under chapter 607, chapter  
 649 608, or chapter 617 and whose principal office is located in the  
 650 state; and

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651 3. Complies with the provisions of subsections (6) and  
652 (16).

653 (f) "Eligible private school" means a private school, as  
654 defined in s. 1002.01(2), located in Florida which offers an  
655 education to students in any grades K-12 and that meets the  
656 requirements in subsection (8).

657 (g) "Owner or operator" includes:

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

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

665 (h) "Tax credit cap amount" means the maximum annual tax  
666 credit amount that the department may approve in a state fiscal  
667 year.

668 (i) "Unweighted FTE funding amount" means the statewide  
669 average total funds per unweighted full-time equivalent funding  
670 amount that is incorporated by reference in the General  
671 Appropriations Act, or any subsequent special appropriations  
672 act, for the applicable state fiscal year.

673 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

674 (a) The Florida Sales Tax Credit Scholarship Program is  
675 established.

676 (b) Contingent upon available funds, a student is eligible

677 for a tax credit scholarship under this section if the student  
 678 meets one or more of the criteria listed in s. 1002.395(3)(b).

679 (4) SCHOLARSHIP PROHIBITIONS.—A student is not eligible  
 680 for a scholarship under this section if he or she satisfies any  
 681 of the criteria listed in s. 1002.395(4).

682 (5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

683 (a) The tax credit cap is as provided in s. 1002.397.

684 (b) A taxpayer may submit an application to the department  
 685 for a tax credit or credits under s. 212.0831(2). The taxpayer  
 686 shall specify in the application the applicable state fiscal  
 687 year for such credits. The department shall approve such tax  
 688 credits on a first-come, first-served basis. Within 10 days  
 689 after approving an application, the department must provide a  
 690 copy of its approval letter to the eligible nonprofit  
 691 scholarship-funding organization specified by the taxpayer in  
 692 the application.

693 (c) If a tax credit approved under paragraph (b) is not  
 694 fully used within the specified state fiscal year, the unused  
 695 amount may be carried forward for a period not to exceed 5  
 696 years. However, any taxpayer that seeks to carry forward an  
 697 unused amount of tax credit must submit an application to the  
 698 department for approval of the carryforward tax credit in the  
 699 year that the taxpayer intends to use the carryforward.

700 (d) A taxpayer may not convey, assign, or transfer an  
 701 approved tax credit or a carryforward tax credit to another  
 702 entity unless all of the assets of the taxpayer are conveyed,

703 assigned, or transferred in the same transaction. However, a tax  
 704 credit granted under this section may be conveyed, transferred,  
 705 or assigned between the members of an affiliated group of  
 706 corporations. A taxpayer must notify the department of the  
 707 intent to convey, transfer, or assign a tax credit to another  
 708 member within an affiliated group of corporations. The amount  
 709 conveyed, transferred, or assigned is available to another  
 710 member of the affiliated group of corporations upon approval by  
 711 the department.

712 (e) Within any state fiscal year, a taxpayer may rescind  
 713 all or part of a tax credit approved under paragraph (b). The  
 714 amount rescinded shall become available for that state fiscal  
 715 year to another eligible taxpayer as approved by the department  
 716 if the taxpayer receives notice from the department that the  
 717 rescindment has been accepted by the department. Any amount  
 718 rescinded under this paragraph shall become available to an  
 719 eligible taxpayer on a first-come, first-served basis based on  
 720 tax credit applications received after the date the rescindment  
 721 is accepted by the department.

722 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING  
 723 ORGANIZATIONS.—The provisions of s. 1002.395(6) apply to each  
 724 eligible nonprofit scholarship-funding organization  
 725 participating in the scholarship program established by this  
 726 section.

727 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM  
 728 PARTICIPATION.— Each parent and each student has the same



729 obligations and responsibilities as imposed by s. 1002.395(7).

730 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An  
 731 eligible private school may be sectarian or nonsectarian and  
 732 must comply with all of the requirements imposed by s.  
 733 1002.395(8).

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

736 (a) Annually submit to the department and division, by  
 737 March 15, a list of eligible nonprofit scholarship-funding  
 738 organizations that meet the requirements of paragraph (2)(e).

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

742 (c) Annually verify the eligibility of private schools  
 743 that meet the requirements of s. 1002.395(8).

744 (d) Annually verify the eligibility of expenditures as  
 745 provided in s. 1002.395 (6)(d) using an audit as required by s.  
 746 1002.395(6)(m).

747 (e) Establish a toll-free hotline that provides parents  
 748 and private schools with information on participation in the  
 749 scholarship program.

750 (f) Establish a process by which individuals may notify  
 751 the Department of Education of any violation by a parent,  
 752 private school, or school district of state laws relating to  
 753 program participation. The Department of Education shall conduct  
 754 an inquiry of any written complaint of a violation of this

755 section, or make a referral to the appropriate agency for an  
 756 investigation, if the complaint is signed by the complainant and  
 757 is legally sufficient. A complaint is legally sufficient if it  
 758 contains ultimate facts that show that a violation of this  
 759 section or any rule adopted by the State Board of Education has  
 760 occurred. In order to determine legal sufficiency, the  
 761 Department of Education may require supporting information or  
 762 documentation from the complainant. A department inquiry is not  
 763 subject to the requirements of chapter 120.

764 (g) Require an annual, notarized, sworn compliance  
 765 statement by participating private schools certifying compliance  
 766 with state laws and shall retain such records.

767 (h) Cross-check the list of participating scholarship  
 768 students with the public school enrollment lists to avoid  
 769 duplication.

770 (i) Maintain a list of nationally norm-referenced tests  
 771 identified for purposes of satisfying the testing requirement in  
 772 s. 1002.395(8)(c)2. The tests must meet industry standards of  
 773 quality in accordance with State Board of Education rule.

774 (j) Select an independent research organization, which may  
 775 be a public or private entity or university, to which  
 776 participating private schools must report the scores of  
 777 participating students on the nationally norm-referenced tests  
 778 or the statewide assessments administered by the private school  
 779 in grades 3 through 10.

780 1. The independent research organization must annually

781 report to the Department of Education on the year-to-year  
 782 learning gains of participating students:

783 a. On a statewide basis. The report shall also include, to  
 784 the extent possible, a comparison of these learning gains to the  
 785 statewide learning gains of public school students with  
 786 socioeconomic backgrounds similar to those of students  
 787 participating in the scholarship program. To minimize costs and  
 788 reduce time required for the independent research organization's  
 789 analysis and evaluation, the Department of Education shall  
 790 conduct analyses of matched students from public school  
 791 assessment data and calculate control group learning gains using  
 792 an agreed-upon methodology outlined in the contract with the  
 793 independent research organization; and

794 b. According to each participating private school in which  
 795 there are at least 30 participating students who have scores for  
 796 tests administered during or after the 2009-2010 school year for  
 797 2 consecutive years at that private school.

798 2. The sharing and reporting of student learning gain data  
 799 under this paragraph must be in accordance with requirements of  
 800 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy  
 801 Act, and shall be for the sole purpose of creating the annual  
 802 report required by subparagraph 1. All parties must preserve the  
 803 confidentiality of such information as required by law. The  
 804 annual report must not disaggregate data to a level that will  
 805 identify individual participating schools, except as required  
 806 under sub-subparagraph 1.b., or disclose the academic level of

807 individual students.

808 3. The annual report required by subparagraph 1. shall be  
 809 published by the Department of Education on its website.

810 (k) Notify an eligible nonprofit scholarship-funding  
 811 organization of any of the organization's identified students  
 812 who are receiving educational scholarships pursuant to chapter  
 813 1002.

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

818 (m) Require quarterly reports by an eligible nonprofit  
 819 scholarship-funding organization regarding the number of  
 820 students participating in the scholarship program, the private  
 821 schools at which the students are enrolled, and other  
 822 information deemed necessary by the Department of Education.

823 (n)1. Conduct site visits to private schools participating  
 824 in the Florida Sales Tax Credit Scholarship Program. The purpose  
 825 of the site visits is solely to verify the information reported  
 826 by the schools concerning the enrollment and attendance of  
 827 students, the credentials of teachers, background screening of  
 828 teachers, and teachers' fingerprinting results. The Department  
 829 of Education may not make more than seven site visits each year;  
 830 however, the department may make additional site visits at any  
 831 time to any school that has received a notice of noncompliance  
 832 or a notice of proposed action within the previous 2 years.

833 2. Annually, by December 15, report to the Governor, the  
834 President of the Senate, and the Speaker of the House of  
835 Representatives the Department of Education's actions with  
836 respect to implementing accountability in the scholarship  
837 program under this section and s. 1002.421, any substantiated  
838 allegations or violations of law or rule by an eligible private  
839 school under this program concerning the enrollment and  
840 attendance of students, the credentials of teachers, background  
841 screening of teachers, and teachers' fingerprinting results and  
842 the corrective action taken by the Department of Education.

843 (o) Provide a process to match the direct certification  
844 list with the scholarship application data submitted by any  
845 nonprofit scholarship-funding organization eligible to receive  
846 the 3-percent administrative allowance under s. 1002.395(6)(j).

847 (p) Upon the request of a participating private school,  
848 provide at no cost to the school the statewide assessments  
849 administered under s. 1008.22 and any related materials for  
850 administering the assessments. Students at a private school may  
851 be assessed using the statewide assessments if the addition of  
852 those students and the school does not cause the state to exceed  
853 its contractual caps for the number of students tested and the  
854 number of testing sites. The state shall provide the same  
855 materials and support to a private school that it provides to a  
856 public school. A private school that chooses to administer  
857 statewide assessments under s. 1008.22 shall follow the  
858 requirements set forth in ss. 1008.22 and 1008.24, rules adopted

859 by the State Board of Education to implement those sections, and  
 860 district-level testing policies established by the district  
 861 school board.

862 (g) On an annual basis, require each scholarship funding  
 863 organization to adjust surety bond or letter of credit amounts  
 864 to equal the amount of undisbursed donations held by that  
 865 organization based on the annual audit provided pursuant to s.  
 866 1002.395(6)(m).

867 (10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

868 (a) Upon the request of any eligible nonprofit  
 869 scholarship-funding organization, a school district shall inform  
 870 all households within the district receiving free or reduced-  
 871 priced meals under the National School Lunch Act of their  
 872 eligibility to apply for a tax credit scholarship. The form of  
 873 such notice shall be provided by the eligible nonprofit  
 874 scholarship-funding organization, and the district shall include  
 875 the provided form, if requested by the organization, in any  
 876 normal correspondence with eligible households. If an eligible  
 877 nonprofit scholarship-funding organization requests a special  
 878 communication to be issued to households within the district  
 879 receiving free or reduced-price meals under the National School  
 880 Lunch Act, the organization shall reimburse the district for the  
 881 cost of postage. Such notice is limited to once a year.

882 (b) Upon the request of the Department of Education, a  
 883 school district shall coordinate with the department to provide  
 884 to a participating private school the statewide assessments

885 administered under s. 1008.22 and any related materials for  
 886 administering the assessments. A school district is responsible  
 887 for implementing test administrations at a participating private  
 888 school, including the:

889 1. Provision of training for private school staff on test  
 890 security and assessment administration procedures;

891 2. Distribution of testing materials to a private school;

892 3. Retrieval of testing materials from a private school;

893 4. Provision of the required format for a private school  
 894 to submit information to the district for test administration  
 895 and enrollment purposes; and

896 5. Provision of any required assistance, monitoring, or  
 897 investigation at a private school.

898 (11) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

899 The Commissioner of Education shall have all the powers and is  
 900 subject to the same limitations as provided by s. 1002.395(11)  
 901 to deny, suspend, or revoke participation in the scholarship  
 902 program established by this section.

903 (12) SCHOLARSHIP AMOUNT AND PAYMENT.—

904 (a) The amount of a scholarship provided to any student  
 905 for any single school year by an eligible nonprofit scholarship-  
 906 funding organization from eligible contributions shall be for  
 907 total costs authorized under s. 1002.395(6)(d), not to exceed  
 908 annual limits, which shall be determined pursuant to the  
 909 provisions of s. 1002.395(12)(a).

910 (b) Payment of the scholarship by the eligible nonprofit

911 scholarship-funding organization shall be by individual warrant  
 912 made payable to the student's parent. If the parent chooses that  
 913 his or her child attend an eligible private school, the warrant  
 914 must be delivered by the eligible nonprofit scholarship-funding  
 915 organization to the private school of the parent's choice, and  
 916 the parent shall restrictively endorse the warrant to the  
 917 private school. An eligible nonprofit scholarship-funding  
 918 organization shall ensure that the parent to whom the warrant is  
 919 made restrictively endorsed the warrant to the private school  
 920 for deposit into the account of the private school.

921 (c) An eligible nonprofit scholarship-funding organization  
 922 shall obtain verification from the private school of a student's  
 923 continued attendance at the school for each period covered by a  
 924 scholarship payment.

925 (d) Payment of the scholarship shall be made by the  
 926 eligible nonprofit scholarship-funding organization no less  
 927 frequently than on a quarterly basis.

928 (13) ADMINISTRATION; RULES.—

929 (a) The department and the Department of Education shall  
 930 develop a cooperative agreement to assist in the administration  
 931 of this section.

932 (b) The department shall adopt rules necessary to  
 933 administer this section, including rules establishing  
 934 application forms, procedures governing the approval of tax  
 935 credits and procedures to be followed by taxpayers when claiming  
 936 approved tax credits on their returns.



937 (c) The State Board of Education shall adopt rules to  
 938 administer the responsibilities of the Department of Education  
 939 and the Commissioner of Education under this section.

940 (14) DEPOSITS OF ELIGIBLE CONTRIBUTIONS.—All eligible  
 941 contributions received by an eligible nonprofit scholarship-  
 942 funding organization shall be deposited in a manner consistent  
 943 with s. 17.57(2).

944 (15) PRESERVATION OF CREDIT.—If any provision or portion  
 945 of this section or s. 212.1831 or the application thereof to any  
 946 person or circumstance is held unconstitutional by any court or  
 947 is otherwise declared invalid, the unconstitutionality or  
 948 invalidity shall not affect any credit earned under s. 212.1831  
 949 by any taxpayer with respect to any contribution paid to an  
 950 eligible nonprofit scholarship-funding organization before the  
 951 date of a determination of unconstitutionality or invalidity.  
 952 Such credit shall be allowed at such time and in such a manner  
 953 as if a determination of unconstitutionality or invalidity had  
 954 not been made, provided that nothing in this subsection by  
 955 itself or in combination with any other provision of law shall  
 956 result in the allowance of any credit to any taxpayer in excess  
 957 of one dollar of credit for each dollar paid to an eligible  
 958 nonprofit scholarship-funding organization.

959 (16) NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS.—In order  
 960 to participate in the scholarship program created by this  
 961 section, a nonprofit scholarship-funding organization must  
 962 comply with all of the obligations and provisions of s.

963 1002.395(16).

964 Section 5. Section 1002.397, Florida Statutes, is created  
 965 to read:

966 1002.397 Scholarship Funding Tax Credit Cap Limits.—The sum  
 967 of the tax credit caps under ss. 1002.395 and 1002.396 in a  
 968 state fiscal year shall not exceed the following limits. The  
 969 Department of Revenue may approve annual tax credit amounts  
 970 under either ss. 1002.395 or 1002.396 until the sum of such  
 971 approvals under both sections combined reaches the following  
 972 limits:

973 (1) The limit is \$390 million beginning in the 2014-2015  
 974 state fiscal year.

975 (2) In the state fiscal year immediately subsequent to the  
 976 first state fiscal year in which the sum of annual tax credit  
 977 amounts under ss. 1002.395 and 1002.396 is equal to or greater  
 978 than 90 percent of the limit set forth in subsection (1), the  
 979 limit shall be \$475 million.

980 (3) In the state fiscal year immediately subsequent to the  
 981 first state fiscal year in which the sum of annual tax credit  
 982 amounts under ss. 1002.395 and 1002.396 is equal to or greater  
 983 than 90 percent of the limit set forth in subsection (2), the  
 984 limit shall be \$590 million.

985 (4) In the state fiscal year immediately subsequent to the  
 986 first state fiscal year in which the sum of annual tax credit  
 987 amounts under ss. 1002.395 and 1002.396 is equal to or greater  
 988 than 90 percent of the limit set forth in subsection (3), the

989 limit shall be \$730 million.

990 (5) In the state fiscal year immediately subsequent to the  
 991 first state fiscal year in which the sum of annual tax credit  
 992 amounts under ss. 1002.395 and 1002.396 is equal to or greater  
 993 than 90 percent of the limit set forth in subsection (4), the  
 994 limit shall be \$873.6 million.

995 (6) For each state fiscal year following the fiscal year in  
 996 which the limit in subsection (5) has been reached, the limit is  
 997 the same as the limit in the prior state fiscal year. However,  
 998 for any state fiscal year in which the sum of annual tax credit  
 999 amounts under ss. 1002.395 and 1002.396 is equal to or greater  
 1000 than 90 percent of the limit applicable to that state fiscal  
 1001 year, the limit shall increase by 25 percent for the immediately  
 1002 subsequent state fiscal year. The Department of Revenue shall  
 1003 publish information on its website information identifying the  
 1004 limit amount when it is increased pursuant to this section.

1005 Section 6. Subsection (1) of section 1002.421, Florida  
 1006 Statutes, is amended to read:

1007 1002.421 Accountability of private schools participating  
 1008 in state school choice scholarship programs.—

1009 (1) A Florida private school participating in the Florida  
 1010 Tax Credit Scholarship Program established pursuant to s.  
 1011 1002.395, the Florida Sales Tax Credit Scholarship Program  
 1012 established pursuant to s. 1002.396, or an educational  
 1013 scholarship program established pursuant to this chapter must  
 1014 comply with all requirements of this section in addition to

1015 private school requirements outlined in s. 1002.42, specific  
 1016 requirements identified within respective scholarship program  
 1017 laws, and other provisions of Florida law that apply to private  
 1018 schools.

1019       Section 7. Any scholarship funding organization whose  
 1020 application for participation in the program established by s.  
 1021 1002.395 was approved prior to July 1, 2014, shall, by August 1,  
 1022 2014, provide a copy of a surety bond or letter of credit to the  
 1023 Office of Independent Education and Parental Choice and  
 1024 thereafter adjust the amount of the surety bond or letter of  
 1025 credit as required by the Department of Education in accordance  
 1026 with s. 1002.395(9)(q).

1027       Section 8. The Department of Revenue and Department of  
 1028 Education may, and all conditions are deemed met to, adopt  
 1029 emergency rules pursuant to ss. 120.536(1) and 120.54, Florida  
 1030 Statutes, to administer this act.

1031       Section 9. This act shall take effect July 1, 2014.

1032



Amendment No. 1

18 electronic return. The net amount of tax due and payable must be  
19 remitted by electronic funds transfer. A dealer may only obtain  
20 a credit using the method described in this subsection. A dealer  
21 is not authorized to obtain a credit by applying for a refund.  
22 The provisions of ss. 1002.396 and 1002.397 apply to credits  
23 allowed under this subsection.

24 Section 2. Paragraph (cc) is added to subsection (8) of section  
25 213.053, Florida Statutes, to read:

26 213.053 Confidentiality and information sharing.—

27 (8) Notwithstanding any other provision of this section,  
28 the department may provide:

29 (cc) For purposes of notification that a tax credit has  
30 been reserved, a copy of a letter of approval issued by the  
31 department to a taxpayer or dealer for an allocation of a tax  
32 credit to the eligible nonprofit scholarship-funding  
33 organization selected by the taxpayer or dealer in an  
34 application for a tax credit authorized

35

Amendment No.2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCB: Finance & Tax Subcommittee  
 2 Representative Diaz, M. offered the following:

**Amendment**

5 Remove lines 132-153 and insert:

6 care as defined in s. 39.01. A student who initially receives a  
 7 scholarship based on eligibility under this subparagraph remains  
 8 eligible until the student graduates from high school or turns  
 9 21 years of age, whichever occurs first, regardless of the  
 10 student's household income.

11 3. For the 2014-2015 and 2015-2016 school years, the  
 12 student continues in the scholarship program as long as the  
 13 student's household income level does not exceed 230 percent of  
 14 the federal poverty level. A sibling of a student who is  
 15 continuing in the scholarship program is eligible as long as the  
 16 student resides in the same household.

17 4. For the 2016-2017 school year and thereafter, the

Amendment No.2

18 student is on the direct certification list or the student's  
19 household income does not exceed 185 percent of the federal  
20 poverty level.

21 5. For the 2016-2017 school year and thereafter, the  
22 student's household income is greater than 185 percent but does  
23 not exceed 260 percent of the federal poverty level and:

24 a. the student spent the prior school year in attendance at  
25 a public school in the state and was enrolled and reported by  
26 the school district for funding during October and February for  
27 purposes of the Florida Education Finance Program membership  
28 surveys; or

29 b. the student is eligible to enter kindergarten or first  
30 grade, or

31 c. the student received a scholarship from an eligible  
32 nonprofit scholarship-funding organization or from the State of  
33 Florida during the previous school year ~~The student, who is a~~  
34 ~~first time tax credit scholarship~~

35

36



COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB FTSC 14-02 (2014)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCB: Finance & Tax Subcommittee  
2 Representative Diaz, M. offered the following:

3

4 **Amendment**

5 Remove line 350 and insert:

6 the organization has operated under either this section or s.  
7 1002.396 for at least 3

8

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB FTSC 14-02 (2014)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)

ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)

ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)

FAILED TO ADOPT \_\_\_\_\_ (Y/N)

WITHDRAWN \_\_\_\_\_ (Y/N)

OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing PCB: Finance & Tax Subcommittee  
2 Representative Diaz, M. offered the following:

3  
4 **Amendment**  
5 Remove line 492 and insert:  
6 Choice no later than September 1 each year, prior to the school  
7 year  
8

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB FTSC 14-02 (2014)

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Committee/Subcommittee hearing PCB: Finance & Tax Subcommittee  
2 Representative Diaz, M. offered the following:

3  
4 **Amendment**

5 Remove lines 613-719 and insert:

6 1. Enable registered sales tax dealers to make private,  
7 voluntary contributions to nonprofit scholarship-funding  
8 organizations in order to promote the general welfare.

9 2. Provide registered sales tax dealers who wish to help  
10 parents with limited resources exercise their basic right to  
11 educate their children as they see fit with a means to do so.

12 3. Promote the general welfare by expanding educational  
13 opportunities for children of families that have limited  
14 financial resources.

15 4. Enable children in this state to achieve a greater level  
16 of excellence in their education.

17 5. Improve the quality of education in this state, both by

Amendment No. 5

18 expanding educational opportunities for children and by creating  
19 incentives for schools to achieve excellence.

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

21 (a) "Annual tax credit amount" means, for any state fiscal  
22 year, the sum of the amount of tax credits approved under  
23 paragraph (5) (b) .

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

25 (c) "Direct certification list" means the certified list  
26 of children who qualify for the food assistance 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 (d) "Eligible contribution" means a monetary contribution  
32 from a registered sales tax dealer, subject to the restrictions  
33 provided in this section, to an eligible nonprofit scholarship-  
34 funding organization. The registered sales tax dealer making the  
35 contribution may not designate a specific child as the  
36 beneficiary of the contribution.

37 (e) "Eligible nonprofit scholarship-funding organization"  
38 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

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44 3. Complies with the provisions of subsections (6) and  
45 (16).

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

50 (g) "Owner or operator" includes:

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

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

58 (h) "Tax credit cap amount" means the maximum annual tax  
59 credit amount that the department may approve in a state fiscal  
60 year.

61 (i) "Unweighted FTE funding amount" means the statewide  
62 average total funds per unweighted full-time equivalent funding  
63 amount that is incorporated by reference in the General  
64 Appropriations Act, or any subsequent special appropriations  
65 act, for the applicable state fiscal year.

66 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.-

67 (a) The Florida Sales Tax Credit Scholarship Program is  
68 established.

69 (b) Contingent upon available funds, a student is eligible

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70 for a tax credit scholarship under this section if the student  
71 meets one or more of the criteria listed in s. 1002.395(3)(b).

72 (4) SCHOLARSHIP PROHIBITIONS.—A student is not eligible  
73 for a scholarship under this section if he or she satisfies any  
74 of the criteria listed in s. 1002.395(4).

75 (5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

76 (a) The tax credit cap is as provided in s. 1002.397.

77 (b) A registered sales tax dealer may submit an  
78 application to the department for a tax credit or credits under  
79 s. 212.0831(2). The registered sales tax dealer shall specify in  
80 the application the applicable state fiscal year for such  
81 credits. The department shall approve such tax credits on a  
82 first-come, first-served basis. Within 10 days after approving  
83 an application, the department must provide a copy of its  
84 approval letter to the eligible nonprofit scholarship-funding  
85 organization specified by the registered sales tax dealer in the  
86 application.

87 (c) If a tax credit approved under paragraph (b) is not  
88 fully used within the specified state fiscal year, the unused  
89 amount may be carried forward for a period not to exceed 5  
90 years. However, any registered sales tax dealer that seeks to  
91 carry forward an unused amount of tax credit must submit an  
92 application to the department for approval of the carryforward  
93 tax credit in the year that the registered sales tax dealer  
94 intends to use the carryforward.

95 (d) A registered sales tax dealer may not convey, assign,

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96 or transfer an approved tax credit or a carryforward tax credit  
97 to another entity unless all of the assets of the registered  
98 sales tax dealer are conveyed, assigned, or transferred in the  
99 same transaction. However, a tax credit granted under this  
100 section may be conveyed, transferred, or assigned between the  
101 members of an affiliated group of corporations. A registered  
102 sales tax dealer must notify the department of the intent to  
103 convey, transfer, or assign a tax credit to another member  
104 within an affiliated group of corporations. The amount conveyed,  
105 transferred, or assigned is available to another member of the  
106 affiliated group of corporations upon approval by the  
107 department.

108 (e) Within any state fiscal year, a registered sales tax  
109 dealer may rescind all or part of a tax credit approved under  
110 paragraph (b). The amount rescinded shall become available for  
111 that state fiscal year to another eligible taxpayer or  
112 registered sales tax dealer as approved by the department if the  
113 registered sales tax dealer receives notice from the department  
114 that the rescindment has been accepted by the department. Any  
115 amount rescinded under this paragraph shall become available to  
116 an eligible taxpayer or registered sales tax dealer on a first-  
117 come, first-served basis based on

118

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB FTSC 14-02 (2014)

Amendment No. 6

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCB: Finance & Tax Subcommittee  
2 Representative Diaz, M. offered the following:

3  
4 **Amendment**

5 Remove lines 935-956 and insert:

6 credits and procedures to be followed by registered sales  
7 tax dealers when claiming approved tax credits on their returns.

8 (c) The State Board of Education shall adopt rules to  
9 administer the responsibilities of the Department of Education  
10 and the Commissioner of Education under this section.

11 (14) DEPOSITS OF ELIGIBLE CONTRIBUTIONS.—All eligible  
12 contributions received by an eligible nonprofit scholarship-  
13 funding organization shall be deposited in a manner consistent  
14 with s. 17.57(2).

15 (15) PRESERVATION OF CREDIT.—If any provision or portion of  
16 this section or s. 212.1831 or the application thereof to any  
17 person or circumstance is held unconstitutional by any court or



COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB FTSC 14-02 (2014)

Amendment No. 6



18 is otherwise declared invalid, the unconstitutionality or  
19 invalidity shall not affect any credit earned under s. 212.1831  
20 by any registered sales tax dealer with respect to any  
21 contribution paid to an eligible nonprofit scholarship-funding  
22 organization before the date of a determination of  
23 unconstitutionality or invalidity. Such credit shall be allowed  
24 at such time and in such a manner as if a determination of  
25 unconstitutionality or invalidity had not been made, provided  
26 that nothing in this subsection by itself or in combination with  
27 any other provision of law shall result in the allowance of any  
28 credit to any registered sales tax dealer in excess

29



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 155 Defense Contracting  
**SPONSOR(S):** Smith  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	9 Y, 2 N, As CS	Collins	West
2) Finance & Tax Subcommittee		Wolfgang 	Langston 
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill creates a new economic development tax incentive program to reward businesses receiving national security-related federal contracts for hiring more Florida-based subcontractors. Qualifying businesses may reduce the computation of adjusted federal income used to determine state corporate income tax liability by an amount equal to four percent of each subcontract awarded to a qualifying Florida-based subcontractor. To receive the incentive, a business must submit specified documentation regarding qualified subcontract awards to the Department of Economic Opportunity (DEO), which is responsible for certifying applicants.

The bill places caps on the amount of qualified subcontract awards DEO may certify for a single company in a single tax year and on the total amount of qualified subcontract awards DEO may certify in a single tax year program-wide.

DEO and the Department of Revenue (DOR) are granted rule-making authority to implement the bill.

The Revenue Estimating Impact Conference met on January 17, 2014, and estimated that the bill would have a negative impact on general revenues of \$3.3 million per fiscal year on a recurring basis and no impact on local government revenues or expenditures.

The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Florida's Defense Industry

Florida is home to three of ten unified combatant commands and hosts two of only four Navy deep water ports in the country with adjacent airfields, the military's only space launch facility on the east coast, the Marine Corps' only maritime prepositioning facility, and one of only three Navy Fleet Readiness Centers. The state also hosts several critical research, development, testing and evaluation centers. In addition, the Joint Gulf Range Complex connects test and training ranges that extend from Key West to northwest Florida and across the eastern Gulf of Mexico, and encompasses 180,000 square miles of Department of Defense-controlled airspace.<sup>1</sup>

The defense industry accounts for 9.4 percent of state gross domestic product in 2011. Defense-related spending, direct and indirect, added up to \$73.4 billion in 2011, \$12.4 billion of which was allocated for procurements.<sup>2</sup> In 2011, Florida businesses generated \$13.6 billion in U.S. Department of Defense (DOD) contract awards, ranking the state 5th in the nation. The state is home to many of the nation's leading defense contractors and a large pool of highly skilled workers and veterans.<sup>3</sup>

According to the federal government, 111,516 contracts have been awarded to prime contractors by DOD and the National Aeronautics and Space Administration (NASA) from federal fiscal year 2012 through the current federal fiscal year for work done in Florida. Combined, these contracts have a total value of more than \$24 billion. There have been 3,628 subcontracts awarded through those 111,516 prime contracts, valued at more than \$5 billion. Of those, 2,891 subcontracts, valued at \$3.9 billion, have been awarded to businesses located in Florida, which accounts for 79.7 percent of all subcontracts awarded by prime contractors who have received federal contracts for work to be done in Florida.<sup>4</sup>

##### Federal Contracting Overview

The typical federal procurement process involves an agency identifying the goods and services it needs, determining the most appropriate method for purchasing those items, and carrying out an acquisition process. Under most procurement processes, an agency posts a solicitation on the Federal Business Opportunities (FedBizOpps) website. Interested businesses prepare their offers in response to the solicitation, and agency personnel evaluate the offers. To be eligible to compete for government contracts, a business must first obtain a Data Universal Numbering System (DUNS) number and register with the System for Award Management (SAM). Many agencies provide assistance and services to potential and existing federal contractors.

Businesses may serve as subcontractors for other businesses awarded federal contracts, known as "prime contractors." Most federal agencies release information on their websites listing prime contractors that have been awarded federal contracts, which serves as a valuable resource for

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<sup>1</sup> Enterprise Florida, *Florida Defense Factbook*, January 2013.

<sup>2</sup> Enterprise Florida, *Florida Defense Industry Economic Impact Analysis*; January 2013.

<sup>3</sup> Enterprise Florida, *Defense and Homeland Security* (can be found at <http://www.enterpriseflorida.com/industries/defense-homeland-security/>; last accessed on 2/27/14).

<sup>4</sup> United States Office of Management and Budget, *USASpending.gov*; (can be found at <http://usaspending.gov/>; last accessed on 1/21/14).

potential subcontractors. Other agencies, including the General Services Administration, Department of Homeland Security, and Small Business Administration provide more specific information regarding subcontracting opportunities with prime contractors on their websites.<sup>5</sup>

### Florida Corporate Income Tax

Florida levies corporate income tax on corporations of 5.5% for income earned in Florida.<sup>6</sup> The calculation of Florida corporate income tax starts with a corporation's federal taxable income.<sup>7</sup> After certain addbacks and subtractions to federal taxable income required by chapter 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.<sup>8</sup> The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate corporation's business activities attributable to Florida.<sup>9</sup> Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt.<sup>10</sup>

### **Effect of Proposed Changes**

The bill creates s. 288.1046, F.S., the Defense Works in Florida Incentive, which encourages defense contractors receiving federal contracts to select Florida-based small business subcontractors. This incentive provides certified businesses a reduction in their corporate income tax. The bill defines the following terms:

- Florida Prime Contractor – A business entity operating in the state that is awarded a prime contract.
- Florida Small Business Subcontractor – A business entity that maintains its primary place of business in the state, has 250 or fewer employees, is awarded a subcontract from a Florida Prime Contractor, and has no subsidiary or affiliate business relationship to the prime contractor making the award.
- Prime Contract – A contract that is awarded directly from the federal government.
- Qualified Defense Work – A Prime Contract awarded after September 30, 2013, for manufacturing, engineering, construction, distribution, research, development, or other activities related to equipment, supplies, technology, or other goods or services that support national security or space-related activities.
- Qualified Subcontract Award – Qualified Defense Work subcontracted from a Florida Prime Contractor to a Florida Small Business Subcontractor which is executed in the state and meets the requirements of the bill.

The bill allows Florida Prime Contractors awarded a Prime Contract for Qualified Defense Work to reduce its computed adjusted federal income under s. 220.13, F.S., by an amount equal to four percent of any Qualified Subcontract Award it awards a Florida Small Business Subcontractor. To qualify for the incentive, a Florida Prime Contractor must apply to DEO and be certified that it is subject to chapter 220, has been awarded Qualified Defense Work, and has awarded a Qualified Subcontract Award of at least \$250,000. A Florida Prime Contractor may claim the incentive only for taxable years beginning on or after January 1, 2014.

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<sup>5</sup> L. Elaine Halchin, Congressional Research Service; *Overview of the Federal Procurement Process and Resources*; September 11, 2012.

<sup>6</sup> Section 220.11, F.S.

<sup>7</sup> Section 220.12, F.S.

<sup>8</sup> Section 220.15, F.S.

<sup>9</sup> Section 220.15, F.S.

<sup>10</sup> Section 220.14, F.S.

Within 10 days of certifying an application, DEO is required to supply the Florida Prime Contractor with a letter of certification for each certified application, as well as a copy of such letter to DOR. Following certification, a Florida Prime Contractor may claim the incentive by applying separately to DEO for each Qualified Subcontract Award it has made to a Florida Small Business Subcontractor. Each application should contain documentation including copies of contracts, tax records, or employment records. For a multiyear Qualified Subcontract Award, DEO will certify the full amount of the award in the year it was awarded but the Florida Prime Contractor may only claim the incentive in the taxable year in which payment was made to the Florida Small Business Subcontractor.

DEO is permitted to certify up to \$250 million in aggregate Qualified Subcontract Awards for a single Florida Prime Contractor per tax year, resulting in no more than \$10 million in reduced taxable income and no more than \$550,000 in reduced taxes. The bill also includes a cap of \$2.5 billion in aggregate Qualified Subcontract Awards resulting in no more than \$100 million in reduced taxable income, and no more than \$5.5 million in reduced taxes for all certified applicants in a single tax year.

The bill also amends s. 220.13, F.S., to allow the incentive to be included among the list of adjusted federal income subtractions allowed under current law.

#### B. SECTION DIRECTORY:

- Section 1: Creates s. 288.1046, F.S., the Defense Works in Florida Incentive, to provide a reduction in the computation of adjusted federal income as used to determine state corporate income tax liability for businesses receiving federal defense contracts who subcontract with certain Florida-based small businesses.
- Section 2: Amends s. 220.13, F.S., to provide a subtraction to adjusted federal taxable income.
- Section 3: Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Revenue Estimating Impact Conference met on January 17, 2014, and estimated that this bill would have a negative recurring impact on general revenues of \$3.3 million per year beginning in fiscal year 2014-2015.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive effect on Florida-based defense industry small business subcontractors.

D. FISCAL COMMENTS:

None

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DEO and the DOR may adopt rules to administer this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2014, the House Economic Development & Tourism Subcommittee adopted a strike-all amendment and passed the bill as a CS. The amendment:

- Amends s. 220.13, F.S. to allow the incentive to be included among the list of adjusted federal income subtractions in current law.
- Removes a provision from the bill that prevented work awarded locally by military installations from being included in the definition of "qualified defense work."
- Adds a requirement to the bill that "qualified subcontract awards" must be at least \$250,000 in order to qualify for the incentive.
- Adds a provision which allows eligible businesses to claim the new incentive for taxable years beginning on or after January 1, 2014.
- Makes technical changes and drafting corrections to the bill.

The analysis has been updated to reflect the amendment.

1                                   A bill to be entitled  
 2           An act relating to defense contracting; creating s.  
 3           288.1046, F.S.; establishing the Defense Works in  
 4           Florida Incentive; providing definitions; providing  
 5           that certain prime contractors may apply to the  
 6           Department of Economic Opportunity to certify that  
 7           such contractors may reduce their computation of  
 8           adjusted federal income by a certain amount when  
 9           awarded a prime contract; providing requirements to  
 10          apply for a reduction in computation of income;  
 11          providing that a prime contractor must apply  
 12          separately for each qualified subcontract award;  
 13          providing guidelines for the department to certify an  
 14          award; providing rulemaking authority; amending s.  
 15          220.13, F.S.; revising definition of "adjusted federal  
 16          income" for corporate income tax purposes; providing  
 17          for certain reduction in computation of income, to  
 18          conform; providing an effective date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1. Section 288.1046, Florida Statutes, is created  
 23 to read:

24           288.1046 Defense Works in Florida Incentive.—

25           (1) As used in this section, the term:

26           (a) "Florida prime contractor" means a business entity



27 operating in the state that is awarded a prime contract.

28 (b) "Florida small business subcontractor" means a  
29 business entity that:

30 1. Maintains its primary place of business in the state;

31 2. Has 250 or fewer employees at the time a qualified  
32 subcontract award, as defined in paragraph (e), is made;

33 3. Is awarded a subcontract from a Florida prime  
34 contractor; and

35 4. Has no subsidiary or affiliate business relationship to  
36 the prime contractor making the award.

37 (c) "Prime contract" means a contract that is awarded  
38 directly from the Federal Government.

39 (d) "Qualified defense work" means a prime contract  
40 awarded for manufacturing, engineering, construction,  
41 distribution, research, development, or other activities related  
42 to equipment, supplies, technology, or other goods or services  
43 that directly or indirectly support the United States Armed  
44 Forces or that can be reasonably determined to support national  
45 security, including space related activities. The term does not  
46 include contracts awarded before October 1, 2013.

47 (e) "Qualified subcontract award" means qualified defense  
48 work, in part or in whole, subcontracted from a Florida prime  
49 contractor to a Florida small business subcontractor, which is  
50 executed in the state, is valued at over \$250,000, and is  
51 determined by the department to meet the criteria in paragraphs  
52 (a) through (d).

53 (2) A Florida prime contractor may apply to the department  
54 to certify that it may reduce its computation of adjusted  
55 federal income under s. 220.13 by an amount equal to 4 percent  
56 of the subcontract award if such prime contractor:

57 (a) Is subject to chapter 220;

58 (b) Is awarded qualified defense work; and

59 (c) Awards a qualified subcontract award.

60 (3) A Florida prime contractor may claim the incentive  
61 under subsection (2) only for taxable years beginning on or  
62 after January 1, 2014, and must apply separately to the  
63 department, for each qualified subcontract award and provide the  
64 department required documentation including, but not limited to,  
65 the application for the award and copies of contracts, tax  
66 records, or employment records.

67 (4) The department may establish application, approval,  
68 appeal, and accountability processes as necessary. The  
69 department may consult with Enterprise Florida, Inc., and the  
70 Florida Defense Support Task Force as necessary to administer  
71 this section.

72 (a) Within 10 days after certifying a qualified  
73 subcontract award, the department shall provide:

74 1. A letter certifying the award to the applicant; and

75 2. A copy of the letter certifying the award to the  
76 Department of Revenue.

77 (b) The department may certify, for each Florida prime  
78 contractor applicant per calendar year, up to \$250 million in

79 aggregate qualified subcontract awards, resulting in no more  
 80 than \$10 million in reduced taxable income and no more than  
 81 \$550,000 in reduced taxes.

82 (c) The department may certify in total, per calendar  
 83 year, up to \$2.5 billion in aggregate qualified subcontract  
 84 awards, resulting in no more than \$100 million in reduced  
 85 taxable income and no more than \$5.5 million in reduced taxes.

86 (d) For a multiyear qualified subcontract award:

87 1. The department shall certify the full amount of the  
 88 award under paragraphs (b) and (c) in the calendar year it was  
 89 awarded; and

90 2. The Florida prime contractor may claim the incentive in  
 91 the taxable year in which payment is made to the Florida small  
 92 business subcontractor.

93 (5) The department and the Department of Revenue may adopt  
 94 rules to administer this section.

95 Section 2. Paragraph (b) of Subsection (1) of 220.13,  
 96 Florida Statutes, is amended to read:

97 220.13 "Adjusted federal income" defined.—

98 (1) The term "adjusted federal income" means an amount  
 99 equal to the taxpayer's taxable income as defined in subsection  
 100 (2), or such taxable income of more than one taxpayer as  
 101 provided in s. 220.131, for the taxable year, adjusted as  
 102 follows:

103 (b) Subtractions.—

104 1. There shall be subtracted from such taxable income:

105 a. The net operating loss deduction allowable for federal  
 106 income tax purposes under s. 172 of the Internal Revenue Code  
 107 for the taxable year, except that any net operating loss that is  
 108 transferred pursuant to s. 220.194(6) may not be deducted by the  
 109 seller,

110 b. The net capital loss allowable for federal income tax  
 111 purposes under s. 1212 of the Internal Revenue Code for the  
 112 taxable year,

113 c. The excess charitable contribution deduction allowable  
 114 for federal income tax purposes under s. 170(d)(2) of the  
 115 Internal Revenue Code for the taxable year, and

116 d. The excess contributions deductions allowable for  
 117 federal income tax purposes under s. 404 of the Internal Revenue  
 118 Code for the taxable year.

119  
 120 However, a net operating loss and a capital loss shall never be  
 121 carried back as a deduction to a prior taxable year, but all  
 122 deductions attributable to such losses shall be deemed net  
 123 operating loss carryovers and capital loss carryovers,  
 124 respectively, and treated in the same manner, to the same  
 125 extent, and for the same time periods as are prescribed for such  
 126 carryovers in ss. 172 and 1212, respectively, of the Internal  
 127 Revenue Code.

128 2. There shall be subtracted from such taxable income any  
 129 amount to the extent included therein the following:

130 a. Dividends treated as received from sources without the

131 United States, as determined under s. 862 of the Internal  
 132 Revenue Code.

133       b. All amounts included in taxable income under s. 78 or  
 134 s. 951 of the Internal Revenue Code.

135  
 136 However, as to any amount subtracted under this subparagraph,  
 137 there shall be added to such taxable income all expenses  
 138 deducted on the taxpayer's return for the taxable year which are  
 139 attributable, directly or indirectly, to such subtracted amount.  
 140 Further, no amount shall be subtracted with respect to dividends  
 141 paid or deemed paid by a Domestic International Sales  
 142 Corporation.

143       3. In computing "adjusted federal income" for taxable  
 144 years beginning after December 31, 1976, there shall be allowed  
 145 as a deduction the amount of wages and salaries paid or incurred  
 146 within this state for the taxable year for which no deduction is  
 147 allowed pursuant to s. 280C(a) of the Internal Revenue Code  
 148 (relating to credit for employment of certain new employees).

149       4. There shall be subtracted from such taxable income any  
 150 amount of nonbusiness income included therein.

151       5. There shall be subtracted any amount of taxes of  
 152 foreign countries allowable as credits for taxable years  
 153 beginning on or after September 1, 1985, under s. 901 of the  
 154 Internal Revenue Code to any corporation which derived less than  
 155 20 percent of its gross income or loss for its taxable year  
 156 ended in 1984 from sources within the United States, as

157 described in s. 861(a)(2)(A) of the Internal Revenue Code, not  
 158 including credits allowed under ss. 902 and 960 of the Internal  
 159 Revenue Code, withholding taxes on dividends within the meaning  
 160 of sub-subparagraph 2.a., and withholding taxes on royalties,  
 161 interest, technical service fees, and capital gains.

162 6. There shall be subtracted from such taxable income 4  
 163 percent of the amount of the subcontract award certified by the  
 164 Department of Economic Opportunity pursuant to s. 288.1046.

165 7. Notwithstanding any other provision of this code,  
 166 except with respect to amounts subtracted pursuant to  
 167 subparagraphs 1. and 3., any increment of any apportionment  
 168 factor which is directly related to an increment of gross  
 169 receipts or income which is deducted, subtracted, or otherwise  
 170 excluded in determining adjusted federal income shall be  
 171 excluded from both the numerator and denominator of such  
 172 apportionment factor. Further, all valuations made for  
 173 apportionment factor purposes shall be made on a basis  
 174 consistent with the taxpayer's method of accounting for federal  
 175 income tax purposes.

176 Section 3. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 231 Admissions Tax  
**SPONSOR(S):** Brodeur and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Collins	West
2) Finance & Tax Subcommittee		Pewitt <i>JP</i>	Langston <i>B</i>
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

Section 212.04, F.S., provides that every person who sells or receives anything of value by way of admissions is exercising a taxable privilege at the rate of six percent of the sales price of admission. The section exempts from this tax admission to specified sporting events, including all-star games produced by the National Football League (NFL), Major League Baseball (MLB), National Hockey League (NHL), and National Basketball Association (NBA). In addition, the MLB Home Run Derby, held in conjunction with the MLB All-Star Game, and the Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, and Slam Dunk Challenge, all produced as part of the NBA's All-Star Game festivities, are also exempt from the admissions tax.

The bill adds the Major League Soccer All-Star Game to the list of events exempted from the sales tax on admissions. It also replaces the list of specific NBA All-Star Game-associated events exempted under current law with language that includes all NBA-produced all-star events held at an arena, convention center, municipal facility or other such facility.

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have no revenue impact on state or local government in fiscal year 2014-2015, but would have a negative, indeterminate impact on state and local government revenues thereafter.

The bill provides an effective date of July 1, 2014.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Professional Sports in Florida

There are nine major professional sports teams based in Florida covering each of the major professional sports leagues; the National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), and National Hockey League (NHL). The oldest major professional sports franchise in the state is the Miami Dolphins (NFL). The Dolphins franchise began play in 1966. The newest major professional sports team in the state is the Tampa Bay Rays (MLB) baseball franchise. The Rays franchise began play in 1998. The Miami Marlins (MLB), Tampa Bay Buccaneers (NFL), Jacksonville Jaguars (NFL), Orlando Magic (NBA), Miami Heat (NBA), Tampa Bay Lightning (NHL), and Florida Panthers (NHL) are all based within the state as well. MLB's Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.<sup>1</sup>

Beginning in 2015, the state will be home to a tenth major professional sports team when the Orlando City Soccer Club begins play as the 21<sup>st</sup> Major League Soccer (MLS) franchise.<sup>2</sup> MLS is the premier professional soccer organization in the United States, having been launched in 1996 and boasting eight franchises currently valued at over \$100 million.<sup>3</sup>

Florida has hosted the NBA All-Star Game three times, most recently in Orlando in 2012. It hosted the MLS All-Star Game in Orlando in 1998.

##### Sales Tax on Admissions

Section 212.04, F.S. provides that every person who sells or receives anything of value by way of admissions is exercising a taxable privilege at the rate of six percent. The section exempts from this tax admission to specified sporting events, including:

- NFL's Pro Bowl or Super Bowl.
- Semifinal or championship games for national collegiate tournaments.
- All-star games of the MLB, NBA, or NHL.
- MLB's Home Run Derby (held in conjunction with the MLB All-Star Game).
- NBA's Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, and Slam Dunk Challenge (held in conjunction with the NBA All-Star Game).

##### **Effect of Proposed Changes**

The bill amends s. 212.04, F.S. to add the MLS All-Star Game to the list of events exempted from the sales tax on admissions. The bill also replaces the list of specific NBA all-star events exempted from

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<sup>1</sup> Florida Sports Foundation, *Sports in Florida*

[http://www.flasports.com/index.php?option=com\\_content&view=article&id=97&Itemid=211](http://www.flasports.com/index.php?option=com_content&view=article&id=97&Itemid=211) (last accessed January 14, 2014).

<sup>2</sup> Major League Soccer, *Major League Soccer Names Orlando City SC as 21<sup>st</sup> Franchise, Set for 2015 Debut*, November 19, 2013; <http://www.mlssoccer.com/news/article/2013/11/19/major-league-soccer-names-orlando-city-21st-franchise-set-2015-debut> (last accessed January, 2014).

<sup>3</sup> Forbes, *Major League Soccer's Most Valuable Teams* November 20, 2013;

<http://www.forbes.com/sites/chris-smith/2013/11/20/major-league-soccer-s-most-valuable-teams/> (last accessed January 14, 2014).

the tax under current law with language that includes all NBA-produced all-star events held at an arena, convention center, municipal facility or other such facility.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 212.04(2)(a), F.S., to exempt the Major League Soccer All-Star Game from the admissions tax, and to clarify previously exempted events associated with the National Basketball League All-Star Game.

Section 2: Provides an effective date of July 1, 2014.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have no revenue impact on state revenues in fiscal year 2014-2015, but would have a negative, indeterminate impact on General Revenue and state trust funds thereafter.

2. Expenditures:

The Department of Revenue estimates that there will be an insignificant operational impact.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have no revenue impact on local government revenues in fiscal year 2014-2015, but would have a negative, indeterminate impact thereafter.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The Revenue Estimating Impact Conference adopted a negative indeterminate impact except for the first year cash, which is zero. If all-star events were to occur within the next five years, the impact for an MLS All-Star Game would be \$100,000, while an NBA all-star event would have an impact of \$100,000. Neither NBA franchise, nor the recently awarded MLS franchise has been selected to host future all-star events by their respective league governing bodies as of January 2014. Therefore, the estimated impact is indeterminate.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill creates an exemption from sales tax, including discretionary sales taxes levied by local governments; however, an exemption may apply as the negative impact to local government is expected to be insignificant.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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2014

1 A bill to be entitled  
 2 An act relating to the admissions tax; amending s.  
 3 212.04, F.S.; revising the professional sporting  
 4 events that are exempt from the admissions tax;  
 5 providing an effective date.

6  
 7 Be It Enacted by the Legislature of the State of Florida:

8  
 9 Section 1. Paragraph (a) of subsection (2) of section  
 10 212.04, Florida Statutes, is amended to read:

11 212.04 Admissions tax; rate, procedure, enforcement.—

12 (2) (a) A tax may not be levied on:

13 1. ~~No tax shall be levied on~~ Admissions to athletic or  
 14 other events sponsored by elementary schools, junior high  
 15 schools, middle schools, high schools, community colleges,  
 16 public or private colleges and universities, deaf and blind  
 17 schools, facilities of the youth services programs of the  
 18 Department of Children and Families ~~Family Services~~, and state  
 19 correctional institutions if ~~when~~ only student, faculty, or  
 20 inmate talent is used. However, this exemption does ~~shall~~ not  
 21 apply to admission to athletic events sponsored by a state  
 22 university, and the proceeds of the tax collected on such  
 23 admissions shall be retained and used by each institution to  
 24 support women's athletics as provided in s. 1006.71(2)(c).

25 2.a. ~~No tax shall be levied on~~ Dues, membership fees, and  
 26 admission charges imposed by not-for-profit sponsoring  
 27 organizations. To receive this exemption, the sponsoring  
 28 organization must qualify as a not-for-profit entity under ~~the~~

29 ~~provisions of s. 501(c)(3) of the Internal Revenue Code of 1954,~~  
 30 as amended.

31 ~~3.b. No tax shall be levied on~~ Admission charges to an  
 32 event sponsored by a governmental entity, sports authority, or  
 33 sports commission if ~~when~~ held in a convention hall, exhibition  
 34 hall, auditorium, stadium, theater, arena, civic center,  
 35 performing arts center, or publicly owned recreational facility  
 36 and if ~~when~~ 100 percent of the risk of success or failure lies  
 37 with the sponsor of the event and 100 percent of the funds at  
 38 risk for the event belong to the sponsor, and student or faculty  
 39 talent is not exclusively used. As used in this subparagraph  
 40 ~~sub-subparagraph~~, the terms "sports authority" and "sports  
 41 commission" mean a nonprofit organization that is exempt from  
 42 federal income tax under s. 501(c)(3) of the Internal Revenue  
 43 Code and that contracts with a county or municipal government  
 44 for the purpose of promoting and attracting sports-tourism  
 45 events to the community with which it contracts.

46 ~~4.3. No tax shall be levied on~~ An admission paid by a  
 47 student, or on the student's behalf, to any required place of  
 48 sport or recreation if the student's participation in the sport  
 49 or recreational activity is required as a part of a program or  
 50 activity sponsored by, and under the jurisdiction of, the  
 51 student's educational institution if, ~~provided~~ his or her  
 52 attendance is as a participant and not as a spectator.

53 ~~5.4. No tax shall be levied on~~ Admissions to the National  
 54 Football League championship game or Pro Bowl; ~~on~~ admissions to  
 55 any semifinal game or championship game of a national collegiate  
 56 tournament; ~~on~~ admissions to a Major League Baseball, Major

57 League Soccer, National Basketball Association, or National  
 58 Hockey League all-star game; ~~an~~ admissions to the Major League  
 59 Baseball Home Run Derby held before the Major League Baseball  
 60 All-Star Game; or ~~an~~ admissions to ~~the~~ National Basketball  
 61 Association all-star events produced by the National Basketball  
 62 Association and held at a facility such as an arena, convention  
 63 center, or municipal facility ~~Rookie Challenge, Celebrity Game,~~  
 64 ~~3-Point Shooting Contest, or Slam Dunk Challenge.~~

65 6.5. A participation fee or sponsorship fee imposed by a  
 66 governmental entity as described in s. 212.08(6) for an athletic  
 67 or recreational program if ~~is exempt when~~ the governmental  
 68 entity by itself, or in conjunction with an organization exempt  
 69 under s. 501(c)(3) of the Internal Revenue Code of 1954, as  
 70 amended, sponsors, administers, plans, supervises, directs, and  
 71 controls the athletic or recreational program.

72 ~~7.6.~~ ~~Also exempt from the tax imposed by this section to~~  
 73 ~~the extent provided in this subparagraph~~ are Admissions to live  
 74 theater, live opera, or live ballet productions in this state  
 75 which are sponsored by an organization that has received a  
 76 determination from the Internal Revenue Service that the  
 77 organization is exempt from federal income tax under s.  
 78 501(c)(3) of the Internal Revenue Code of 1954, as amended, if  
 79 the organization actively participates in planning and  
 80 conducting the event, is responsible for the safety and success  
 81 of the event, is organized for the purpose of sponsoring live  
 82 theater, live opera, or live ballet productions in this state,  
 83 has more than 10,000 subscribing members and has among the  
 84 stated purposes in its charter the promotion of arts education

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2014

85 | in the communities ~~which~~ it serves, and will receive at least 20  
86 | percent of the net profits, if any, of the events ~~which~~ the  
87 | organization sponsors and will bear the risk of at least 20  
88 | percent of the losses, if any, from the events ~~which~~ it sponsors  
89 | if the organization employs other persons as agents to provide  
90 | services in connection with a sponsored event. Before ~~Prior to~~  
91 | March 1 of each year, such organization may apply to the  
92 | department for a certificate of exemption for admissions to such  
93 | events sponsored in this state by the organization during the  
94 | immediately following state fiscal year. The application must  
95 | ~~shall~~ state the total dollar amount of admissions receipts  
96 | collected by the organization or its agents from such events in  
97 | this state sponsored by the organization or its agents in the  
98 | year immediately preceding the year in which the organization  
99 | applies for the exemption. Such organization shall receive the  
100 | exemption only to the extent of \$1.5 million multiplied by the  
101 | ratio that such receipts bear to the total of such receipts of  
102 | all organizations applying for the exemption in such year;  
103 | however, ~~in no event shall~~ such exemption granted to any  
104 | organization may not exceed 6 percent of such admissions  
105 | receipts collected by the organization or its agents in the year  
106 | immediately preceding the year in which the organization applies  
107 | for the exemption. Each organization receiving the exemption  
108 | shall report each month to the department the total admissions  
109 | receipts collected from such events sponsored by the  
110 | organization during the preceding month and shall remit to the  
111 | department an amount equal to 6 percent of such receipts reduced  
112 | by any amount remaining under the exemption. Tickets for such

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113 events sold by such organizations may ~~shall~~ not reflect the tax  
 114 otherwise imposed under this section.

115 ~~8.7. Also exempt from the tax imposed by this section are~~  
 116 Entry fees for participation in freshwater fishing tournaments.

117 ~~9.8. Also exempt from the tax imposed by this section are~~  
 118 Participation or entry fees charged to participants in a game,  
 119 race, or other sport or recreational event if spectators are  
 120 charged a taxable admission to such event.

121 ~~10.9. No tax shall be levied on~~ Admissions to any  
 122 postseason collegiate football game sanctioned by the National  
 123 Collegiate Athletic Association.

124 Section 2. This act shall take effect July 1, 2014.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 567 Hurricane Preparedness  
**SPONSOR(S):** Gaetz  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger <i>BF</i>	Langston <i>AL</i>
2) Economic Development & Tourism Subcommittee			
3) Appropriations Committee			

### SUMMARY ANALYSIS

HB 567 establishes a sales tax exemption for specified items related to hurricane preparedness beginning on June 1, 2014, and ending on June 12, 2014. The exempted items are:

- A portable self-powered light source selling for \$20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less;
- A self-contained first-aid kit selling for \$30 or less;
- A ground anchor system or tie-down kit selling for \$50 or less;
- A gas or diesel fuel tank selling for \$25 or less;
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- A nonelectric food storage cooler selling for \$30 or less;
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less.

The bill also provides that the Department of Revenue may adopt rules.

The bill appropriates \$221,400 from the General Revenue Fund to the Department of Revenue for purposes of administering this bill.

This bill provides that the act shall take effect upon becoming a law.

The Revenue Estimating Conference met on November 20, 2013, and estimated the impact of this bill to the state will be negative \$2.9 million, with an additional negative impact of \$0.7 million to local governments in fiscal year 2014-2015, only.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The state of Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions, storage, rentals of transient accommodations, rental of commercial real estate, and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 200 different exemptions.<sup>1</sup> Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.<sup>2</sup> The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent. The surtax only applies to \$5,000 of the sales price for any item of tangible personal property. The cap does not limit the tax on the sale of any service, rentals of real property, or transient rentals.

In 2004, the Florida Office of Insurance Regulation has estimated a gross probable loss of over \$25 billion due to 4 hurricanes in 2004 and \$10.8 billion due to 4 in 2005.<sup>3</sup> Tropical Storm Fay was estimated to have resulted in \$242 million of damage in 2008.<sup>4</sup>

The Florida Division of Emergency Management (DEM) recommends having a plan and preparing your home to prevent damage. Additionally, DEM recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit.<sup>5</sup>

##### Proposed Changes

HB 567 establishes a sales tax exemption for specified items related to hurricane preparedness beginning on June 1, 2014, and ending on June 12, 2014. The timing of this period coincides with the start of hurricane season.<sup>6</sup> The exempted items are:

- A portable self-powered light source selling for \$20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less;
- A self-contained first-aid kit selling for \$30 or less;
- A ground anchor system or tie-down kit selling for \$50 or less;

<sup>1</sup> For a list of exemptions and history, see REC, *2013 Florida Tax Handbook*. Exemptions are estimated to total about \$10 billion.

<sup>2</sup> The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

<sup>3</sup> Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, <http://www.florir.com/siteDocuments/HurricaneSummary20042005.pdf> (last visited Jan. 22, 2014).

<sup>4</sup> Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, <http://www.florir.com/siteDocuments/HurricaneSummary2008.pdf> (last visited Feb 25, 2014)

<sup>5</sup> Florida Division of Emergency Management, *Disaster Supply Kit*, <http://www.floridadisaster.org/supplykit.htm> (last visited Jan. 22, 2014).

<sup>6</sup> National Oceanic & Atmospheric Administration, *Frequently Asked Questions*, <http://www.aoml.noaa.gov/hrd/tcfaq/G1.html> (last visited Jan. 22, 2014).

- A gas or diesel fuel tank selling for \$25 or less;
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- A nonelectric food storage cooler selling for \$30 or less;
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less.

The bill also provides that the Department of Revenue may adopt rules to implement the exemption period of this bill.

The bill appropriates \$221,400 from the General Revenue Fund to the Department of Revenue for purposes of administering this bill.

This bill provides that the act shall take effect upon becoming a law.

**B. SECTION DIRECTORY:**

- Section 1. Exempting certain items from the sales tax for a 12 day period in June 2014
- Section 2. Providing an appropriation to the Department of revenue
- Section 3. Providing an effective date

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The Revenue Estimating Conference met on November 20, 2013, and estimated the impact of this bill to General Revenue will be negative \$2.9 million, and negative insignificant to state trust funds for FY 2014-15 only.

2. Expenditures:

The Department of Revenue estimates that it will cost \$280,912 to administer this bill.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference estimated the impact of this bill to local governments will be negative \$0.7 million for FY 2014-15 only.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Floridians will be encouraged to purchase hurricane preparedness items during the proposed exemption period.

**D. FISCAL COMMENTS:**

None

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill reduces the revenues from discretionary sales taxes levied by local governments; however, an exemption may apply as the negative impact to local governments is expected to be insignificant.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill provides rule making authority to the Department of Revenue.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

First aid kits, regardless of cost, are currently exempted from sales tax by s. 212.08(2)(a), F.S.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 567

2014

1 A bill to be entitled

2 An act relating to hurricane preparedness; providing  
3 an exemption from the sales and use tax for sales  
4 during a specified period of certain tangible personal  
5 property; authorizing the Department of Revenue to  
6 adopt rules; providing an appropriation; providing an  
7 effective date.

8  
9 Be It Enacted by the Legislature of the State of Florida:

10  
11 Section 1. (1) Effective June 1, 2014, through June 12,  
12 2014, no tax levied under chapter 212, Florida Statutes, shall  
13 be collected on the sale of:

14 (a) A portable self-powered light source selling for \$20  
15 or less.

16 (b) A portable self-powered radio, two-way radio, or  
17 weatherband radio selling for \$50 or less.

18 (c) A tarpaulin or other flexible waterproof sheeting  
19 selling for \$50 or less.

20 (d) A self-contained first-aid kit selling for \$30 or  
21 less.

22 (e) A ground anchor system or tie-down kit selling for \$50  
23 or less.

24 (f) A gas or diesel fuel tank selling for \$25 or less.

25 (g) A package of AA-cell, C-cell, D-cell, 6-volt, or 9-  
26 volt batteries, excluding automobile and boat batteries, selling

27 for \$30 or less.

28 (h) A nonelectric food storage cooler selling for \$30 or  
 29 less.

30 (i) A portable generator used to provide light or  
 31 communications or preserve food in the event of a power outage  
 32 selling for \$750 or less.

33 (2) The Department of Revenue may adopt rules to  
 34 administer this section.

35 Section 2. The sum of \$221,400 is appropriated from the  
 36 General Revenue Fund to the Department of Revenue for purposes  
 37 of administering section 1.

38 Section 3. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 567 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                              \_\_\_ (Y/N)  
OTHER                                    \_\_\_\_\_

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1 Committee/Subcommittee hearing bill: Finance & Tax Subcommittee  
2 Representative Gaetz offered the following:

3  
4       **Amendment**

5       Remove lines 33-35 and insert:

6       (2) The Department of Revenue may, and all conditions are  
7 deemed met to, adopt emergency rules pursuant to ss. 120.536(1)  
8 and 120.54, Florida Statutes, to administer this section.

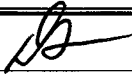
9       Section 2. The sum of \$280,912 is appropriated from the  
10





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 943 Department of Revenue's Certified Audit Program  
**SPONSOR(S):** Raulerson  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1022

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger BF	Langston 
2) Appropriations Committee			

### SUMMARY ANALYSIS

Section 213.285, Florida Statutes, F.S., establishes a Certified Audit Program as a cooperative effort between the Department of Revenue and the Florida Institute of Certified Public Accountants. The program allows taxpayers to hire qualified CPA firms to review their tax compliance for the tourist development taxes imposed by ss. 125.0104 and 125.0108, F.S, and the sales and use tax imposed by ch. 212, F.S.

To encourage participation in the program, taxpayers who undergo a certified audit receive a statutorily guaranteed waiver of all penalties, abatement of the first \$25,000 of interest, and an additional 25 percent of any interest liability in excess of the first \$25,000 if that audit reveals additional liability. A taxpayer may not currently participate in the certified audit program if they are currently under audit or have received a written notice of intent to audit.

The bill allows taxpayers to participate in the certified audit program after they have received a notice of intent to audit. The amount of interest abated for such taxpayers is reduced to the first \$15,000 and 15 percent of any amount over \$15,000. The bill also increases the amount of interest that is abated for participating taxpayers who have not received a notice of intent to audit to an abatement of the first \$50,000 of interest plus 50 percent of any amount over \$50,000.

On February 28, 2014, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$1.4 million to General Revenue and a recurring impact of -\$0.3 million to local governments. Impacts will not begin until fiscal year 2015-2016. The interest abatement changes for the current program will have an indeterminate fiscal impact of unknown direction.

The effective date is July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The Department of Revenue ("DOR") routinely audits businesses in this state to determine if state taxes were collected, reported, and paid correctly. DOR begins the audit process by mailing a taxpayer a Notification of Intent to Audit Books and Records ("notice of intent").<sup>1</sup> This notice identifies the audit period and taxes to be examined. The types of records needed may include, but are not limited to: federal income tax returns, Florida tax returns, depreciation schedules, general ledgers and journals, property records, cash receipt and disbursement journals, purchase and sales journals, sales tax exemption or resale certificates, and documentation to verify amounts entered on tax returns. An audit may extend back three years.<sup>2</sup>

To encourage voluntarily compliance by taxpayers, s. 213.285, F.S., establishes a Certified Audit Program as a cooperative effort between DOR and the Florida Institute of Certified Public Accountants. The program allows taxpayers to hire qualified CPA firms to review their tax compliance for the tourist development taxes imposed by ss. 125.0104 and 125.0108, F.S, and the sales and use tax imposed by ch. 212, F.S.<sup>3</sup>

To encourage participation in the program, taxpayers who undergo a certified audit receive a statutorily guaranteed waiver of all penalties, abatement of the first \$25,000 of interest, and an additional 25 percent of any interest liability in excess of the first \$25,000 in cases where the audit reveals additional liability.<sup>4</sup> These incentives are not available where tax was collected but not remitted to the state. Additionally, except in cases of fraud or misrepresentation, DOR will not audit a taxpayer who uses the program for the same tax years that the certified audit reviewed.

A taxpayer may not participate in the certified audit program if they are currently under audit or have received a written notice of intent to audit from DOR.

To conduct a certified audit a CPA must possess an active Florida CPA license, attend a 2.5-day training seminar, and pass an examination to be certified. For a firm to be eligible to conduct certified audits, several additional requirements must be met. The firm must be a licensed audit firm with the Florida Board of Accountancy, have received a timely on-site peer review, and must conduct the audits using agreed-upon procedures. A staff member of the firm must have completed DOR-provided training on Florida multi-tax software.<sup>5</sup>

To be eligible to provide a certified audit service to a taxpayer, the qualified CPA firm must also be independent with respect to that taxpayer, pursuant to the guidelines established by Florida Board of Accountancy.<sup>6</sup>

When the certified audit project was authorized by the Legislature in 1998, a sunset provision was included of July 1, 2002. The program was made permanent in 2003.<sup>7</sup>

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<sup>1</sup> Form DR-840 or CA-I

<sup>2</sup> Section 95.091, F.S.

<sup>3</sup> Rule 12-25.0305, F.A.C.

<sup>4</sup> Section 213.21(8), F.S.

<sup>5</sup> Rule 12-25.033, F.A.C.

<sup>6</sup> <http://www.ficpa.org/Content/CPAResources/Professional/Audit/Issues.aspx> (last accessed 3/3/14)

<sup>7</sup> Section 40, ch. 2003-254, L.O.F.

## Proposed Changes

The bill allows taxpayers to participate in the certified audit program after they have received a notice of intent to audit from DOR. The time limits for administering a certified audit in that situation are modified, giving the taxpayer an additional 30 days to submit a proposed audit plan. Within 90 days after the submittal of the proposed audit plan, the department shall designate the agreed-upon procedures for that audit. The certified auditor has 285 days from the date of the notice of intent to audit to timely complete the audit.

The amount of interest that is abated for such taxpayers is \$15,000 plus 15 percent of any amount over \$15,000.

The bill also increases the amount of interest that is abated for participating taxpayers who have not received a notice of intent to audit, increasing the abatement to the first \$50,000 of interest plus 50 percent of any amount over \$50,000.

The bill codifies into statute the current rule<sup>8</sup> that the certified audit program only applies to the sales and use tax and the tourist development tax.

### B. SECTION DIRECTORY:

Section 1. Amends s. 213.21, F.S., to adjust the amount of interest abated.

Section 2. Amends s. 213.285, F.S., to allow taxpayers who have received a notice of intent to audit to participate in the certified audit program, providing procedures for such participation, codifying the applicable taxes.

Section 3. Amends s. 213.053, F.S., conforming changes.

Section 4. Providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

On February 28, 2014, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$1.4 million to General Revenue. Impacts will not begin until fiscal year 2015-2016. The interest abatement changes for the current program will have an indeterminate fiscal impact of unknown direction.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$0.3 million to

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<sup>8</sup> Rule 12-25.0305, F.A.C.  
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local governments. Impacts will not begin until fiscal year 2015-2016. The interest abatement changes for the current program will have an indeterminate fiscal impact of unknown direction.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers who take advantage of the certified audit program may see their tax liability decrease due to the abatement of interest and waiver of penalties. CPAs who are certified by DOR to conduct such audits will see additional demand for their services should the expanded eligibility lead to more participation.

D. FISCAL COMMENTS:

Increased participation in the certified audit program should free up resources to allow DOR to conduct more audits and collect additional taxes from noncompliant taxpayers whose liability would have otherwise gone undetected.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may cause local governments to receive lower collections from local option sales taxes; however, an exemption may apply as the negative impact to local governments may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1                   A bill to be entitled  
 2           An act relating to the Department of Revenue's  
 3           certified audit program; amending s. 213.21, F.S.;  
 4           revising the amounts of interest liability that the  
 5           department may abate for taxpayers participating in  
 6           the certified audit program; authorizing a taxpayer to  
 7           participate in the certified audit program after the  
 8           department has issued notice of intent to conduct an  
 9           audit of the taxpayer; reducing the amount of interest  
 10          that may be abated for a taxpayer requesting to  
 11          participate in the program; amending s. 213.285, F.S.;  
 12          conforming provisions; specifying the tax programs to  
 13          be audited; revising procedures, deadlines, and notice  
 14          requirements for certified audits; authorizing the  
 15          department to adopt rules prohibiting a qualified  
 16          practitioner from representing a taxpayer in informal  
 17          conference procedures under certain circumstances;  
 18          amending s. 213.053, F.S.; conforming terminology;  
 19          providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:  
 22

23           Section 1. Subsection (8) of section 213.21, Florida  
 24           Statutes, is amended to read:

25           213.21 Informal conferences; compromises.—

26           (8) In order to determine whether certified audits are an

27 | effective tool in the overall state tax collection effort, the  
 28 | executive director of the department or the executive director's  
 29 | designee shall settle or compromise penalty liabilities of  
 30 | taxpayers who participate in the certified audit program ~~audits~~  
 31 | ~~project~~. As further incentive for participating in the program,  
 32 | the department shall:

33 |       (a) For a taxpayer who requests to participate in the  
 34 | program before the department has issued the taxpayer a written  
 35 | notice of intent to conduct an audit, abate the first \$50,000 of  
 36 | any interest liability and 50 percent of any interest due in  
 37 | excess of the first \$50,000; or

38 |       (b) For a taxpayer who requests to participate in the  
 39 | program after the department has issued the taxpayer a written  
 40 | notice of intent to conduct an audit, abate the first \$15,000  
 41 | ~~\$25,000~~ of any interest liability and 15 ~~25~~ percent of any  
 42 | interest due in excess of the first \$15,000 ~~\$25,000~~.

43 |  
 44 | A settlement or compromise of penalties or interest pursuant to  
 45 | this subsection is ~~shall~~ not be subject to ~~the provisions of~~  
 46 | paragraph (3)(a), except for the requirement relating to  
 47 | confidentiality of records. The department may consider an  
 48 | additional compromise of tax or interest pursuant to ~~the~~  
 49 | ~~provisions of~~ paragraph (3)(a). This subsection does not apply  
 50 | to ~~any~~ liability related to taxes collected but not remitted to  
 51 | the department.

52 |       Section 2. Section 213.285, Florida Statutes, is amended

53 to read:

54 213.285 Certified audits.—

55 (1) As used in this section, the term:

56 (a) "Certification program" means an instructional  
 57 curriculum, examination, and process for certification,  
 58 recertification, and revocation of certification of certified  
 59 public accountants which is administered by an independent  
 60 provider and ~~which~~ is officially approved by the department to  
 61 ensure that a certified public accountant possesses the  
 62 necessary skills and abilities to successfully perform an  
 63 attestation engagement for tax compliance review in the a  
 64 certified audit program audits project.

65 (b) "Department" means the Department of Revenue.

66 (c) "Participating taxpayer" means any person subject to  
 67 the revenue laws administered by the department who enters into  
 68 an engagement with a qualified practitioner for tax compliance  
 69 review and who is approved by the department under the certified  
 70 audit program audits project.

71 (d) "Qualified practitioner" means a certified public  
 72 accountant who is licensed to practice in this state Florida and  
 73 who has completed the certification program.

74 (2) (a) The department may ~~is authorized to~~ initiate a  
 75 certified audit program for sales and use taxes imposed under  
 76 chapter 212 and local option taxes imposed under ss. 125.0104  
 77 and 125.0108 and administered by the department ~~audits project~~  
 78 to further enhance tax compliance reviews performed by qualified



79 practitioners and to encourage taxpayers to hire qualified  
 80 practitioners at their own expense to review and report on their  
 81 tax compliance. The nature of certified audit work performed by  
 82 qualified practitioners shall be agreed-upon procedures in which  
 83 the department is the specified user of the resulting report.

84 (b) As an incentive for taxpayers to incur the costs of a  
 85 certified audit, the department shall compromise penalties and  
 86 abate interest due on ~~any~~ tax liabilities revealed by the a  
 87 certified audit:

88 1. For a taxpayer who requests to participate in the  
 89 certified audit program before the department has issued the  
 90 taxpayer a written notice of intent to conduct an audit, as  
 91 provided in s. 213.21(8)(a); or

92 2. For a taxpayer who requests to participate in the  
 93 certified audit program after the department has issued the  
 94 taxpayer a written notice of intent to conduct an audit, as  
 95 provided in s. 213.21(8)(b) ~~s. 213.21.~~

96  
 97 The ~~This~~ authority to compromise penalties or abate interest  
 98 under this paragraph does ~~shall~~ not apply to ~~any~~ liability for  
 99 taxes ~~that were~~ collected by the participating taxpayer but ~~that~~  
 100 were not remitted to the department.

101 (3) A ~~Any~~ practitioner responsible for planning,  
 102 directing, or conducting a certified audit or reporting on a  
 103 participating taxpayer's tax compliance with ~~in~~ a certified  
 104 audit must be a qualified practitioner. For the purposes of this

105 subsection, a practitioner is considered responsible for:

106 (a) "Planning" in a certified audit when performing work  
 107 that involves determining the objectives, scope, and methodology  
 108 of the certified audit, ~~when~~ establishing criteria to evaluate  
 109 matters subject to the review as part of the certified audit,  
 110 ~~when~~ gathering information used in planning the certified audit,  
 111 or ~~when~~ coordinating the certified audit with the department.

112 (b) "Directing" in a certified audit when the work  
 113 involves supervising the efforts of others who are involved or  
 114 ~~when~~ reviewing the work to determine whether it is properly  
 115 accomplished and complete.

116 (c) "Conducting" a certified audit when performing tests  
 117 and procedures or field audit work necessary to accomplish the  
 118 audit objectives in accordance with applicable standards.

119 (d) "Reporting" on a participating taxpayer's tax  
 120 compliance in a certified audit when determining report contents  
 121 and substance or reviewing reports for technical content and  
 122 substance before ~~prior to~~ issuance.

123 (4) (a) A ~~The~~ qualified practitioner shall notify the  
 124 department of an engagement to perform a certified audit and  
 125 ~~shall~~ provide the department with the information the department  
 126 deems necessary to identify the taxpayer, to confirm whether  
 127 ~~that~~ the taxpayer is ~~not~~ already under audit by the department,  
 128 and to establish the basic nature of the taxpayer's business and  
 129 the taxpayer's potential exposure to the ~~Florida~~ revenue laws  
 130 administered by the department. Once the department has issued a

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131 written notice of intent to conduct an audit to a taxpayer, and  
132 if the taxpayer requests to participate in the certified audit  
133 program, the qualified practitioner or the taxpayer must notify  
134 the department of the engagement to perform the certified audit  
135 within 30 days after the notice of intent to conduct the audit  
136 was issued to the taxpayer.

137 (b) The information provided in the notification must  
138 ~~shall~~ include the taxpayer's name, federal employer  
139 identification number or social security number, state tax  
140 account number, mailing address, and business location, and the  
141 specific taxes and period proposed to be covered by the  
142 engagement for the certified audit. In addition, the notice must  
143 ~~shall~~ include the name, address, identification number, contact  
144 person, e-mail address, and telephone number of the engaged  
145 firm.

146 (c) ~~(b)~~ Upon the department's receipt of the engagement ~~if~~  
147 ~~the taxpayer has not been issued a written notice of intent to~~  
148 ~~conduct an audit, the taxpayer becomes~~ shall be a participating  
149 taxpayer and the department shall so advise the qualified  
150 practitioner in writing within 10 days after receipt of the  
151 engagement notice. However, the department may exclude a  
152 taxpayer from a certified audit or may limit the taxes or  
153 periods subject to the certified audit if ~~on the basis that~~ the  
154 department has previously conducted an audit, ~~that it~~ is in the  
155 process of conducting an investigation or other examination of  
156 the taxpayer's records, or for just cause determined solely by

157 the department.

158 (d)~~(e)~~ Notice of the qualification of a taxpayer for a  
 159 certified audit tolls ~~shall toll~~ the statute of limitations  
 160 provided in s. 95.091 with respect to the taxpayer for the tax  
 161 and periods covered by the engagement.

162 ~~(e)~~~~(d)~~ ~~Within 30 days after receipt of the notice of~~  
 163 ~~qualification from the department,~~ The qualified practitioner  
 164 shall contact the department and, within the following periods,  
 165 shall submit a proposed audit plan and procedures for review and  
 166 agreement by the department:

167 1. For a taxpayer who requests to participate in the  
 168 certified audit program before the department has issued the  
 169 taxpayer a written notice of intent to conduct an audit, within  
 170 30 days after receipt of the notice of qualification from the  
 171 department; or

172 2. For a taxpayer who requests to participate in the  
 173 certified audit program after the department has issued the  
 174 taxpayer a written notice of intent to conduct an audit, within  
 175 60 days after the department issued the taxpayer the notice of  
 176 intent to conduct the audit.

177  
 178 The department may extend the time for submission of the plan  
 179 and procedures for reasonable cause. The qualified practitioner  
 180 shall initiate action to advise the department that amendment or  
 181 modification of the plan and procedures is necessary if ~~in the~~  
 182 ~~event that~~ the qualified practitioner's inspection reveals that

183 the taxpayer's circumstances or exposure to the revenue laws is  
 184 substantially different than as described in the engagement  
 185 notice.

186 (f) If the taxpayer has been issued a written notice of  
 187 intent to conduct an audit but submits a proposed audit plan and  
 188 procedures in accordance with subparagraph (e)2. within 90 days  
 189 after the notice of intent was issued to the taxpayer, the  
 190 department shall designate the agreed-upon procedures to be  
 191 followed by the qualified practitioner in the certified audit.

192 (5) Upon the department's designation of the agreed-upon  
 193 procedures to be followed by the practitioner in the certified  
 194 audit, the qualified practitioner shall perform the engagement  
 195 and ~~shall~~ timely submit a completed report to the department.  
 196 The report must ~~shall~~ affirm completion of the agreed-upon  
 197 procedures and ~~shall~~ provide ~~any~~ required disclosures. For a  
 198 certified audit completed pursuant to agreed-upon procedures  
 199 designated by the department under paragraph (4)(f), the  
 200 completed report is considered timely only if submitted to the  
 201 department within 285 days after the notice of intent to conduct  
 202 the audit was issued to the taxpayer.

203 (6) The department shall review the report of the  
 204 certified audit and shall accept it when it is determined to be  
 205 complete. Once the report is accepted by the department, the  
 206 department shall issue a notice of proposed assessment  
 207 reflecting the determination of any additional liability  
 208 reflected in the report and shall provide the taxpayer with all

209 the normal payment, protest, and appeal rights with respect to  
 210 the liability. In cases where the report indicates an  
 211 overpayment has been made, the taxpayer shall submit a properly  
 212 executed application for refund to the department. Otherwise,  
 213 the certified audit report is a final and conclusive  
 214 determination with respect to the tax and period covered. An ~~No~~  
 215 additional assessment may not be made by the department for the  
 216 specific taxes and period referenced in the report, except upon  
 217 a showing of fraud or misrepresentation of material facts and  
 218 except for adjustments made under s. 198.16 or s. 220.23. This  
 219 determination does ~~shall~~ not prevent the department from  
 220 collecting liabilities not covered by the report or from  
 221 conducting an audit or investigation and making an assessment  
 222 for additional tax, penalty, or interest for any tax or period  
 223 not covered by the report.

224 (7) To administer ~~implement~~ the certified audit program  
 225 ~~audits project~~, the department may ~~shall have authority to~~ adopt  
 226 rules relating to:

227 (a) The availability of the certification program required  
 228 for participation in the certified audit program ~~project~~;

229 (b) The requirements and basis for establishing just cause  
 230 for approval or rejection of participation by taxpayers;

231 (c) Procedures for assessment, collection, and payment of  
 232 liabilities or refund of overpayments and provisions for  
 233 taxpayers to obtain informal and formal review of certified  
 234 audit results;

235 (d) The nature, frequency, and basis for the department's  
 236 review of certified audits conducted by qualified practitioners,  
 237 including the requirements for documentation, work-paper  
 238 retention and access, and reporting; ~~and~~

239 (e) Requirements for conducting certified audits and for  
 240 review of agreed-upon procedures; and

241 (f) The circumstances under which a qualified practitioner  
 242 who conducts a certified audit for a taxpayer after the  
 243 department has issued the taxpayer a written notice of intent to  
 244 conduct the audit is prohibited from representing the taxpayer  
 245 in informal conference procedures established pursuant to s.  
 246 213.21.

247 Section 3. Paragraph (m) of subsection (8) of section  
 248 213.053, Florida Statutes, is amended to read:

249 213.053 Confidentiality and information sharing.—

250 (8) Notwithstanding any other provision of this section,  
 251 the department may provide:

252 (m) Information contained in returns, reports, accounts,  
 253 or declarations to the Board of Accountancy in connection with a  
 254 disciplinary proceeding conducted pursuant to chapter 473 when  
 255 related to a certified public accountant participating in the  
 256 certified audit program ~~audits project~~, or to the court in  
 257 connection with a civil proceeding brought by the department  
 258 relating to a claim for recovery of taxes due to negligence on  
 259 the part of a certified public accountant participating in the  
 260 certified audit program ~~audits project~~. In a ~~any~~ judicial

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261 proceeding brought by the department, upon motion for protective  
262 order, the court shall limit disclosure of tax information when  
263 necessary to effectuate the purposes of this section.

264  
265 Disclosure of information under this subsection shall be  
266 pursuant to a written agreement between the executive director  
267 and the agency. Such agencies, governmental or nongovernmental,  
268 shall be bound by the same requirements of confidentiality as  
269 the Department of Revenue. Breach of confidentiality is a  
270 misdemeanor of the first degree, punishable as provided by s.  
271 775.082 or s. 775.083.

272 Section 4. This act shall take effect July 1, 2014.