

BILL ANALYSIS

C.S.H.B. 52
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been asserted that the costs associated with child care place a tremendous burden on families across Texas. There are suggestions that one option for addressing these rising child-care costs is dependent care flexible spending accounts, which allow an employer and employee to contribute money into a tax-free account. C.S.H.B. 52 seeks to incentivize employer contributions to these accounts through the establishment of a pilot program to provide franchise tax credits to qualifying employers who make such contributions for certain employees.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 52 amends the Tax Code to establish a pilot program under which a taxable entity that has an average of not more than 500 employees during the period on which a franchise tax report is based is entitled to a franchise tax credit for contributions made to the dependent care flexible spending account of each of the entity's employees who maintains such an account and receives from the entity an annual salary or wage of not more than \$65,000. A combined group qualifies for such a credit in connection with any member of the group that satisfies the employer requirements. The bill defines "dependent care flexible spending account" as a pretax benefit account used to pay eligible dependent care services as authorized by the federal Internal Revenue Code of 1986, as effective on January 1, 2019.

C.S.H.B. 52 sets the amount of the credit for a report in connection with each applicable employee at the lesser of 50 percent of the contributions made by the taxable entity to the employee's dependent care flexible spending account, excluding any portion of a contribution returned to the entity, or \$2,500. The bill sets the total amount of the credit for each report at the lesser of the total of the credits allowed for a report in connection with each employee for the reporting period for all employees or the amount of franchise tax due after applying all other applicable credits. The bill requires the comptroller of public accounts to deposit to the credit of the property tax relief fund each fiscal year an amount of revenue received from the franchise tax sufficient to offset any decrease in deposits to that fund that results from the implementation of the credit.

C.S.H.B. 52 requires a taxable entity to apply for a credit under the pilot program on or with the tax report for the period for which the credit is claimed and limits the reports for which an entity

may claim a credit to a report originally due on or after January 1, 2020, and before January 1, 2023, in connection with contributions made on or after September 1, 2019, and before January 1, 2022, during the accounting period on which the report is based. The bill requires the comptroller to promulgate a form for the application for such a credit and requires a taxable entity to use that form in applying for the credit. The pilot program and the bill's provisions expire December 31, 2021.

C.S.H.B. 52 requires the comptroller, not later than September 1, 2022, to prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over taxation a report that evaluates the pilot program's effect on employer contributions to employees' dependent care flexible spending accounts for which credits are granted under the pilot program and requires the report to include a recommendation regarding whether the credit allowed under the pilot program should be reestablished. The bill requires a taxable entity that claims such a credit to provide to the comptroller information the comptroller requests to prepare the report.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 52 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the qualifications to receive the franchise tax credit by:

- clarifying that the 500 employee cap applies with respect to the period on which the applicable franchise tax report is based and is based on an average of 500 employees; and
- clarifying that the contributions to the dependent care flexible spending accounts need only be made to employees who maintain such an account.

The substitute includes a provision providing for the qualification of a combined group for the tax credit.

The substitute excludes any portion of a contribution made to a dependent care flexible spending account that is returned to the taxable entity making the contribution from the calculation of the amount of the franchise tax credit.

The substitute includes a requirement for the comptroller to deposit to the credit of the property tax relief fund an amount of revenue received from the franchise tax sufficient to offset any decrease in deposits to that fund that results from the implementation of the franchise tax credit.

The substitute limits the period during which contributions qualify a taxable entity to the franchise tax credit to contributions made before January 1, 2022, and provides that the last report on which the credit made be claimed is one due before January 1, 2023.