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BILL ANALYSIS

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Senate Bills 687 and 688 (as introduced 10-14-21)
Sponsor: Senator Lana Theis (S.B. 687)
Senator Tom Barrett (S.B. 688)
Committee: Education and Career Readiness

Date Completed: 10-19-21

CONTENT

Senate Bill 687 would enact the "Student Opportunity Scholarship Act", which would do the following:

- Require the Department of Treasury to establish a Student Opportunity Scholarship (SOS) program.
- Require each scholarship-granting organization (SGO) to create a uniform process to determine the amount of funds to be allocated to each eligible student's SOS account.
- Specify the qualifying education expenses for which SOS funds could be used.
- Prohibit a school from charging an SOS student tuition or for services in an amount specific to SOS students or that was different than what would be charged to non-SOS students.
- Specify that funds allocated to an SOS account and used for qualifying education expenses would not be considered taxable income to the parent or SOS student.
- Allow unused funds to roll over until an SOS account was closed because of misuse of funds, withdrawal from the SOS program, specific increase in household income, or until the student completed high school or reached 19 years of age, or 26 years of age if the student had a disability.
- Require unused funds within a closed SOS account to revert to the granting SOS or, if the granting SGO were not operating, to an operating SGO in good standing.
- Prescribe the manner in which an SGO would have to prioritize funding SOS accounts.
- Prohibit an SGO from accepting a contribution from any person that specified that the contribution would have to be awarded to a particular student, or from funding an SOS for dependents of its board of directors, its staff, or its donors.
- Require a parent to submit an application to establish an SOS account for an eligible student and require the SGO to approve the application if certain requirements were met.
- Prescribe the requirements an organization would have to meet to be certified or receive renewal certification as an SGO.
- Require the Department to publish a list of SGOs on its website on or before January 1 of each year.
- Require each SGO to implement a cost-effective and parent-friendly system for payment of qualifying education expenses from SOS accounts to education service providers.
- Require each SGO to establish a process to approve education service providers.

- Specify that if the Act were challenged in State court as violating the Michigan or United State Constitution, parents of students who would be eligible for the program could intervene in a lawsuit to defend the Act's constitutionality.
- Appropriate to the Department from the General Fund, for the State fiscal year ending September 30, 2022, \$112,500 to hire a 0.75 full-time equated (FTE) position to implement the Act's provisions.

Senate Bill 688 would amend the Income Tax Act to do the following:

- Amend the definition of "taxable income" to include a deduction of funds allocated to an SOS account pursuant to the Student Opportunity Scholarship Program proposed under Senate Bill 687.
- Allow a taxpayer, for tax years beginning on or after January 1, 2022, to claim a tax credit against the taxes imposed under Parts 1 and 2 of the Income Tax Act in an amount up to 100% of the total amount of contributions made by the taxpayer during the tax years to one or more SGOs.
- Require a taxpayer to submit an application and contribution plan to the Department of Treasury for preapproval of the tax credit and prescribe the information that would have to be included in those documents.
- Require the Department to approve or deny a completed application within 10 business days after receiving it and to issue a preapproval letter to the applicant if the application were accepted.
- Specify that the total of all credits reserved under preapproval letters could not exceed \$500.0 million for any State fiscal year.
- Require the tax credits available for the current State fiscal year to be increased by 20% if the total aggregate amount of tax credits approved for the previous fiscal year were equal to or greater than 90% of the total aggregate amount of all tax credits available for the previous year.
- Allow a credit that exceeded the taxpayer's tax liability for the tax year to be carried forward to offset tax liability in subsequent tax years or until used up, whichever occurred first.
- Prohibit a taxpayer from claiming a credit in excess of the amount of proposed contributions reflected on the preapproval letter.
- Require an SGO, within 10 days after receiving contribution, to notify the Department and issue a certificate of contribution to the taxpayer and require the taxpayer to attach a copy of the certificate to his or her annual return.
- Require the Department to include on its website the current amount of the total credit applications pending verification, the amount of the total credits allocated to date, and the remaining credit that was available to taxpayers that made contributions to SGOs.
- Require the Department, by November 1, 2023, and by each November 1 thereafter, to submit a report concerning the administration, operation, and fiscal impact of the SOS program and the corresponding credits to Legislature.
- Appropriate to the Department from the General Fund, for the State fiscal year ending September 30, 2022, \$37,500 to hire a 0.25 FTE position to administer the credits made as described above, and allow the Department to combine the 0.25 FTE and 0.75 FTE position to do so.

Senate Bill 687

Definitions

"Eligible student" would mean a resident of Michigan who is five years of age or older or is enrolled in a public school or nonpublic school [as those terms are defined in the Revised

School Code] in any grades kindergarten to 12 and who satisfies at least one of the following:

- Is a member of a household with an annual household income at the time of initial applying for an SOS from an SGO under the bill of no more than 200% of the amount of household income necessary to meet the income eligibility criteria for the Federal Free or Reduced-Price Lunch program, as determined under the Richard B. Russell National School Lunch Act.
- Is a child with a disability as defined under the Individuals with Disabilities Education Act (IDEA).
- Is a child in foster care as defined in Section 2 of the Foster Care and Adoption Services Act.
- Is a member of the household of an eligible student that currently has an SOS from a scholarship-granting organization (SGO).

"Scholarship-granting organization" would mean a nonprofit organization that complies the requirements of this Act and that receives contributions, allocates funds, and administers SOS accounts. "Student opportunity scholarship account" or "SOS account" would mean the account to which funds are allocated an SGO to the parent of an SOS student in order to pay for the student's qualifying education expenses in accordance with the requirements of the Act. "Parent" would mean a biologically or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an SOS student.

The bill would define "SOS student" as an eligible student who is participating in the Student Opportunity Scholarship Program.

"Person" would mean an individual or a partnership, corporation, limited liability company, association, government entity, or other legal entity.

"Minimum foundation allowance" would mean the minimum foundation allowance established under Section 20 of the State School Aid Act. (Currently, the minimum foundation allowance is \$8,700.)

Student Opportunity Scholarship; Creation & Eligibility

The bill would create the Student Opportunity Scholarship Act or SOS Act. The Department of Treasury would have to establish a Student Opportunity Scholarship Program "to give more flexibility and choices in education to [Michigan residents] and to address disparities in educational options available to students".

Each SGO would have to create a uniform process for determining the amount to be allocated to each eligible student's SOS account with the following limitations:

- For eligible students enrolled at a public school (except for eligible students who were nonresident pupils who were admitted to a school operated by a district that collected tuition for the pupil under Section 1401 of the Revised School Code), the total SOS funds for a single school fiscal year could not exceed \$500 for an eligible student or \$1,100 for an eligible student who was a child with a disability.
- For eligible students not described in the provision above, including those who intended to use the funds in the SOS account to pay tuition, the total SOS funds for a single school fiscal year could not exceed 90% of the minimum foundation allowance for the immediately preceding State fiscal year reduced by the percentage equal to 3/8 of the percentage by which the applicant's household income exceeded the applicable income eligibility criteria for the Federal Free or Reduced-Price Lunch program; a child with a

disability could receive up to 90% of the minimum foundation allowance for the immediately preceding State fiscal year, regardless of household income.

- For eligible students in foster care, the SGO would have to assume that the student's parents had no income or ability to pay for educational services for the purpose of prioritizing the students and determining the amount of assistance provided under the program.

"State fiscal year" would mean a fiscal year that commences October 1 and continues through September 30. "School fiscal year" would mean that term as defined in Section 6 of the State School Aid Act: a fiscal year that commences July 1 and continues through June 30.

Use of SOS Funds

The funds in the SOS account could be used only to pay for the following qualifying education expenses, unless limited by the SGO, that were incurred to educate an SOS student:

- Tuition or fees to attend a kindergarten to grade 12 public school or nonpublic school, or for online learning programs.
- Tutoring services provided by an individual or a tutoring facility.
- Services contracted for and provided by a public school, including individual classes and extracurricular activities and programs.
- Textbooks, curricula, or other instructional materials, including any supplemental materials or associated online instruction required by either a curriculum or an education service provider.
- Computer hardware or other technological devices that were primarily used to help meet an SOS student's educational needs or educational software application.
- School uniforms.
- Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission, and tuition or fees for preparatory courses for these.
- Tuition or fees for summer education programs and specialized after-school education programs, excluding after-school child care.
- Tuition, fees, instructional materials, and examination fees for career and technical education.
- Educational services and therapies, including occupational, behavioral, physical, speech-language, and audiology therapies provided by a license professional.
- Tuition and fees for enrollment in an eligible course under the Postsecondary Enrollment Options Act, enrollment in an eligible course under the Career and Technical Preparation Act, or participation in a career and technical education (CTE) early/middle college or CTE dual enrollment program.
- Fees for transportation paid to a fee-for-service transportation provider, or costs for mileage, for the student's travel to and from an education service provider.
- Fees for school-based athletic activities.

"Career and technical education" would mean organized, systemic instruction designed to prepare an eligible student for useful employment in a recognized occupation.

"Curriculum" would mean a complete course of study for a particular content area or grade level.

"Education service provider" would mean a person or organization that receives payments from an SOS account to provide educational materials and services to SOS students.

A public school or nonpublic school would be prohibited from charging an SOS student tuition or for any services: 1) in an amount that applied only to SOS students, 2) in an amount that was different than the amount the public school or nonpublic school otherwise would have charged the SOS student under State law if he or she were not an SOS student, or 3) solely because he or she was an SOS student.

Scholarship funds could not be refunded, rebated, or shared with a parent or SOS student in any manner. Any refund or rebate for materials or services purchased with SOS funds would have to be credited directly to the student's SOS account. A parent could make payments for the costs of educational material and services that were not covered by the funds in his or her student's account, but personal deposits into an SOS account would not be permitted. As provided in Section 30 of the Income Tax Act (which Senate Bill 687 would add), funds allocated to an SOS account and used for qualifying education expenses would not be considered taxable income to the parent or the SOS student.

An SOS account would remain in force unless the SOS account was closed because of a substantial misuse of funds. Any unused funds would roll over from quarter to quarter and from year to year until one of the followed occurred:

- The parent withdrew the SOS student from the program.
- The SGO determined that the student's family income had increased above 250% of the amount of household income necessary to meet the income eligibility criteria for the Federal Free or Reduced-Price Lunch Program.
- The student received a high school diploma or high school equivalency certificate or, for an SOS student who was a child with a disability, the student received a high school diploma, high school equivalency certificate, or certificate of completion for high school.
- The end of the school fiscal year in which the SOS student reached 19 years of age or, for an SOS student who was a child with a disability, 26 years of age.

"High school equivalency certificate" would mean that term as defined in Section 4 of the State School Aid Act: the GED test developed by the GED Testing Service, the HISET exam developed by Educational Testing Service, or another comparable test approved by the Department of Labor and Economic Opportunity.

If an SOS account were closed, any unused funds would revert to the SGO that granted the SOS and that SGO would have to allocate the unused funds to other SOS accounts. If that SGO were no longer operating, the funds would have to be transferred to another SGO that was operating in good standing with the State.

An SGO first would have to prioritize funding SOS accounts for students who received an SOS in the previous school fiscal year, the siblings of those students, and foster children living in the same household as those students and then first-time applications. An SGO would have to prioritize first-time applications as follows:

- A majority of funds available for other first-time applicants would have to be reserved for students whose household incomes did not exceed that necessary to meet the income eligibility criteria for the Federal Free or Reduced-Price Lunch Program, or for a child who met the definition of a child with a disability under IDEA.
- The unfunded first-time applicants not described in the provision above would have to be selected for funding based on a random lottery until all remaining funds were allocated to SOS accounts.

An SGO could define and limit the educational services that the funds could cover so long as any limitation on qualified educational services was in compliance with Federal and State laws

that affected students with a disability and other Federal and State laws regarding nondiscrimination. An SGO could not accept a contribution from any person if that person designated that the contribution would have to be used to award an SOS to a particular student. "Contribution" would mean a donation in the form of cash or marketable securities that is eligible for the tax credit under Section 279 or 679 of the Income Tax Act (proposed under Senate Bill 687).

A SGO could not fund an SOS for the dependents of its board of directors, its staff, or its donors.

Establishing & Renewing an SOS Account

To establish an SOS account for an eligible student, the parent would have to submit an application to an SGO. The SGO would have to approve an application if all of the following applied:

- An SGO verified that the student on whose behalf the parent was applying was an eligible student.
- Funds were available for the SOS.
- The parent signed a written agreement with the SGO that provided that funds in the SOS account could be used only for the covered qualifying education expenses, that a parent could not establish another SOS account for that student with any other SGO, and requires compliance with the SOS program's rules and requirements.

The SGO would have to renew a student's SOS annually if funds were available, unless the student's family income increased above 250% of the amount of household income necessary to meet the income eligibility criteria for the Federal Free or Reduced-Price Lunch Program. If an eligible student became ineligible for reasons other than fraud or misuse of funds, the SGO could cease funding for the student's SOS provided that the SGO complied with each of the following:

- The SGO immediately suspended payment of additional funds into the student's account; for SOS accounts that had been open for at least one full school fiscal year, the account would have to remain open and active for the parent to make qualifying education expenses to educate the student from remaining funds in the SOS account and when no funds remained in the account, the SGO could close the account.
- If the parent of an eligible student reapplied to the SGO and signed a new written agreement, payments into the student's existing SOS account could resume if the account were still open and active; a new SOS account could be established if the student's account had been closed.
- An SGO would have to adopt policies to provide the least disruptive process possible for SOS students who desired to leave the SOS program.

Establishing an SGO

An organization that sought to become an SGO would have to apply for initial certification or renewal of certification from the Department. An application for initial certification would have to include all of the following:

- A copy of the SGO's incorporation documents and the SGO's 501(c)(3) determination letter issued by the Internal Revenue Service (IRS).

- A description of the methodology the SGO would use to evaluate whether a student was eligible to establish an SOS account and the application processes the SGO would use for parents and eligible students.
- A description of the process the SGO would use to approve education service providers.
- A description of the SGO's procedures for crediting refunds for an education service provider back to a student's SOS account.
- An assurance that the SGO would conduct a background check of all of its employees and maintain records of those background checks for audit purposes.

An application for renewal of certification as an SGO would have to include the following:

- The SGO's completed IRS Form 990, submitted no later than November 30 of the year before the school fiscal year that the SGO intended to fund SOS accounts.
- A copy for the SGO's most recent financial audit, which would have satisfy the conditions prescribed in the proposed Act.
- A list of the SGO's approved education service providers.
- A description of how the SGO had complied with the proposed Act's operational requirements and responsibilities.
- An annual report that included the number of applications the SGO received during the previous school fiscal year (disaggregated by county and grade level), the number of all students (disaggregated by county and grade level) that received SOS funds from the SGO during the previous school fiscal year, and the total number of SOS accounts the SGO maintained.

The annual report would have to include information on the following amounts of funds:

- Funds received by the SGO to fund SOS accounts during the last school year.
- Funds distributed by the SGO into SOS accounts during the last school fiscal year.
- Funds remaining after the distribution into SOS accounts and any obligations to fund SOS accounts in the future.
- Funds spent on administrative expenses and an accounting of those expenses during the last school fiscal year.
- Funds spent on fees to private financial management firms or other organizations to maintain records and process account transactions.

The annual report also would have to satisfy all of the following:

- Comply with uniform financial accounting standards.
- Be attested to by an independent certified public accountant
- Be free of material misstatements or exceptions.

The Department would have to certify an SGO or renew an SGO's certification under the proposed Act if the organization met the requirements described above. The Department also would have to issue initial certifications within 60 days after receiving the application and renew certifications with 30 days after receiving the application. For a renewal application, an SGO would have to provide proof that at least 90% of the total annual contributions the SGO received were allocated to the SOS accounts no later than the last day of the SGO's immediately succeeding calendar year or fiscal year, whichever was applicable, unless the current year's total annual contributions exceeded an amount equal to the average of the total annual contributions received in the immediately preceding three years by more than 15%, in which case the excess amount could be carried forward and spent for SOS accounts in three equal installments over the immediately succeeding three years.

The SGO also would have to prove that it did the following:

- Maintained separate accounts for SOS funds and operating funds and that any interest that accrued from contributions that were eligible for the income tax credit proposed under Senate Bill 688 were allocated by the SGO to fund SOS accounts.
- Used a standard application process for a parent to establish his or her student's eligibility for an SOS and the application was readily available to interested families and could be submitted through various sources, including the internet.
- Included two or more education service providers in its program.

An SGO would have to provide parents with a written explanation of the qualifying education expenses for which SOS funds could be used, parents' responsibilities under the proposed Act, and the duties of the SGO and the role of any private financial management firms or other organizations that the SGO could contract with to process transactions or maintain records for other aspects of the SOS program.

An SGO could transfer funds to another SGO if additional funds were required to meet SOS demands at the receiving SGO or if the transferring SGO determined it could not continue to operate for any reason. If funds were transferred to meet SOS demands, no more than a combined aggregate of 10% of the SGOs total annual contributions received could be retained by the SGOs for administrative expenses. All transferred funds would have to be allocated by the receiving SGO to its account for SOS accounts. All transferred amounts received by an SGO would have to be separately disclosed in the receiving SGO's annual report for certification renewal.

An SGO that received a transfer of funds from an SGO that had determined it would not continue to operate would have to agree to fund the SOS accounts established by the transferring SGO to the extent funds were available. The receiving SGO also would have to prioritize the funding of transferred SOS accounts before funding new applicants.

Contributions to an SGO

An SGO that received a contribution for which a preapproval letter was issued, within 10 business days after receiving the contribution, would have to notify the Department and issue a certificate of contribution to the taxpayer that included the taxpayer's name, the amount of the contribution made, and the date on which the contribution was made. An SGO could accept donations that were not made pursuant to a preapproval letter and that were not eligible for the tax credit under Senate Bill 688 and grants to cover administrative costs, to inform the public about the SOS program, to fund SOS accounts, or to offer assistance outside of the SOS program. Donations that were not eligible for the tax credit would not be subject to the proposed Act's requirements.

Department Responsibilities; Violations

On or before January 1 of each year, the Department would have to publish a list of SGOs on its website. However, if an SGO failed to meet the proposed Act's requirements, the Department could not include the organization on the list of SGOs the following calendar year.

The Department would have to produce and publish on its website an annual report that aggregated the data obtained from the annual reports submitted by SGOs for the renewal of their certifications. The Department's report could not include, for SOS students, any personally identifiable information and, for SGOs, any confidential identifying information of SGOs.

The Department could conduct or contract for an additional audit or appropriate financial review of an SGO upon reasonable belief that the SGO had violated the proposed Act's

requirements. If the Department determined that there had been a violation by an SGO, it would have to send written notice to the SGO. The SGO that received written notice of a violation would have 60 days after receiving it to correct the violation identified by the Department. If the SGO failed or refused to comply after 60 days, the Department could revoke the SGO's certification to participate in the SOS program.

An SGO whose certificate had been revoked could appeal the revocation of its certification pursuant to Section 22 of Public Act 122 of 1941. If the applicant did not file a timely appeal, upon revocation, an SGO would have to comply with the following:

- Continue administering SOS funds that were donated before the date of notice stated on the revocation.
- Not accept any further contributions for the purpose of funding SOS accounts on or after the date stated on the revocation.
- Refund any contributions that were received for the purpose of funding SOS accounts on or after the date of notice stated on the revocation.

(Section 22 of Public Act 22 of 1941 allows a taxpayer aggrieved by an assessment, decision, or order of the Department to appeal the contested portion of the assessment, decision, or order to the Tax Tribunal within 60 days, or to the Court of Claims within 90 days after the assessment, decision, or order.)

SGO Payments & Transactions

Each SGO would have to implement a commercially viable, cost-effective, and parent-friendly system for payment of qualifying education expenses from SOS accounts to education service providers. The SGO could not adopt a system that relied exclusively on requiring parent to be reimbursed for out-of-pocket qualifying education expenses, but would have to provide maximum flexibility to parents by facilitating direct payments to education service providers or requests for reapproval of reimbursements for qualifying education expenses.

An SGO could contract with private financial management firms or other organizations to develop the payment system. An SGO could contract with private financial management firms or other organizations to maintain records and process transactions of the SOS accounts. If funding were available, an SGO would have to continue making payments into an SOS account until any of the following occurred:

- The parent withdrew the SOS student from the program.
- The SGO determined that the SOS student's family income had increased above 250% of the income eligibility criteria for the Federal Free or Reduced-Price Lunch Program.
- The SGO determined that there was a substantial misuse of the funds in the SOS account.
- The SOS student received a high school diploma or high school equivalency certificate, for an SOS student who was a child with a disability, until the student received a high school diploma, high school equivalency certificate, or certificate of completion for high school.
- The end of the school fiscal year in which the SOS student reached 19 years of age, or for a student who was a child with a disability, 26 years of age.

Education Service Providers; Approval Process

Each SGO would have to establish a process for approving education service providers. An SGO could approve education service providers on its own initiative, at the request of parents, or upon request from prospective education service providers.

The proposed Act would not limit the independence or autonomy of an education service provider or to make the actions of a provider the actions of the State.

Nothing in the Act could be construed to expand the regulatory authority of the State, its officers, or any public school or nonpublic school to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the SOS program.

An education service provider that accepted payment from an SOS account would not be an agent of the State. An education service provider could not be required to alter its creed, practices, admissions policy, or curriculum in order to accept payments from an SOS account.

Intervention in Lawsuits; Appropriation

The bill specifies that if any part of the proposed Act were challenged in State court as violating either the State or United States Constitutions, parents of students who would meet the criteria for being eligible students could intervene as of right in a lawsuit to defend the SOS program's constitutionality.

For the State fiscal year ending September 30, 2022, there would be appropriated to the Department from the General Fund the amount of \$112,500 to hire a 0.75 FTE position to implement the Act's provisions. The Department could combine this 0.75 FTE position with the 0.25 FTE position referred under Senate Bill 688 as necessary to fully implement the Act and the credits for contributions proposed under Senate Bill 688.

Senate Bill 688

"Taxable Income"

Under the Income Tax Act, "taxable income" means, for a person other than a corporation, estate, or trust, adjusted gross income as defined in the Internal Revenue Code subject to any applicable adjustments allowed under the Act. Under the bill, a person could deduct, to the extent included in adjusted gross income, funds that were allocated during the tax year to an SOS account pursuant to the SOS program, and used for qualifying education expenses of an SOS student as provided in the Student Opportunity Scholarship Act (as proposed by Senate Bill 687).

Tax Credit; Contributions to SGOs

For tax years beginning on or after January 1, 2022, a taxpayer could claim a credit against the tax imposed by Part 1 or 2 of the Income Tax Act for the tax year in an amount up to 100% of the total amount of contributions made by the taxpayer during the tax year to one or more SGOs (as defined under Senate Bill 687) that were certified by the Department of Treasury and that participated in the SOS program. For a taxpayer who was a member of a flow-through entity that qualified for the credit, that taxpayer could claim the credit against the member's tax liability based on the member's distributive share of business income reported from that flow-through entity or an alternative method approved by the Department. To be eligible for the credit, if the taxpayer claimed a deduction for the same contributions for which a credit was sought on his or her Federal tax return for the same tax year, the deduction could not exceed an amount equal to the total contributions that were made during that tax year less the amount of credit certified and allowed to be claimed for that same tax year.

"Contributions" would mean a donation in the form of cash or marketable securities.

Tax Credit Application Procedures

To be eligible for a tax credit, before making a contribution to an SGO, a person or an SGO that acted on behalf of that person would, in a form and manner prescribed by the Department, submit an application and contribution plan for preapproval of the credit. The application and contribution plan would have to include the total amount of the proposed contributions, the tax year and tax years in which the contributions would be made, whether the proposed contributions would be in the form of cash or marketable securities, and the name of the SGO to which the contributions would be made. "Contribution plan" would mean a plan to make contributions to an SGO for SOS accounts in accordance with the requirements and guidelines established under the SOS program.

Completed applications would have to be considered in the order in which the Department received them and approved or denied within 10 business days after receiving the application. If the Department determined that the application was complete and the contribution plan and the SGO met the requirements proposed under Senate Bill 687, the Department would have to issue a preapproval letter to the applicant that stated that the contribution plan qualified for the credit and the maximum total amount of the credit reserved for which a credit could be claimed for the tax year in which the contribution was made and a certificate of the contribution was issued by the SGO.

If an application were denied, the applicant could file an appeal in a form and manner prescribed by the Department or subsequently reapply for the same contribution plan or for another contribution plane, or both.

Maximum Amount of Credits & Carryforward of Credit

Except as otherwise provided, the total of all credits reserved under preapproval letters for contributions plans approved under the bill could not exceed \$500.0 million for any State fiscal year. However, if in any State fiscal year in which the total aggregate amount of tax credits approved for the previous fiscal year was equal to or greater than 90% of the total aggregate amount of all tax credits available for the previous fiscal year, then the total aggregate amount of all tax credits available for the current State fiscal year would have to increase by 20%. The Department would have to publish on its website the total aggregate amount of all tax credits available when the amount was increased.

A taxpayer could agree to a multiyear contribution plan that could not exceed a total of four tax years.

If the credit allowed under the bill for the tax year and any unused carryforward of the credit allowed by the bill exceeded the taxpayer's tax liability for the tax year, that portion that exceeded the tax liability for the tax year could not be refunded but could be carried forward to offset tax liability in subsequent tax years or until used up, whichever occurred first.

A taxpayer with a preapproval lettered would have to make the preapproved contributions to the SGO no later than the earlier of the 15 businesses days following the date of the Department's preapproval letter or June 30 of the fiscal year of the preapproval letter. If the preapproved contribution were in the form of marketable securities, the SGO would have to monetize the securities within five business days of receipt and notify the Department within 10 business days of the monetization. If the monetized value of the market securities were less than the amount of the proposed contribution reflected on the preapproval letter, the taxpayer would have to supplement the contribution with additional cash to equal the amount of contribution reflected on the letter. The taxpayer could not claim a credit in excess of the amount of proposed contribution reflected on the preapproval letter. Within 10 business days

after receiving a contribution for which a preapproval letter was issued, the SGO would have to notify the Department and issue a certificate of contribution to the taxpayer that included the name of the taxpayer, the amount of the contribution made, and the date on which the contribution was made.

The taxpayer would have to attach a copy of the certificate of contribution to the taxpayer's annual return for which a credit was claimed.

Website Information & Report

The Department would have to include on its website the current amount of the total credit applications pending verification, the amount of the total credits allocated to date, and the remaining credit that was available to taxpayers that made contributions of SGOs. Upon notification that a contribution was made and a certificate of contribution had been issued, the Department would have to update the website to modify the amount of credit pending certification, the amount of credit allocated to taxpayers, and the remaining credit available for allocation, as applicable.

By November 1, 2023, and each November 1 thereafter, the Department would have to submit a report concerning the administration, operation, and fiscal impact of the SOS program and the corresponding credits to the Legislature annually for the immediately preceding State fiscal year. The report would have to include all of the following:

- The number of applications received and the total amount of contributions proposed for which a credit was sought.
- The number of preapproval letters issued, and the total amount of credits authorized in the letters.
- The number of certificate of contributions issued and the total amount of credits claimed.
- The amount of credits authorized in a preapproval letter that were not claimed or that were claimed by carried forward.
- The number of SOS accounts opened, and the total amount awarded by SGOs to SOS students reported by household income range intervals of \$5,000.
- Any other information that could be necessary to assist the Legislature in determining that the purposes of the SOS program and the corresponding tax credits were being fulfilled.

The report also would have to include the number of SOS accounts opened and total amount awarded to SGOs to SOS students reported as follows:

- SOS students who met the definition of a child with a disability as defined under IDEA.
- SOS students who were currently in foster care as defined in Section 2 of the Foster Care and Adoption Act.
- SOS students who were members of a household in which a student had previously received an SOS under the SOS Act.

Appropriation

For the fiscal year that would end September 30, 2022, \$37,500 appropriated to the Department from the General Fund to hire a 0.25 FTE position to implement and administer the credits for contribution made in accordance with the SOS Act. The Department could combine this FTE with the 0.75 FTE funded under Senate Bill 687, as necessary to fully implement the credits.

MCL 206.30 et al. (S.B. 688)

Legislative Analyst: Dana Adams

FISCAL IMPACT

Senate Bill 687

The bill would increase costs in the Department of Treasury to establish the Student Opportunity Scholarship Program. The costs likely would exceed current appropriation and would result from establishing the program, certifying SGOs, monitoring contributions made to an SGO, and providing annual reports on the program. The final costs to the Department would depend on the number of SGOs that sought certification and the level of contributions made to organizations. The bill would provide \$112,500 and a 0.75 FTE position in fiscal year 2021-22 to implement the bill, which would cover some of the initial costs.

To the extent the bill would provide new financial opportunities for low-income, disabled, or foster care students to attend nonpublic schools or home schools (rather than attending public schools), local units of government (schools) would see a decrease in State foundation allowance and categorical funding commensurate with the number of students who, because of the scholarships, unenrolled in public schools and enrolled in nonpublic or home schools. Similarly, the State would see lower costs for fewer pupils enrolled in public schools if the scholarships resulted in public school students' unenrolling and enrolling instead in nonpublic or home schools. However, the extent to which these financial opportunities would be available and used is unknown; therefore, a more precise fiscal impact estimate is indeterminable.

Senate Bill 688

The bill would reduce State revenue by as much as \$500.0 million in the first year it was effective, with the potential for the revenue loss to increase 20% per year in later years. Even excluding the provisions that would allow the maximum amount of credits to increase 20% in future years, carry-forward provisions would make it possible for the revenue reduction in any given year to exceed \$500.0 million (or the respective cap for that tax year).

The revenue reduction would lower General Fund and School Aid Fund revenue. However, the impact on each fund would depend on both 1) the dollar value of credits claimed under the Corporate Income Tax (CIT) versus the Individual Income Tax (IIT), and 2) the degree to which claiming the credit under the IIT would lower annual and quarterly payments versus increasing refund claims. All credits claimed against the CIT would reduce General Fund revenue. Similarly, all refunds claimed under the IIT would reduce General Fund revenue. However, to the extent that a credit lowers gross collections (such as estimated or annual payments), 23.8% of the reduction will lower School Aid Fund revenue, while the remaining impact will reduce General Fund revenue. There is no information upon which to estimate either of these factors.

As an example of the potential splits between funds, assume that, because corporations generally exhibit larger tax liabilities and may have a greater ability to manage the cash flows necessary to take advantage of the credit, 60% of the dollar value of the credits would be claimed under the CIT. Furthermore, assume 80% of reduction in IIT revenue would be borne by the General Fund. Under these assumptions, if \$500.0 million of credits were claimed, General Fund revenue would be reduced by \$460.0 million and School Aid Fund revenue by \$40.0 million. If instead 50% of the impact lowered CIT revenue and 60% of the IIT impact lowered General Fund revenue, the bill would reduce General Fund revenue by \$350.0 million and School Aid Fund revenue by \$150.0 million. As indicated earlier, there is no information upon which to make an estimate of how the bill's impact would be spread across tax types or between payment reductions and larger refunds.

Because the credit would be a 100% credit, the credit would be essentially costless to taxpayers beyond cash-flow constraints and the administrative requirements of the bill. As a result, there would be a high risk that a significant portion of each year's annual limit on credits would be approached, although the nonrefundable nature of the credit could reduce the likelihood of reaching the limit by an unknown magnitude.

If the cap on the maximum value of credits grew 20% per year, the cap would be \$500.0 million in the first year, \$600.0 million in the second year, \$720.0 million in the third year, \$864.0 million in the fourth year, and more than \$1.0 billion by the fifth year.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.