



# Ohio Legislative Service Commission

## Bill Analysis

Sam Benham

### H.B. 242

129th General Assembly  
(As Introduced)

**Reps.** Brenner and Patmon, Driehaus, Barnes, Butler, Maag, Newbold, Henne, Yuko, Young, Sears, Wachtmann, McClain, Huffman, Boose, J. Adams, Beck, Uecker, Stebelton, Blessing

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## 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 lower-income 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 2010, 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 meet any applicable anti-discrimination and health and safety requirements.
- 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, to certify educational scholarship organizations,

and to annually evaluate the activities of the organizations through reporting requirements.

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## **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.<sup>1</sup> 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 and recipient ESO of the amount of credit authorized. Applications are to be approved in the order in which they are received by the Department.<sup>2</sup>

#### **Credit amount**

The bill allows donors to receive a tax 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 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.<sup>3</sup>

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<sup>1</sup> R.C. 3310.30(B).

<sup>2</sup> R.C. 3310.30(C).

<sup>3</sup> R.C. 3310.30(B)(1) to (3).

## **Credit carry-forward**

Donors may claim an approved credit for the taxable or calendar year in which the authorized donation was made. Donors who remit tax on a quarterly or other installment schedule must claim the credit in proportionate amounts against payments remaining to be paid for the year in which the donor makes a donation. 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.<sup>4</sup>

## **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%.<sup>5</sup>

## **Educational scholarship organizations (ESOs)**

To qualify for the tax 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) 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.
- (4) Conduct a criminal background check on each new employee of the ESO.

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

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<sup>4</sup> R.C. 3310.30(B).

<sup>5</sup> R.C. 3310.30(D).

all certified ESOs in the state on its web site and in paper form. The Department may charge a reasonable application and administration fee.<sup>6</sup>

### **Eligible students**

To be eligible for an ESO scholarship funded by a tax credit-eligible donation, 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 150% of the income eligibility guidelines for reduced-price school lunches published by the Department of Agriculture's Food and Nutrition Service.<sup>7</sup> 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.<sup>8</sup>

### **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 \$4,250 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 adequacy amount from the previous fiscal year.<sup>9</sup> (Because of changes to the school funding system, the bill's reference to the "adequacy amount" requires updating, as different factors are currently used to determine the allocation of funding to school districts after fiscal year 2011.)<sup>10</sup>

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<sup>6</sup> R.C. 3310.30(E)(1).

<sup>7</sup> 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 2011-2012, a household of four must have earned less than \$41,348 to qualify for reduced-price lunches. 76 Fed. Reg. 3,637 (2011).

<sup>8</sup> R.C. 3310.30(A)(5).

<sup>9</sup> R.C. 3310.30(A)(6).

<sup>10</sup> Under the previous school funding system, enacted in Am. Sub. H.B. 1 of the 128th G.A., an "adequacy amount" is calculated for each school district to determine that district's allocation of school funding.

## **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 the following:

- (1) That the school is not in a state of academic watch or emergency;<sup>11</sup>
- (2) That the school's education buildings have been certified for occupancy by an appropriate building authority;
- (3) That the school complies with state and federal anti-discrimination and health and safety laws.<sup>12</sup>

## **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.<sup>13</sup>

## **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

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Several factors are used in determining a school district's adequacy amount, including the district's student count, instructional services support, additional services support, administrative services support, operations and maintenance support, gifted education and enrichment support, technology resources support, a professional development factor, and an instructional materials factor. In addition, each school district is assigned, in R.C. 3306.051, an educational challenge factor that is partly based on the college attainment rate of the district's population. The adequacy amount was eliminated as a component of the state school funding formula by Am. Sub. H.B. 153 of the 129th G.A.

<sup>11</sup> Although the bill purports to require a chartered nonpublic school to certify that the school is not classified under academic watch or emergency, such classifications are not applicable to chartered nonpublic schools. R.C. 3302.03.

<sup>12</sup> R.C. 3310.30(F).

<sup>13</sup> R.C. 3310.30(H).

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 accountant.<sup>14</sup> The ESO must also hire an accountant to perform a financial audit of the ESO at least once every five years. If a donor, a chartered nonpublic school that has received scholarship money, or the Tax Commissioner has reasonable suspicion that donated funds have been mishandled or misappropriated, the party may file a written request with the Auditor of State to audit the ESO and file evidence supporting the party's suspicion. If the Auditor determines reasonable suspicion exists, the Auditor shall select an accountant to perform the audit, billing the ESO for audit expenses. No more than one audit may be conducted in this manner of any single ESO per year.<sup>15</sup>

### **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.<sup>16</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	05-25-11

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<sup>14</sup> R.C. 3310.30(E)(2).

<sup>15</sup> R.C. 3310.30(I).

<sup>16</sup> R.C. 3310.30(E)(1)(c).