



Ohio Legislative Service Commission

Bill Analysis

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Am. S.B. 88

129th General Assembly

(As Reported by S. Ways and Means and Economic Development)

Sens. Jordan, Bacon, Lehner, Obhof, Schaffer, Seitz, Hite

BILL SUMMARY

- Allows a nonrefundable credit against the income tax or certain business taxes for taxpayers who donate to nonprofit educational scholarship organizations that provide scholarships to students attending chartered nonpublic schools.
- Authorizes annual credits of up to \$1,000 for individuals and \$2,500 for joint filers, if the individual or joint filer is not a pass-through entity owner, and up to \$300,000 for other taxpayers.
- Limits the total amount of such credits to \$20 million in fiscal year 2012, and increases the credit ceiling each year by 20% over the previous year's ceiling if the previous year's ceiling is reached.
- Prohibits credits for donations designated for a specific child.
- Requires the schools that the scholarship students attend to affirm that they do not discriminate on the basis of race, color, or national origin.
- Requires an educational scholarship organization to spend at least 90% of the donations it receives on scholarships for eligible students who reside in Ohio, are eligible to attend a public school in the state, and meet financial eligibility requirements.
- Requires the Department of Development to authorize taxpayers' donations for purposes of receiving the credit, certify educational scholarship organizations, and annually evaluate the activities of the organizations through reporting requirements.

CONTENT AND OPERATION

Credit for donations to educational scholarship organizations

The bill authorizes a nonrefundable credit for individuals or businesses that donate to a nonprofit organization that provides scholarships to students attending chartered nonpublic schools. The donor may claim the credit against the income tax, corporation franchise tax, dealers in intangibles tax, public utility excise tax, kilowatt-hour tax, natural gas distribution tax, or insurance premiums taxes on domestic or foreign insurance companies.¹ To qualify for the credit, a donor may not designate a specific child as the beneficiary of the donation.

Credit application

Under the bill, a donor may receive a credit by making an authorized donation to an educational scholarship organization (ESO) certified by the Department of Development. To make an authorized donation, the donor must first submit an application to the Department that includes a statement that the donor will not specify a specific child as the beneficiary of the donation. Upon reviewing the application and determining that the credit may be granted without exceeding the annual credit ceiling, the Department must approve the donation application and notify the donor of the amount of credit authorized.

The bill requires donors to make an authorized donation to an ESO within 60 days after receiving the Department of Development's authorization. If the ESO does not receive the donation by then, it must notify the Department, which must revoke authorization toward the total credit ceiling for the credit. Revoked credits are not counted.²

Credit amount

The bill allows donors to receive a credit equal to the total donation amount, subject to a limit based on the donor's filing status. If an individual donates directly (i.e., not as the owner of a pass-through business that makes a donation), the maximum annual credit is \$1,000. If married individuals file joint income tax returns, the maximum is \$2,500. Businesses, estates, and trusts that make donations may receive a credit of up to \$300,000 per year against the applicable tax. Pass-through entity owners

¹ R.C. 3310.30(B).

² R.C. 3310.30(C).

who are taxed based on each owner's distributive share of the pass-through entity's income may claim a distributive or proportionate share of the credit.³

Credit carry-forward

Donors may claim an approved credit for the taxable or calendar year in which the authorized donation was made. If the amount of a credit exceeds the donor's tax liability in the year it is first claimed, the remaining amount of the credit may be carried forward for up to three years.⁴

Annual total credit ceiling

The bill authorizes the Department of Development to grant up to \$20 million of credits in fiscal year 2012. In every fiscal year after 2012, if the credit ceiling was reached in the preceding year, the credit limit for the current year increases by 20%.⁵

Educational scholarship organizations (ESOs)

To qualify for the credit, a donor must make a donation to a federally tax-exempt nonprofit 501(c)(3) organization that provides qualified scholarships to eligible students attending chartered nonpublic schools in Ohio and that is certified as such by the Department of Development. An organization may seek certification as an ESO by applying to the Department and agreeing to do each of the following:

(1) Spend at least 90% of the donations it receives to fund qualified scholarships for eligible students;

(2) Disburse the total amount of a donation received within three fiscal years of receiving it;

(3) Not limit availability of scholarships to students of only one school;

(4) Award at least 50% of new qualified scholarships to students who did not attend an Ohio chartered nonpublic school in the previous year. "New qualified scholarships" are those given to students who did not receive a scholarship from an ESO in the previous year.

(5) Conduct a criminal background check on each new employee of the ESO.

³ R.C. 3310.30(B)(1) to (3).

⁴ R.C. 3310.30(B).

⁵ R.C. 3310.30(D).

The Department of Development must approve or deny an organization's application for certification within 20 days. The Department also must publish a list of all certified ESOs in the state on its web site and in paper form. The Department may charge a reasonable application and administration fee.⁶

Eligible students

Once certified, an ESO may provide scholarships to eligible students to pay expenses related to attending a chartered nonpublic school. To be eligible for an ESO scholarship, a student must reside in Ohio and be eligible to attend public school in the state. Additionally, the student's household must have an annual income at or below 300% of the income eligibility guidelines for reduced-price school lunches published by the Department of Agriculture's Food and Nutrition Service.⁷ The student also may not simultaneously receive a scholarship from another ESO or through the existing Educational Choice Scholarship Program, Autism Scholarship Program, or Pilot Project Scholarship Program.⁸

Qualified scholarships

To qualify for the tax credits, donations to an ESO must be for scholarships to eligible students for the costs of attending a chartered nonpublic school in the state. The scholarship amounts are limited according to grade level. For students in kindergarten through 8th grade, the limit is \$4,200 or the cost of the school's tuition, whichever is less. Students in grades 9 through 12 may receive up to \$7,000 or the cost of tuition, whichever is less. The bill states that, beginning in fiscal year 2013, these respective scholarship amount limits must be increased by the same percentage by which the General Assembly increases the state aid formula amount from the previous fiscal year.

⁶ R.C. 3310.30(E)(1).

⁷ The "National School Lunch Act," 60 Stat. 230 (1946), 42 U.S.C. 1751 created the National School Lunch Program, which provides free or reduced-price meals to students who meet financial eligibility requirements. The Food and Nutrition Service annually issues those eligibility guidelines, which are based on the federal poverty guidelines. Households with an income at or below 185% of the federal poverty guideline for that household size are eligible for reduced-price lunches, while households with an income at or below 130% of the relevant federal poverty guideline are eligible for free lunches. For 2009-2010, a household of four must have earned less than \$40,793 to qualify for reduced-price lunches. 74 Fed. Reg. 13,410 (2009).

⁸ R.C. 3310.30(A)(5).

The scholarship amount limit would not decrease if the General Assembly decreased the formula amount for any fiscal year.⁹

Scholarship awards

Under the bill, an ESO that awards a scholarship to an eligible student must make the scholarship check payable to the student's parent or guardian and send the check to the school in which the student is enrolled. The parent or guardian then endorses the check payable to the school. Before forwarding the check, the bill requires the ESO to obtain a written statement from the school stating that the school does not discriminate on the basis of race, color, or national origin.¹⁰

Employee background checks

The bill requires every employee hired by an ESO to pass a criminal background check conducted by the Bureau of Criminal Identification and Investigation or one of its vendors. Additionally, an ESO must terminate any employee who is convicted of or pleads guilty to certain criminal offenses involving money and securities, including theft, fraud, money laundering, drug trafficking, or gambling.¹¹

Reporting requirements

Under the bill, each ESO must file an annual report with the Department of Development that includes: the number, total amount, and average amount of scholarships awarded in the previous year; the percentage of new qualified scholarships awarded to students who did not attend a chartered nonpublic school in the previous year; the total amount of authorized donations the ESO received in the previous year; the names of the schools to which donations were delivered; and the results of any criminal background checks conducted for new ESO employees. The Department may not require an ESO to report additional information that it is not required to report in the bill.

In addition, the bill requires that each ESO must provide to the Department an annual financial information report completed by a certified public account.¹²

⁹ R.C. 3310.30(A)(6). Under current law, the "formula amount" is used to compute transfer payments for students attending community schools, STEM schools, other districts through an open enrollment policy, and colleges and universities through the Post-Secondary Enrollment Options Program. The formula amount for fiscal years 2009, 2010, and 2011 was \$5,732. (R.C. 3317.02.)

¹⁰ R.C. 3310.30(F).

¹¹ R.C. 3310.30(H).

¹² R.C. 3310.30(E)(2).

Revocation of certification

The bill allows the Department of Development to revoke an ESO's certification if the ESO does not comply with annual reporting requirements or with any of the conditions specified in the ESO's certification application.¹³

HISTORY

ACTION	DATE
Introduced	02-23-11
Reported, S. Ways & Means & Economic Development	04-14-11

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¹³ R.C. 3310.30(E)(1)(c).