

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB740**

**As Engrossed: 3/20/2013**

**Bill Subtitle: TO PROVIDE K-12 SCHOLARSHIPS TO ECONOMICALLY DISADVANTAGED STUDENTS BY PROVIDING A TAX CREDIT FOR CONTRIBUTIONS TO NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS; AND TO DECLARE AN EMERGENCY.**

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### Basic Change :

Senator J. English

The bill would create a tax credit equal to 100% of a contribution to an eligible scholarship funding organization. The scholarship funding organization must meet certain criteria and would fund scholarships to private schools for grades K-12 for children of families making 250% or less than the federal poverty level. The credit may offset 100% of the tax liability and unused credits may be carried forward ten years. A taxpayer may not claim a deduction under the income tax law or premium tax law for the same contribution. A taxpayer may not convey, assign, or transfer the income tax credit to another entity unless all of the assets of the eligible taxpayer are conveyed, assigned, or transferred in the same transaction. An eligible taxpayer may rescind all or part of the taxpayer's allocated income tax credit. The rescinded amounts shall become available for purposes of the cap for the state fiscal year. The rescinded amounts shall become available on a first-come, first-served basis after the date of rescission.

Sets up the following process to approve the contributions and enforce the \$10 million cap:

1. The eligible taxpayer makes a pledge to a funding organization;
2. The funding organization submits the pledge to DFA within 1 day;
3. DFA determines if the pledge is eligible under the cap and notifies the funding organization within 10 days;
4. The funding organization notifies the eligible taxpayer of the DFA's determination within 2 days;
5. The eligible taxpayer pays the pledge in the required time (30 or 60 days);
6. The funding organization notifies DFA within 2 days that the pledge has been paid.

A pledge is not considered part of the calculation of the \$10 million cap until it is paid. DFA is required to track the pledges in the order they are received including the pledges that are received after the cap is reached. DFA is required to notify each funding organization when the cap is reached.

Eligible students must reside in a school district that exceeds 1,000 students. Scholarships are limited to the lesser of \$4,000 per year or the amount of tuition. Scholarship funding organizations must submit quarterly reports to DFA of the number of students receiving scholarships, the eligible private schools at which students are enrolled and other rules deemed necessary by DFA. Eligible private schools must inform the Department of Education of its planned participation in the program. Eligible scholarship funding organizations must have owners and operators undergo background checks every 5 years and must submit audited financial and compliance statements to DFA. The credit would be limited to \$10,000,000 per year, but could increase by 35% if at least 90% of the credit is used in the previous year.

The DFA and DOE shall develop a cooperative agreement to assist in the administration of the credit. The DFA shall adopt rules to administer the credit including rules establishing application forms and procedures governing the allocation and carry forward of the credits. The bill is effective July 1, 2013.

### Revenue Impact :

FY2014 - \$10.0 m loss

FY2015 - \$13.5 m loss

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### **Taxpayer Impact :**

A taxpayer will be allowed to claim a credit for 100% of a contribution to an eligible nonprofit scholarship-funding organization. Taxpayer would have to complete the appropriate forms to claim or carry forward the credit.

### **Resources Required :**

Forms, instructions and computer updates will be required - \$2,000

Two additional DFA Service Reps - \$65,000 per year

### **Time Required :**

Adequate time is provided.

### **Procedural Changes :**

Income tax employees would need to be trained to administer the credits claimed on returns. Forms will need to be developed and instructions will need to be updated. DFA and DOE will need to develop a cooperative agreement.

### **Legal Analysis :**

SB740 as engrossed March 20, 2013 provides a credit against state income tax or insurance premium tax of 100% of contributions made during the year to an eligible nonprofit scholarship funding organization (NSFO). The credit may not exceed 100% of the tax. Additionally, the credit is subject to a reduction by an amount to be determined by calculating the difference in the tax due with and without the credit. Under amendment S1, unused credits may now be carried forward up to 10 years. A taxpayer may not convey, assign, or transfer the credit to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction.

There is a \$10 million cap on income tax credits and carry forward of income tax credits for the fiscal year beginning July 1, 2013. The bill now requires that eligible taxpayers make a pledge for contribution in order for a contribution to be eligible for the tax credit. Specifically: 1) the taxpayer must make a pledge to the NSFO, 2) the NSFO must submit the pledge to DFA within 1 business day of receiving the pledge, 3) DFA must determine whether the cap on credits has already been met at the time of the pledge and must notify the NSFO of its determination within 10 business days of receiving the pledge; 4) the NSFO must notify the eligible taxpayer as to DFA's determination within 2 days of notification of the Department's determination, 5) the taxpayer must remit the contribution within 60 days after receiving the notice from the NSFO if the taxpayer is a business entity, or within 30 days after receiving the notice from the NSFO if the taxpayer is an individual; and 6) the NSFO must notify DFA of the receipt of contributions within 1 business day of receiving the contribution. The bill specifically provides that the pledge shall not be considered for purposes of evaluating whether the credit cap has been met.

DFA is no longer required to provide an annual list of NSFOs or annually verify the eligibility of NSFOs, but is still required to: 1) annually verify the eligibility of expenditures of NSFOs, 2) require quarterly reports from NSFOs regarding the number of students participating in the scholarship program, as well as the eligible private schools at which the students are enrolled and any other information deemed

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necessary by DFA, 3) adopt necessary rules, 4) cooperate with the Department of Education to develop a cooperative agreement to assist in the administration of the required act, and 5) approve transfers of funds to other NSFOs in the event the funds are required to meet scholarship demand at the receiving NSFO. The bill does not identify what is to be done with the information received and retained by DFA.

Page 7 of the bill now includes a requirement that DFA develop a system for tracking the order in which pledges for contributions are received, including those pledges that are received after the cap on credits has been reached, as well as notify NSFOs when the cap has been reached.

Page 17 of the bill still provides that a decision of an NSFO to deny, suspend, or revoke an eligible private school's participation in a scholarship program, or to suspend payment of scholarship funds, is appealable to DFA. Such an appeal would not fall under the provisions of the Tax Procure Act and any such hearings would fall under the requirements of the Administrative Procedure Act at Ark. Code Ann. §25-15-201 et seq.

The bill still contains an emergency clause with an effective date of July 1, 2013.