

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Haynes Analyst: Kristina E. North Bill Number: SB 1273

Related Bills: See Prior Analysis Telephone: 845-6978 Amended Date: April 2, 2002

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Contributions to Nonprofit Educational Assistance Organization Credit/Private Funding for Educational Assistance Act

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced January 15, 2002.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO Neutral, if amended.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED January 15, 2002, STILL APPLIES.
- OTHER - See comments below.

SUMMARY

This bill would create a credit for monetary donations to a nonprofit organization that provides scholarships to K-12 students in public or private schools.

SUMMARY OF AMENDMENTS

The April 2, 2002, amendments:

- changed the percentages for distribution of qualified contributions;
- altered the computation of the monetary amount of scholarships that may be awarded to disabled children;
- specified uses for the scholarship money;
- replaced some occurrences of the term "pupil" with the word "student";
- required a nonprofit organization to identify the number of vacancies in eligible nonpublic schools, and limit the amount of accepted qualifying contributions to that amount; and
- mandated that the nonprofit organization must designate all interest earned and accrued from qualifying contributions solely to provide scholarships.

Board Position:

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Legislative Director

Date

Brian Putler

04/09/02

The April 2, 2002, amendments did not resolve the implementation and policy concerns discussed in the department's analysis of the bill as introduced January 15, 2002. As a result of this and the new amendments, the department has identified new and modified existing implementation concerns and identified a new technical concern. For convenience, all new and existing concerns are provided below. Except for these new or modified concerns, and the new position, the remainder of the department's analysis of the bill as introduced still applies.

POSITION

Neutral, if amended.

On March 25, 2002, the Franchise Tax Board voted 2-0 on the January 15, 2002, version to be neutral on this bill if it is amended to resolve the policy and implementation concerns addressed in this analysis.

IMPLEMENTATION CONSIDERATIONS

Department staff is available to assist with amendments to resolve the implementation, technical, and policy concerns discussed in this analysis.

The definition of "nonprofit educational assistance organization" (organization) has several grammatical and structural issues that make this bill confusing to read and difficult to administer. For example:

- ◆ It appears that the intent of the bill is that the organization must distribute at least 90% of its qualified contributions toward educational assistance and no more than 10% of qualified contributions being used for marketing and administrative expenses. However, as written this bill specifies that no more than 10% of the 90% of qualified contributions distributed toward educational assistance may be used for marketing and administrative expenses and it does not address the remaining percentage.
- ◆ To establish eligibility as a nonprofit organization, an organization must distribute 90% of its qualified contributions toward educational assistance. Since the 90% test cannot be satisfied until after qualified contributions have been made, it is unclear if the satisfaction of the 90% distribution test establishes eligibility for the credit for contributions made before the 90% test was satisfied. Additionally, the bill does not specify how the distribution is determined or during what time frame this limitation should be satisfied. Further, it is unclear if the 90% distribution is for *each* taxpayer contribution or *all* taxpayer contributions received during some specified time period. It is unclear if the 90% test must be satisfied annually, or on some other basis. It is unclear what affect an organization's failure to satisfy or maintain the 90% requirement a taxpayer's eligibility for the credit.
- ◆ The bill requires a nonprofit organization to "distribute" its qualified contributions and "allocate" its annual revenue in accordance with certain rules. However, the intent of the term "allocate" can mean "set apart for a particular purpose" or it can also mean allot or distribute. Ambiguous eligibility requirements will complicate implementation and administration of this credit.

- ◆ It appears the intent of the bill is that an organization must demonstrate a pattern of giving priority in awarding scholarships to students with the greatest need. However, as written, this bill could be interpreted to require that *the student* to whom the scholarship is awarded, not the organization, must demonstrate this pattern.
- ◆ The bill requires an organization to identify the number of vacancies in “eligible” nonpublic schools and then limit the amount of “accepted qualifying contributions” to amounts necessary to provide scholarships to the same number of students. These requirements alter the availability the credit to only those contributions that are “accepted” and only to the extent of dollar amounts to be determined by an eligible organization. However, no time frame and no parameters are provided for “accepting” or otherwise “limiting” contributions, or determining vacancies. In the absence of third-party involvement, these limitations will be difficult for the department to implement and administer. Also, the term “eligible” nonpublic school suggests something in addition to nonpublic schools as currently defined, but the term is not further defined.
- ◆ In addition to the above concerns with the definition of “nonprofit educational assistance organization,” the last two subparagraphs of this definition are extremely confusing. Multiple concepts are addressed making the credit particularly problematic to administer. The author may wish to consider revising the language.
- ◆ Within the definition of “nonprofit educational assistance organization,” several credit requirements are specified. The department does not have the expertise or ability to verify many of these requirements, including information pertaining to students, student funding, transportation funding, attendance, and school district funding. In addition, state law restricts the release of information pertaining to student records. School districts do not have a method for tracking individual students. Information is not available to determine if a particular student who receives a scholarship met the state’s compulsory attendance requirement. Further, no requirement is provided for the school, or school district, to provide student or funding information to the organization, the taxpayer, or the department. Verification of these credit requirements would be difficult, if not impossible, for the department.
- ◆ The credit amount is based on qualified contributions made by a taxpayer during a *taxable* year; the organization must meet certain qualifications based on a state *fiscal* year; and scholarships are distributed based on a *school* year. All of these types of years begin and end with different dates. It would be helpful if only one type of measurement period or “year,” preferably “taxable year,” was used to reduce potential confusion and administrative complexity.

Definitions are needed for “educational assistance,” “administrative expenses,” “greatest need,” “state’s share,” “total program,” “funded pupil count,” “allocate,” and “private educational supplies and materials.”

This bill contains language that would specifically grant FTB the authority to prescribe rules or regulations to administer and enforce the provisions of this new credit. However, existing law already provides FTB the authority to prescribe interpretive regulations (Revenue and Taxation Code §19503). Thus, it is unclear if the author intended to provide FTB with a specific legislative delegation of additional regulatory authority to prevent potential misuse of this credit.

TECHNICAL CONSIDERATION

This bill uses the terms “pupil” and “student” interchangeably. These amendments replaced some, but not all, occurrences of the term “pupil” with the term “student.” To the extent the use of the term “pupil” or “student” is not a term-of-art, the author may wish to consider consistent use of a single term.

POLICY CONCERNS

This bill does not contain a sunset date. Sunset dates generally are provided to allow periodic review by the Legislature.

This bill would provide a credit for making monetary donations to nonprofit organizations for scholarships to students equal to 70% of the donation. In combination with the federal deduction for a charitable contribution, some taxpayers could receive a credit for 100% or more of the expense. The department has found that credits in an amount equal to or in excess of the incurred costs have the potential to lead to abuse because the taxpayer is not at risk for the activity that generates the credit.

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