

SB 2126 – Florida Tax Credit Scholarships by Negron (*Identical to [HB 1009](#) by Weatherford*)
The bill transfers and renumbers s. 220.187, F.S. to create s. 1002.395, F.S. and amends several provisions.

Scholarship Program

The bill amends provisions for scholarship eligibility to provide that eligibility for the program (rather than *continued* eligibility) is contingent upon available funds, that a student's household income level does not exceed 230 percent (rather than 200 percent) of the federal poverty level, and that a sibling of a student who is continuing in the program and who resides in the same household as the student is eligible as a first-time tax credit scholarship recipient if the sibling meets one or more of the existing eligibility criteria and the student's and sibling's household income level does not exceed 230 percent of the federal poverty level.

The bill also phases in increases in the scholarship amount by providing that, for the FY 2010-2011 state fiscal year, the scholarship limit will be 60 percent of the unweighted FTE funding amount for that year. For FY 2011-2012 and thereafter, the limit will be determined by multiplying the unweighted FTE funding amount in that year by the percentage used to determine the limit in the prior state fiscal year. However, in each fiscal year that the tax credit cap amount increases, the prior year percentage must be increased by 4 percentage points and the increased percentage must be used to determine the limit for that state fiscal year. If the percentage so calculated reaches 80 percent in a state fiscal year, no further increase in the percentage is allowed and the limit shall be 80 percent of the unweighted FTE funding amount for that state fiscal year and thereafter. The annual limit for a scholarship must be reduced by 25 percent if the student's household income level is equal to or greater than 200 percent, but less than 215 percent, of the federal poverty level and reduced by 50 percent if the student's household income level is equal to or greater than 215 percent, but equal to or less than 230 percent, of the federal poverty level. The bill amends the existing private school eligibility and obligations to provide that the requirement to annually administer, or make provision for students take, one of the nationally norm-referenced test identified by DOE applies to scholarship students in grades 3-10 (rather than all scholarship students). An independent research organization selected by DOE must annually report the year-to-year learning gains of participating students. The report must provide information on a statewide basis and for each participating private school in which there are at least 30 participating students who have scores for tests administered during or after the 2009-2010 school year for 2 consecutive years at that school. The statewide report must include a comparison of scholarship student learning gains to the statewide learning gains of public school students with similar socioeconomic backgrounds. The annual report must not disaggregate data to a level that will identify individual participating schools, except for the private schools that meet the criteria above, and must not disclose the academic level of individual students. The annual report must be published on the DOE website.

The bill grants the Commissioner authority to deny, suspend, or revoke a private school's participation in the scholarship program if the Commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in a manner contrary to the health, safety, or welfare of the public. In making this determination, the commissioner may consider factors that include, but are not limited to, acts or omissions by an owner or operator that led to a previous denial or revocation of participation in an education scholarship program, an owner's or operator's failure to reimburse DOE for scholarship funds improperly received or retained by a school, imposition of a prior criminal or civil administrative sanction related to an owner's or operator's management or operation of an educational institution, or other types of criminal proceedings in which the owner or operator was found guilty of, regardless of adjudication, or entered a plea of *nolo contendere* or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

The bill adds to the obligations of an eligible nonprofit scholarship funding organization (SFO) to require the SFO to participate in the joint development of agreed-upon procedures to be performed by an independent certified public accountant if the SFO provided more than \$250,000 in scholarship funds to an eligible private school during the 2009-2010 state fiscal year. The agreed-upon procedures must uniformly apply to all private schools and must determine, at a minimum, whether the private school has been verified as eligible by DOE, has an adequate accounting system, a system of financial controls, a process for deposit and classification of scholarship funds, and has properly expended scholarship funds for education-related expenses. Participating SFOs must specify guidelines governing the materiality of exceptions that may be found during the accountant's performance of the procedures. The procedures and guidelines must be provided to private schools and the Commissioner by March 15, 2011. The SFO must also participate in a joint review of the agreed-upon procedures and guidelines. If the procedures and guidelines are revised, the revisions must be provided to private schools and the Commissioner by March 15, 2013, and biennially thereafter. An SFO must also seek input from the accrediting associations that are members of the Florida Association of Academic Nonpublic Schools when jointly developing the agreed-upon procedures and guidelines and conducting a review of those procedures and guidelines.

The bill also provides that a participating private school must annually contract with an independent certified public accountant to perform the agreed-upon procedures and produce a report of the results if the private school receives more than \$250,000 from scholarships awarded through this program in the 2010-2011 state fiscal year or any year thereafter. A private school must submit the report by September 15, 2011, and annually thereafter to the SFO that awarded the majority of the school's scholarship funds. The SFO must monitor the private school's compliance with these provisions and, for each private school subject to these provisions, the appropriate SFO must notify the Commissioner by October 30, 2011, and annually thereafter of a private school's failure to submit a required report or any material exceptions set forth in the report.

Tax Credits

The bill amends provisions that cap the total tax credits available in any given year by providing that, in FY 2010-2011 the tax credit cap will be raised from \$118 million to \$140 million and, beginning in FY 2011-2012 and each year thereafter, the annual tax credit cap amount is the tax credit amount in the prior year. However, in any fiscal year when the annual tax credit amount for the prior state fiscal year is equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, the tax credit cap amount will increase by 25 percent. The Department of Revenue (DOR) must publish on its website information identifying the tax credit cap amount when it is increased.

The bill adds to the list of taxes that are eligible for a 100 percent credit against the taxes due to the state if a contribution is made to an eligible non-profit SFO – these credits are currently limited to contributions to an SFO that are made in lieu of corporate income taxes and insurance premium taxes that would, otherwise, be paid into state coffers.

- The bill creates s. 211.0251 to provide that, effective January 1, 2011, a 100 percent credit will be allowed for a contribution to an SFO against any tax due under s. 211.02 relating to the oil production tax or s. 211.025 relating to the gas production tax. However, the credit may not exceed 50 percent of the tax due and DOR must ensure any reduction in tax revenue attributable to this credit is applied only to the General Revenue Fund and not to other entities or trust funds that benefit from the collection of this tax.
- The bill creates s. 212.1831 to provide that, effective January 1, 2011, a 100 percent credit will be allowed for a contribution to an SFO against any tax imposed by the state and due from a direct pay permit holder as a result of the direct pay permit held pursuant to s. 212.183 relating to self accrual of sales tax. DOR must ensure any reduction in tax

revenue attributable to this credit is applied only to the General Revenue Fund and not to other entities or trust funds that benefit from the collection of this tax.

- The bill creates s. 561.1211 to provide that a 100 percent credit is allowed for a contribution to an SFO against any tax due under s. 563.05 relating to excise taxes on malt beverages, 564.06 relating to excise taxes on wine and beverages, and s. 565.12 relating to liquor and beverages. The Division of Alcoholic Beverages and Tobacco and DOR must ensure any reduction in tax revenue attributable to this credit is applied only to the General Revenue Fund and not to other entities or trust funds that benefit from the collection of this tax.

The bill also creates s. 220.1875 to reinstate some of the provisions of s. 220.187 that would be lost as a result of the transfer, renumbering, and amendment of s. 220.187 to be s. 1002.395. In effect, this newly created section restores the existing provisions in s. 220.187 that allow a 100 percent credit against any tax due under Chapter 220 relating to corporate income tax. The bill also makes conforming amendments to s. 624.51055 relating to the existing 100 percent credit against any tax due under s. 624.509(1) relating to insurance premium taxes.

The bill provides that a taxpayer may submit an application to DOR for a tax credit or credits and must specify in the application each tax for which the taxpayer requests a credit and the applicable taxable year (for a credit under s. 220.1875 or s. 624.51055) or the applicable state fiscal year (for a credit under s. 211.0251, s. 212.1831, or s. 561.1211). DOR must approve tax credits on a first come, first-served basis. If an approved tax credit is not fully used within the state fiscal year or taxable year, as applicable, because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 3 years. However, any taxpayer that seeks to carry forward an unused amount of tax credit must submit an application to DOR for approval of the carryforward in the year that the taxpayer intends to use the carryforward. A taxpayer may not convey, assign, or transfer an approved tax credit or a carryforward to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. The bill repeals the provisions that a taxpayer who is eligible to receive the credit provided for in s. 624.51055 is not eligible to receive the credit provided for in s. 220.187.

Definitions

The bill adds to the existing definitions for this program. “Annual tax credit amount” means, for any state fiscal year, the sum of the amount of approved tax credits which are approved for a taxpayer whose taxable year begins on or after January 1 of the calendar year preceding the start of the applicable state fiscal year. “Division” means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation. “Tax credit cap amount” means the maximum annual tax credit amount that DOR may approve in a state fiscal year. “Unweighted FTE funding amount” means the statewide average total funds per unweighted full-time equivalent funding amount that is incorporated by reference in the General Appropriations Act, or any subsequent special appropriations act, for the applicable state fiscal year.