LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 5, 2011

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

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

IN RE: **SB1847** by Lucio (Relating to a franchise or insurance premium tax credit for contributions made to certain educational assistance organizations.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1847, As Introduced: a negative impact of ($4,550,000) 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	($4,550,000)
2014	($7,063,000)
2015	($9,746,000)
2016	($12,508,000)

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 (Cost) from *Foundation School Fund - Cost for Loss of PTRF* 193
2012	$0	$0	$0	
2013	($11,486,000)	($3,829,000)	($52,935,000)	($52,935,000)
2014	($12,061,000)	($4,020,000)	($55,582,000)	($55,582,000)
2015	($12,664,000)	($4,221,000)	($58,361,000)	($58,361,000)
2016	($13,297,000)	($4,432,000)	($61,279,000)	($61,279,000)

Fiscal Year	Probable Savings from *Foundation School Fund - Potential Savings from reduced ADA* 193
2012	$0
2013	$63,700,000
2014	$64,600,000
2015	$65,500,000
2016	$66,500,000

Fiscal Analysis

The bill would amend Chapter 171 of the Tax Code, regarding the franchise tax, 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 a definition and set eligibility requirements for certification by the Comptroller of a nonprofit educational assistance organization. The bill would set requirements for a nonpublic school to be eligible to enroll students who receive a scholarship from an organization and for students' eligibility to qualify for assistance from an organization. The bill would set the maximum amounts for a scholarship and for educational expense assistance.

For the franchise tax credit, the bill would require money donated to an organization be designated for scholarships or educational expense assistance for eligible students. The tax credit for a contribution to an organization would be the lesser of the amount of the contribution or 50 percent of the taxable entity's tax liability. The bill would specify a total amount of credit that could be claimed by all taxable entities under both the franchise tax and the insurance tax for a state fiscal year. For fiscal 2012, the amount would be $65 million. The maximum would grow by five percent per year for future years. 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 credits claimed exceed the maximum. The Comptroller may require an entity to notify the Comptroller of the amount of credit an entity intends to claim. 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 the insurance premium tax the credit limit is equal to the lesser of the amount of the contribution or 50 percent of the entity's state premium tax liability after other applicable credits.

The bill would provide that a constitutional challenge to any of the bill's provisions would be subject to an accelerated appeal to the supreme court.

This bill would take effect January 1, 2012, and apply only to expenditures made on or after that date.

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 $68.25 million under both the franchise tax and the insurance premium taxes. The limit on the amount of credit available in 2014 and beyond would increase by five percent per year. The fiscal impact of the bill 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 $68.25 million if fiscal year 2013, 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 $136.5 million in fiscal year 2013. Eligible recipient educational organizations are required by the bill to spend 90 percent of contributions for scholarships to eligible students, which would be $122.9

million per year under the assumptions of this fiscal note.

At a scholarship amount of $5,692.50 for a student in kindergarten through grade 8 and $7,762.50 for a student in grade 9 through 12 starting in fiscal year 2013, this would yield approximately 18,267 scholarships in that year. 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 9,133 students, would come from public schools. The projected savings to the FSP resulting from these students leaving public school is estimated to be $63.7 million in fiscal year 2013. 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 indicates there would be a one-time technology cost of $1,916,000.00 in fiscal year 2012 for programming and project management. In addition it would be necessary to hire 1 FTE to serve on the implementation committee to test the programming changes and handle the increased workload, web programming, maintenance and security controls, and taxpayer notification via mail.

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