LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION
Revision 1

April 18, 2011

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: **HB1115** by Paxton (Relating to a franchise or insurance premium tax credit for contributions made to certain nonprofit educational assistance organizations.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1115, As Introduced: a positive impact of $6,500,000 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	$0
2013	$6,500,000
2014	$6,500,000
2015	$6,500,000
2016	$6,500,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *General Revenue Fund* 1	Probable Revenue (Loss) from *Foundation School Fund* 193	Probable Revenue (Loss) from *Property Tax Relief Fund* 304	Probable Savings/ (Cost) from *Foundation School Fund - Cost for Loss of PTRF* 193
2012	$0	$0	$0	$0
2013	($12,000,000)	($4,000,000)	($65,000,000)	($65,000,000)
2014	($12,000,000)	($4,000,000)	($65,000,000)	($65,000,000)
2015	($12,000,000)	($4,000,000)	($65,000,000)	($65,000,000)
2016	($12,000,000)	($4,000,000)	($65,000,000)	($65,000,000)

Fiscal Year	Probable Savings/ (Cost) from *Foundation School Fund - Potential Savings for reduced ADA* 193
2012	$0
2013	$87,500,000
2014	$87,500,000
2015	$87,500,000
2016	$87,500,000

Fiscal Analysis

The bill would amend Chapter 171 (franchise tax) of the Tax Code and Subtitle B, Title 3 of the Insurance Code to add franchise tax and insurance premium tax credits for contributions to certain nonprofit educational assistance organizations.

The bill would amend Chapter 171 to add definitions for educational expenses, eligible students, and priority levels for students; set eligibility requirements for a nonprofit educational assistance organization (organization); direct the Comptroller to certify organizations; establish requirements for the award of scholarships by an organization; and require a biannual report from each certified organization to the Texas Education Agency. The definitions and requirements added to Chapter 171 would also apply to the credits the bill would add to the Insurance Code. The bill would set the maximum amount for a scholarship at 75 percent of the statewide average amount a school district could receive per student under the Foundation School Program.

For the franchise tax, the bill would require a minimum contribution of $500 to a certified organization in order to be eligible for a credit. The credit amount would be the lesser of 50 percent of the total contributions made or 75 percent of the taxable entity's franchise liability. The bill would specify a total amount of credit that could be claimed by all taxable entities for a state fiscal year. For fiscal 2012, the amount would be $100 million. For other years, if the total amount of tax credits claimed in that year were equal to at least 90 percent of the previous year's cap amount, the total amount of tax credits that could be claimed in the following year would be increased by 10 percent. The Comptroller would prescribe procedures for allocating credits on a "first-come, first-served" basis based on the date the contributions were initially made. If a taxable entity were eligible for credits that exceeded the limit, the taxable entity could carry the unused credits forward for not more than two consecutive reports. A taxable entity would apply for the credit on the tax report for the period for which the credit is claimed. A taxable entity could not convey, assign, or transfer the credit to another taxable entity. The Comptroller would adopt rules, procedures, and forms to administer the credit provisions.

For insurance premium taxes, the provisions for the credit against an entity's state premium tax liability would follow those for the franchise tax with one exception. For fiscal 2012 the total amount of tax credits that could be claimed by all entities would be $25 million.

This bill would take effect January 1, 2012, with two exceptions. The bill sections in the Tax Code and Insurance Code that would require the Comptroller to adopt rules, procedures, and forms to administer the credits would take effect September 1, 2011.

Methodology

Under the bill's provisions there would be no fiscal impact in 2012 because eligible contributions made on or after January 1, 2012 would be taken on a report due in fiscal 2013. The maximum amount of credit that could be taken in 2013 would be $100 million under the franchise tax and $25 million under the insurance premium taxes. The amount of credit taken in 2013 and later would depend on certification of one or more nonprofit educational assistance organizations by the Comptroller and the effectiveness of the organizations in soliciting contributions from taxable entities.

The estimated fiscal impact assumes that one or more nonprofit educational assistance organizations would be certified by the Comptroller in fiscal 2012. It also assumes that the certified organizations would receive donations from franchise and insurance premium taxpayers based on tax savings available and on the tax benefit of shifting charitable contributions to a certified nonprofit educational assistance organization.

The following analysis is to calculate potential savings to the state in the Foundation School Program (FSP) due to lower public school enrollment, as currently enrolled students could receive scholarships to attend private school. Because credits, estimated by the Comptroller at $81 million per year, may not exceed 50 percent of contributions, it is assumed that the total amount of contributions to certified nonprofit educational assistance organizations would be twice that amount, or $162 million per year. Eligible recipient educational organizations are required by the bill to spend 90 percent of contributions for scholarships to eligible students, which would be $145.8 million per year under the assumptions of this fiscal note.

At a scholarship amount of 75 percent of statewide average FSP funding per student in average daily attendance, this would yield approximately 25,100 scholarships. Because not only public school students would be eligible to receive the scholarships, for the purposes of this fiscal note it is assumed that 50 percent of scholarship recipients, or 12,550 students, would come from public schools. The projected savings to the FSP resulting from these students leaving public school is estimated to be $87.5 million per year. The actual savings may be more or less depending upon the actual number of scholarships available, and the number that go to students currently enrolled in public schools.

Technology

The Comptroller has indicated there would be a one-time technology cost of $1,916,000 in fiscal year 2012 for programming and project management to implement provisions of the bill. They would also require one additional FTE per fiscal year to implement provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, KK, SD, JGM