

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 315

(Senator DeGrange, *et al.*)

Budget and Taxation

Building Opportunities for All Students and Teachers (BOAST) in Maryland Tax Credit

This bill creates an income tax credit for 75% of the contributions made by a business or nonprofit organization to an eligible nonprofit organization that either (1) provides scholarships to eligible students or teachers at a nonpublic K-12 school; or (2) provides grants to (a) public schools to support innovative educational programs that are not part of the regular academic program in order to achieve the goals of the Bridge to Excellence in Public Schools Act of 2002; or (b) public school teachers to assist in the cost of certification coursework. The amount of credits that the Maryland State Department of Education (MSDE) can award in each year cannot exceed the amount of money appropriated to a reserve fund established by the bill.

The bill takes effect July 1, 2011, and applies to tax year 2012 and beyond.

Fiscal Summary

State Effect: Potential significant general fund expenditure increase beginning in FY 2012. The amount of the expenditure increase depends on the amount of money, if any, appropriated to the reserve fund in each year. If the program is funded at a similar level to existing programs in other states, general fund expenditures will increase by \$50.0 million annually. Administrative costs increase by \$192,900 in FY 2012 and by \$231,200 in FY 2016. Potential significant decrease in general fund expenditures for State education aid beginning in FY 2013.

Local Effect: Local highway user revenues distributed from the Transportation Trust Fund will decrease as a result of credits claimed against the corporate income tax. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill establishes a Building Opportunities for All Students and Teachers Reserve Fund. The total amount of initial tax credit certificates issued by MSDE in each fiscal year cannot exceed the amount appropriated to the reserve fund in the State budget. The Governor may appropriate money to the reserve fund but the bill does not require or specify an amount. Any amount of money in the fund that is not expended in the fiscal year must be rolled over into the next fiscal year.

MSDE can approve a maximum of 60% of the total amount appropriated to the reserve fund for contributions to educational scholarship organizations (ESOs) and 40% to innovative educational organizations (IEOs). The value of the credit is equal to 75% of the eligible donation, not to exceed \$200,000. Any unused amount of the credit may not be carried to any other tax year. Organizations claiming the credit are required to add back the amount of the credit claimed to Maryland adjusted gross income.

Organizations seeking the tax credit must apply to MSDE for each contribution it intends to make in the tax year; applications are approved on a first-come first-served basis until the total cap for the year is reached. In order for a contribution to qualify for the tax credit, the contribution must be made to an organization approved by MSDE.

An eligible ESO must (1) be a 501(c)(3) charitable organization; (2) provide scholarships to students or teachers at an eligible nonpublic K-12 school; (3) spend at least 85% of its annual contributions that qualify for the tax credit on scholarships; (4) contribute a maximum of 25% of its annual contributions that qualify for the tax credit to teacher scholarships at eligible nonpublic schools; (5) provide scholarships on a priority basis to students who qualify for a free or reduced price school meals program and other students based on financial need; (6) apply to MSDE for approval in each year and submit other required information that verifies eligibility for the program; and (7) provide scholarships to at least four different nonpublic schools annually.

An eligible IEO must (1) be a 501(c)(3) charitable organization; (2) provide grants to public schools to support innovative educational programs that are not part of the regular academic program in order to achieve the goals of the Bridge to Excellence in Public Schools Act of 2002, or to public school teachers to assist in the cost of certification coursework; (3) spend at least 85% of contributions that qualify for the tax credit on grants, services, or programs for public schools and teachers in the year; (4) contribute a maximum of 25% of its annual contributions that qualify for the tax credit to teacher grants; (5) qualify as a State-aided educational institution; and (6) apply to MSDE for approval and submit information that verifies eligibility for the program.

MSDE is required to (1) approve ESO, IEO, and tax credit applications; (2) publish an annual list of eligible ESOs and IEOs; and (3) report specified information about the tax credit to the Governor and the General Assembly by January 10 of each year.

Current Law: No similar tax credit exists, although businesses can typically deduct contributions for scholarships as charitable donations, which typically lowers federal and State income tax liability.

Background: According to the Foundation for School Choice, several states offer similar tax credit programs that grant tax credits for contributions to organizations that provide scholarships for children to attend private school; these states include Arizona, Florida, Georgia, Indiana, Iowa, and Pennsylvania. Other states, including Minnesota and Illinois, offer tax credits or deductions for the eligible costs of attending a private school. A brief discussion on the programs in Pennsylvania and Florida is provided below.

Pennsylvania

In 2001, Pennsylvania enacted an Educational Improvement Tax Credit for businesses that contribute to eligible scholarship organizations at nonpublic schools or educational improvement organizations for “innovative programs” at public schools. The credit is equal to 75% of the contribution made, not to exceed \$300,000. The value of the credit can be increased to 90% of the contribution, if the business agrees to provide the same amount for two consecutive tax years. For contributions to prekindergarten scholarship organizations, a business may receive a tax credit equal to 100% of the first \$10,000 contributed and up to 90% of the remaining amount contributed; for a maximum annual credit of \$150,000.

In fiscal 2011, a total of \$60.0 million in credits were available under the program: \$40.2 million was allocated to scholarship organizations; \$13.4 million to educational improvement organizations; and \$6.4 million to prekindergarten scholarship organizations. All of the credits for contributions to educational improvement organizations and prekindergarten scholarship organizations were awarded on the first day in which credits could be awarded. All program funds were exhausted within a week of the beginning of the application period.

Florida

In 2001, Florida enacted a corporate tax credit for eligible scholarship organizations that grant scholarships to low-income students attending a nonpublic school. A corporation can claim a dollar-for-dollar credit for the amount of contributions made, up to 75% of its state income tax liability. The program was amended in 2006 to provide for greater

fiscal accountability after a series of fiscal improprieties at several scholarship organizations. In fiscal 2011, a total of \$140.0 million in credits can be awarded. Recent legislation expanded the tax credit to other business taxes and provided that the maximum amount of credits that can be awarded could be increased by 25% if at least 90% of the maximum amount of credits were awarded.

During the 2009-2010 school year, a total of \$106 million in scholarships were awarded to a total of 28,927 students enrolled in 1,033 private schools, a little less than double the amount of students receiving scholarships in the 2005-2006 school year. The average scholarship granted was \$3,950.

State Fiscal Effect:

Appropriations to the Reserve Fund

The bill provides that the Governor may appropriate funds to the reserve fund, but does not require or suggest an amount that should be appropriated. If the program proposed by the bill is funded at a similar level as in other states, general fund expenditures will increase by \$50.0 million annually. To the extent that the Governor provides less or no money to the reserve fund in any year, the increase in general fund expenditures will be less. Although the tax credit can be claimed beginning in tax year 2012, appropriations to the reserve fund may be made beginning in fiscal 2012.

State Education Aid Impact

A portion of the credits that can be claimed are for contributions made to an eligible nonprofit organization that provides scholarships to eligible students at a nonpublic K-12 school. To the extent that these scholarships reduce public school enrollment beginning with the 2011-2012 school year, general fund expenditures for State education aid may decrease beginning in fiscal 2013. The actual amount of the decrease, if any, depends on the amount of credits that can be awarded in each fiscal year, the portion of credits that are for scholarships to attend nonpublic schools, and the number of scholarships that result in a public school student attending a nonpublic school.

However, *for illustrative purposes only*, if 1,000 students receive a scholarship under the program and one-half of these are for students that currently attend a public school, general fund expenditures for State education aid will decrease by \$2.8 million in fiscal 2013. Future year expenditures will decrease by 2% annually thereafter.

Administrative Costs

The bill requires MSDE to implement and administer the tax credit program. MSDE indicates it would need two full-time budget specialists and one support staff position. General fund expenditures will increase by an estimated \$152,900 in fiscal 2012, which reflects the bill's July 1, 2011 effective date. This estimate includes salaries, fringe benefits, and ongoing operating expenses.

The Comptroller's Office reports that it would incur a one-time expenditure increase of \$40,000 in fiscal 2012 to add the credit to the personal income tax form. This amount includes data processing changes to the SMART income tax return processing and imaging systems and systems testing.

Positions	3
Salaries and Fringe Benefits	\$131,075
Operating Expenses	<u>21,814</u>
MSDE Expenditures	\$152,889
Comptroller Expenditures	40,000
Total FY 2012 Expenditures	\$192,889

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses. Future year administrative costs at MSDE total \$200,500 in fiscal 2013, \$210,200 in fiscal 2014, \$220,400 in fiscal 2015, and \$231,200 in fiscal 2016.

Additional Information

Prior Introductions: HB 946 of 2010 received an unfavorable report from the House Ways and Means Committee. Its cross file, SB 385, passed the Senate, but no action was taken by the House Ways and Means Committee. HB 1259 of 2009 received a hearing from the House Ways and Means Committee, but no further action was taken. Its cross file, SB 715, received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. SB 373 of 2008 passed the Senate and received a hearing in the House Ways and Means Committee, but no further action was taken. HB 812 of 2008 received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: HB 932 (Delegate Proctor, *et al.*) - Ways and Means.

Information Source(s): Maryland State Department of Education, Comptroller's Office, Foundation for School Choice, Department of Legislative Services

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