

## **BILL ANALYSIS**

Senate Research Center  
82R8400 JE-D

S.B. 1847  
By: Lucio  
Finance  
5/6/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

This bill will expand the state franchise or insurance premium tax credit so that corporations and insurance companies who have a tax liability to the state are encouraged to fund K-12 scholarship programs for low-income students and those who are in foster or institutional care in counties with a population of 750,000 or more to attend a different public or a private school. A corporation will be able to take a tax credit for the amount of their scholarship donation for up to 50 percent of their state tax liability. To qualify, the corporation would make their donation to a qualified educational assistance organization, as defined in the bill. Twelve similar tax credit programs currently exist in the United States, with Florida and Arizona being the most similar to the proposed Texas program.

As proposed, S.B. 1847 amends current law relating to a franchise or insurance premium tax credit for contributions made to certain educational assistance organizations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Sections 171.608 and 171.610, Tax Code) and SECTION 2 (Sections 230.052 and 230.054, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 171, Tax Code, by adding Subchapter K, as follows:

#### **SUBCHAPTER K. TAX CREDIT FOR CONTRIBUTIONS TO CERTAIN EDUCATIONAL ASSISTANCE ORGANIZATIONS**

Sec. 171.601. DEFINITION. Defines, in this subchapter, "educational assistance organization."

Sec. 171.602. ELIGIBILITY REQUIREMENTS FOR CERTIFICATION OF EDUCATIONAL ASSISTANCE ORGANIZATION. Authorizes an organization to apply to the comptroller of public accounts (comptroller) for certification as a certified educational assistance organization. Provides that, to qualify for certification, the organization:

(1) must:

(A) be exempt from federal tax under Section 501(a) of the Internal Revenue Code by being listed as an exempt organization in Section 501(c)(3) of that code;

(B) be in good standing with the state;

(C) be located in the state;

(D) allocate at least 90 percent of its annual revenue from contributions that are designated for scholarships or educational expense assistance for

eligible students under this subchapter for student scholarships and assistance for educational expenses, including tuition, transportation, textbooks, and other supplies, and for other related educational expense assistance as described by this section;

(E) award scholarships and assistance for qualifying educational expenses to eligible students who demonstrate the greatest financial and academic need;

(F) give the taxable entity a receipt for money contributed to the organization that includes the name of the organization, the name of the taxable entity, the amount of the contribution, and any other information required by the comptroller;

(G) demonstrate, within the previous five-year period, the experience and expertise of awarding scholarships to students in primary and secondary schools;

(H) agree to be independently audited on an annual basis and file the audit with the comptroller; and

(I) disburse contributions received within two academic years of receipt; and

(2) may not:

(A) allocate each academic year more than 25 percent of its scholarship or educational expense assistance funds to students who are not counted toward a public school's average daily attendance during the year in which the student receives the scholarship or educational expense assistance;

(B) award all scholarships under this subchapter to students who attend a particular school or pay educational expenses incurred only at a particular school;

(C) provide to a student a scholarship in an annual amount that exceeds the amounts provided under Section 171.607(a); and

(D) provide to a student educational expense assistance in excess of the amount provided under Section 171.607(b) per academic year, including assistance for:

(i) facility fees;

(ii) textbooks;

(iii) school supplies;

(iv) tutoring;

(v) academic after-school programs;

(vi) school or lab fees;

(vii) before-school or after-school child care; and

(viii) transportation expenses, including the cost to transfer from one public school to another.

Sec. 171.603. NONPUBLIC SCHOOL REQUIREMENTS. Prohibits a certified educational assistance organization from awarding scholarships to or paying educational expenses for eligible students enrolled in nonpublic schools unless the nonpublic school executes a notarized affidavit, with supporting documentation, concerning the school's qualification for scholarships and educational expense assistance for eligible students who receive assistance from a certified educational assistance organization, including evidence of:

- (1) accreditation or of actively being in the process of accreditation by the Texas Education Agency or by a recognized accrediting agency;
- (2) annual administration of a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Section 39.023 (Adoption and Administration of Instruments), Education Code;
- (3) valid certificate of occupancy; and
- (4) policy statements regarding:
  - (A) admissions;
  - (B) curriculum;
  - (C) safety;
  - (D) food service inspection; and
  - (E) student to teacher ratios.

Sec. 171.604. ELIGIBILITY. Provides that a taxable entity is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

Sec. 171.605. ELIGIBILITY OF STUDENTS. Provides that to qualify for assistance from a certified educational assistance organization under this subchapter:

- (1) a student:
  - (A) must:
    - (i) be in foster care;
    - (ii) be in institutional care; or
    - (iii) reside in a county with a population of 750,000 or more and have a household income not greater than 200 percent of the income guidelines necessary to qualify for the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.; and
  - (B) must:
    - (i) have been enrolled in a public school during the preceding school year;
    - (ii) be starting school in the state for the first time;
    - (iii) be the sibling of a student who is eligible; or

(iv) qualify as a student who is not counted toward a public school's average daily attendance during the year in which the student receives the scholarship or educational expense assistance; or

(2) a student must have previously qualified under Subdivision (1).

Sec. 171.606. CREDIT FOR CONTRIBUTIONS. (a) Authorizes a taxable entity to claim a credit under this subchapter only for money contributed to a certified educational assistance organization and designated for scholarships or educational expense assistance for eligible students.

(b) Prohibits a taxable entity from claiming a credit under this subchapter for a contribution made to a certified educational assistance organization if:

(1) the taxable entity requires that the contribution benefit a particular person or school; or

(2) the contribution is designated to provide a scholarship or educational expense assistance for a taxable entity employee or for a spouse or dependent of a taxable entity employee.

Sec. 171.607. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL EXPENSE ASSISTANCE. (a) Prohibits the maximum scholarship amount a certified educational assistance organization may award under this subchapter from exceeding:

(1) \$5,500 for a student in kindergarten through grade 8 for the 2012 state fiscal year, increased by 3.5 percent each subsequent year; and

(2) \$7,500 for a student in grades 9 through 12 for the 2012 state fiscal year, increased by 3.5 percent each subsequent year.

(b) Prohibits the maximum educational expense assistance a certified educational assistance organization may award under this subchapter from exceeding \$500 for a student for the 2012 state fiscal year, increased by five percent each subsequent year.

Sec. 171.608. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a) Provides that, subject to Subsections (b) and (c), the amount of a taxable entity's annual credit is equal to the lesser of the amount of the qualifying contributions made by the taxable entity or 50 percent of the taxable entity's tax liability under this chapter.

(b) Prohibits the total amount of tax credits that may be claimed by all taxable entities under this subchapter and Chapter 230, Insurance Code, from exceeding \$65 million for the 2012 state fiscal year. Provides that for each subsequent state fiscal year, the total amount of tax credits that may be claimed is an amount equal to 105 percent of the total amount of tax credits that may be claimed in the previous state fiscal year.

(c) Requires the comptroller by rule to prescribe procedures by which the comptroller may allocate credits under this subchapter. Requires that the procedures provide that credits are allocated on a "first-come, first-served" basis, based on the date the contribution was initially made.

(d) Authorizes the comptroller to require an entity to notify the comptroller of the amount the entity intends or expects to claim under this subchapter before the beginning of a state fiscal year or at any other time required by the comptroller.

Sec. 171.609. APPLICATION FOR CREDIT. (a) Requires a taxable entity to apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires a taxable entity to use this form in applying for the credit.

Sec. 171.610. RULES; PROCEDURES. (a) Requires the comptroller to adopt rules and procedures to implement, administer, and enforce this subchapter.

(b) Provides that a rule adopted under Subsection (a) is binding on any state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce this subchapter.

Sec. 171.611. ASSIGNMENT PROHIBITED; EXCEPTION. Prohibits a taxable entity from conveying, assigning, or transferring the credit allowed under this subchapter to another taxable entity unless all assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

Sec. 171.612. REVOCATION. (a) Requires the comptroller to revoke a certification provided under Section 171.602 if the comptroller finds that a certified educational assistance organization:

(1) is no longer eligible under Section 171.602; or

(2) intentionally and substantially violates this subchapter.

(b) Provides that revocation of a certification under this section does not affect the validity of a tax credit relating to a contribution made before the date of revocation.

SECTION 2. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 230, as follows:

## CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CERTAIN CONTRIBUTIONS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. Defines, in this chapter, "educational assistance organization" and "state premium tax liability."

[Reserves Sections 230.002-230.050 for expansion.]

### SUBCHAPTER B. CREDIT

Sec. 230.051. CREDIT. (a) Provides that an entity is eligible for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter.

(b) Provides that the amount of the credit is equal to the lesser of the amount of contributions made to a certified educational assistance organization or 50 percent of the entity's state premium tax liability if the contributions and the organizations that received the contributions meet the requirements prescribed by Subchapter K, Chapter 171, Tax Code.

Sec. 230.052. LIMITATION. (a) Prohibits the total credit claimed under this chapter for a taxable year from exceeding the lesser of the amount determined under Subsection (b) or 50 percent of the amount of the entity's state premium tax liability for the taxable year after any other applicable credits, subject to Subsection (c).

(b) Prohibits the total amount of tax credits that may be claimed under this chapter and Subchapter K, Chapter 171, Tax Code, from exceeding \$65 million for the 2012 state fiscal year. Provides that for each subsequent state fiscal year, the total amount of tax credits that is authorized to be claimed is an amount equal to 105 percent of the total amount of tax credits that is authorized to be claimed in the previous state fiscal year.

(c) Requires the comptroller by rule to prescribe procedures by which the comptroller is authorized to allocate credits under this chapter. Requires that the procedures provide that credits are allocated on a "first-come, first-served" basis, based on the date the contribution was initially made.

(d) Authorizes the comptroller to require an entity to notify the comptroller of the amount the entity intends or expects to claim under this chapter before the beginning of a state fiscal year or at any other time required by the comptroller.

Sec. 230.053. APPLICATION FOR CREDIT. (a) Requires an entity to apply for a credit under this chapter on or with the tax return for the taxable year for which the credit is claimed.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires an entity to use this form in applying for the credit.

Sec. 230.054. RULES; PROCEDURES. (a) Requires the comptroller to adopt rules and procedures to implement, administer, and enforce this chapter.

(b) Provides that a rule adopted under Subsection (a) is binding on any state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce this chapter.

Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. Prohibits an entity from conveying, assigning, or transferring the credit allowed under this chapter to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

SECTION 3. (a) Authorizes the constitutionality and other validity under the state or federal constitution of all or any part of Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by this Act, to be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code.

(b) Provides that an appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining that all or any part of Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by this Act, is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) Provides that if the judgment or order is interlocutory, an interlocutory appeal is authorized to be taken from the judgment or order and is an accelerated appeal.

(d) Authorizes a district court in Travis County to grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by this Act.

(e) Provides that there is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or

unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by this Act.

(f) Provides that the direct appeal is an accelerated appeal.

(g) Provides that this section exercises the authority granted by Section 3-b (Appeal from Order Granting or Denying Injunction), Article V (Judicial Department), Texas Constitution.

(h) Provides that the filing of a direct appeal under this section will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction granted in accordance with this section pending final determination by the supreme court, unless the supreme court makes specific findings that the applicant seeking such injunctive relief has pleaded and proved that:

(1) the applicant has a probable right to the relief it seeks on final hearing; and

(2) the applicant will suffer a probable injury that is imminent and irreparable, and that the applicant has no other adequate legal remedy.

(i) Provides that an appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6) (relating to requiring a notice of appeal, in an accelerated appeal, state that the appeal is accelerated), 26.1(b) (relating to requiring in an accelerated appeal in a civil case, that the notice of appeal must be filed within 20 days after the judgment or order is signed), 28.1 (Accelerated Appeal), 28.3 [Deleted], 32.1(g) (relating to requiring an appellant, upon perfecting an appeal in a civil case, to file a docketing statement that includes whether the appeal's submission should be given priority or whether the appeal is an accelerated one), 37.3(a)(1) (relating to notice of late record in civil cases), 38.6(a) (relating to appellant's filing date to file a brief) and (b) (relating to appellee's filing date to file a brief), 40.1(b) (relating to providing that an accelerated appeal has precedence over other civil cases), and 49.4 (Accelerated Appeals).

SECTION 4. Authorizes a credit to be claimed under Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by this Act, only for an expenditure made on or after the effective date of this Act.

SECTION 5. Effective date: January 1, 2012.