

ASSEMBLY BILL

No. 1161

**Introduced by Assembly Members Olsen and Atkins
(Principal coauthor: Assembly Member Steinorth)**

February 27, 2015

An act to amend Section 41202 of, and to add and repeal Article 7.5 (commencing with Section 8239.5) of Chapter 2 of Part 6 of Division 1 of Title 1 of, the Education Code, and to add and repeal Sections 17053.87 and 23687 of the Revenue and Taxation Code, relating to preschool funding.

LEGISLATIVE COUNSEL'S DIGEST

AB 1161, as introduced, Olsen. Preschool: privately funded pilot program: tax credits.

Existing law, the Child Care and Development Services Act, administered by the State Department of Education, requires the Superintendent of Public Instruction to administer child care and development programs that offer a full range of services for eligible children from infancy to 13 years of age. Existing law requires the Superintendent to administer all California state preschool programs, including, but not limited to, part-day and full-day age and developmentally appropriate programs for 3- and 4-year-old children.

This bill would, until January 1, 2021, authorize the department, as part of a pilot program, to accept monetary contributions made to the California Preschool Investment Fund, which this bill would create, by a person for purposes of preschool education, as provided. The bill would require the money in the fund to be used to, among other things, fund state preschools part of the California state preschool program located in one of the 5 participating counties, as provided. The bill

would require participating counties to report to the department’s Early Education & Support Division regarding the county’s assessment of how the pilot program is performing. The bill would require any moneys remaining in the fund after January 1, 2021, to be transferred to any other state fund identified by the department that provides funding for increased access to preschool programs for low-income children.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill, under both laws, for taxable years beginning on or after January 1, 2016, and before January 1, 2020, would allow a credit equal to 40% of the amount contributed by the taxpayer during the taxable year to the California Preschool Investment Fund, as provided. The bill would limit the aggregate amount of credit allowed under both laws to not exceed \$250,000,000 and would require the State Department of Education to establish a procedure for a person to obtain from the department a receipt indicating specified information, including the amount of monetary contributions made, for purposes of the tax credits allowed under these provisions.

The bill would, until January 1, 2021, require the total annual amount of credits claimed pursuant to these provisions to be treated as though they were proceeds of taxes for purposes of calculating the moneys to be applied by the state for the support of school districts and community college districts pursuant to a specified provision of the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.5 (commencing with Section 8239.5)
2 is added to Chapter 2 of Part 6 of Division 1 of Title 1 of the
3 Education Code, to read:

4
5 Article 7.5. California Preschool Investment Pilot Program

6
7 8239.5. The Legislature finds and declares that by providing
8 an additional source of funding, the state can expand the number
9 of preschool slots and the number of subsidies provided to help
10 reduce the waitlist for parents seeking prekindergarten child care
11 assistance.

1 8239.6. For purposes of this article, the following terms have
2 the following meanings:

- 3 (a) “Department” means the State Department of Education.
- 4 (b) “Fund” means the California Preschool Investment Fund.
- 5 (c) “Person” means an individual, partnership, corporation,
6 limited liability company, association, or other group, however
7 organized.
- 8 (d) “Program” means the five-county investor funded preschool
9 pilot program.

10 8239.7. (a) No later than June 1, 2016, a county may apply to
11 the department for consideration of inclusion in the program. For
12 purposes of this section, a county’s local child care and
13 development planning council, established pursuant to Chapter
14 2.3 (commencing with Section 8499), shall be responsible for
15 making the application authorized pursuant to this section.

16 (b) No later than September 1, 2016, the department shall
17 determine, pursuant to subdivision (c), the five counties that shall
18 be included in the program. When making this determination, the
19 department shall ensure that urban, suburban, and rural counties
20 are represented in the program.

21 (c) The department shall make the determination of which five
22 counties shall be included in the program by giving priority to
23 counties that meet any of the following factors:

- 24 (1) The length of the county’s waitlist of individuals seeking
25 public child care assistance.
- 26 (2) The ability to increase the number of preschool slots
27 available to children in the county.
- 28 (3) Whether the county received federal Race to the Top funds,
29 authorized under the federal American Recovery and Reinvestment
30 Act of 2009 (Public Law 111-5), with favorable consideration
31 going to the counties that received the funds.

32 8239.8. (a) (1) The department may accept monetary
33 contributions made by a person for funding the purposes of this
34 article. The California Preschool Investment Fund is hereby created
35 in the State Treasury to receive any monetary contributions made
36 pursuant to this article.

37 (2) (A) The department shall establish a procedure for a person
38 to make monetary contributions to the fund and for a person to
39 obtain from the department a receipt that indicates the amount of
40 monetary contributions made by that person. The receipt shall also

1 contain, at minimum, the date the monetary contribution was made,
2 the name of the person who made the contribution, the amount of
3 the monetary contribution, and whether the person has or has not
4 been allocated a tax credit pursuant to Section 17053.87 or 23687
5 of the Revenue and Taxation Code.

6 (B) Subject to the annual cap as provided in subdivision (f) of
7 Sections 17053.87 and 23687 of the Revenue and Taxation Code,
8 the department shall allocate credits to contributors on a
9 first-come-first-served basis.

10 (C) The department shall notify the Franchise Tax Board of the
11 credits allocated on at least a monthly basis, and the Franchise Tax
12 Board and the department shall place this information on their
13 respective Internet Web sites together with information as to the
14 amount of remaining credits, at least every calendar quarter,
15 including information as to whether the cap described in
16 subdivision (f) of Sections 17053.87 and 23687 of the Revenue
17 and Taxation Code may be reached by the end of the calendar
18 quarter.

19 (3) Moneys in the fund shall be allocated as follows:

20 (A) First, moneys in the fund shall be transferred to the General
21 Fund in an amount equal to the aggregate amount of certified
22 credits allowed pursuant to Sections 17053.87 and 23687 of the
23 Revenue and Taxation Code for the taxable year.

24 (B) Second, upon appropriation:

25 (i) To the Franchise Tax Board and the department for
26 reimbursement of all administrative costs incurred by those
27 agencies in connection with their duties under this article.

28 (ii) To the department for the purposes of this article, as provided
29 in subdivision (b).

30 (b) The moneys appropriated to the department pursuant to
31 clause (ii) of subparagraph (B) of paragraph (3) of subdivision (a)
32 shall be used to fund the California state preschool programs,
33 pursuant to Article 7 (commencing with 8235). The moneys shall
34 only be used to support state preschools located in one of the five
35 counties participating in the program.

36 8239.9. A county selected to participate in the program pursuant
37 to Section 8239.7 shall annually report to the department's Early
38 Education & Support Division. The report shall contain the
39 county's assessment of how the program is performing.

1 8239.10. (a) This article shall remain in effect only until
2 January 1, 2021, and as of that date is repealed, unless a later
3 enacted statute, that is enacted before January 1, 2021, deletes or
4 extends that date.

5 (b) Any moneys remaining in the fund as of January 1, 2021,
6 shall be transferred to any other state fund identified by the
7 department that provides funding for increased access to preschool
8 programs for low-income children.

9 SEC. 2. Section 41202 of the Education Code is amended to
10 read:

11 41202. The words and phrases set forth in subdivision (b) of
12 Section 8 of Article XVI of the Constitution of the State of
13 California shall have the following meanings:

14 (a) “Moneys to be applied by the State,” as used in subdivision
15 (b) of Section 8 of Article XVI of the California Constitution,
16 means appropriations from the General Fund that are made for
17 allocation to school districts, as defined, or community college
18 districts. An appropriation that is withheld, impounded, or made
19 without provisions for its allocation to school districts or
20 community college ~~districts~~, *districts* shall not be considered to
21 be “moneys to be applied by the State.”

22 (b) (1) “General Fund revenues which may be appropriated
23 pursuant to Article XIII B,” as used in paragraph (1) of subdivision
24 (b) of Section 8 of Article ~~XVI~~, *XVI of the California Constitution*,
25 means General Fund revenues that are the proceeds of taxes as
26 defined by subdivision (c) of Section 8 of Article XIII B of the
27 California Constitution, including, for the 1986–87 fiscal year
28 only, any revenues that are determined to be in excess of the
29 appropriations limit established pursuant to Article XIII B *of the*
30 *California Constitution* for the fiscal year in which they are
31 received. General Fund revenues for a fiscal year to which
32 paragraph (1) of subdivision (b) is being applied shall include, in
33 that computation, only General Fund revenues for that fiscal year
34 that are the proceeds of taxes, as defined in subdivision (c) of
35 Section 8 of Article XIII B of the California Constitution, and shall
36 not include prior fiscal year revenues. Commencing with the
37 1995–96 fiscal year, and each fiscal year thereafter, “General Fund
38 revenues that are the proceeds of taxes,” as defined in subdivision
39 (c) of Section 8 of Article XIII B of the California Constitution,
40 includes any portion of the proceeds of taxes received from the

1 state sales tax that are transferred to the counties pursuant to, and
2 only if, legislation is enacted during the 1995–96 fiscal year the
3 purpose of which is to realign children’s programs. The amount
4 of the proceeds of taxes shall be computed for any fiscal year in
5 a manner consistent with the manner in which the amount of the
6 proceeds of taxes was computed by the Department of Finance for
7 purposes of the Governor’s Budget for the Budget Act of 1986.

8 (2) (A) *For purposes of calculating the moneys to be applied*
9 *by the state, as used in subdivision (b) of Section 8 of Article XVI*
10 *of the California Constitution, the “General Fund revenues that*
11 *are the proceeds of taxes,” as defined in subdivision (c) of Section*
12 *8 of Article XIII B of the California Constitution, shall include the*
13 *total annual amount of credit claimed pursuant to Sections*
14 *17053.87 and 23687 of the Revenue and Taxation Code as though*
15 *they were proceeds of taxes.*

16 (B) *This paragraph shall become inoperative on January 1,*
17 *2021.*

18 (c) “General Fund revenues appropriated for school districts,”
19 as used in paragraph (1) of subdivision (b) of Section 8 of Article
20 XVI of the California Constitution, means the sum of
21 appropriations made that are for allocation to school districts, as
22 defined in Section 41302.5, regardless of whether those
23 appropriations were made from the General Fund to the
24 Superintendent, to the Controller, or to any other fund or state
25 agency for the purpose of allocation to school districts. The full
26 amount of any appropriation shall be included in the calculation
27 of the percentage required by paragraph (1) of subdivision (b) of
28 ~~Article XVI~~, *XVI of the California Constitution*, without regard to
29 any unexpended balance of any appropriation. Any reappropriation
30 of funds appropriated in any prior year shall not be included in the
31 sum of appropriations.

32 (d) “General Fund revenues appropriated for community college
33 districts,” as used in paragraph (1) of subdivision (b) of Section 8
34 of Article XVI of the California Constitution, means the sum of
35 appropriations made that are for allocation to community college
36 districts, regardless of whether those appropriations were made
37 from the General Fund to the Controller, to the Chancellor of the
38 California Community Colleges, or to any other fund or state
39 agency for the purpose of allocation to community college districts.
40 The full amount of any appropriation shall be included in the

1 calculation of the percentage required by paragraph (1) of
2 subdivision (b) of Article ~~XVI~~, *XVI of the California Constitution*,
3 without regard to any unexpended balance of any appropriation.
4 Any reappropriation of funds appropriated in any prior year shall
5 not be included in the sum of appropriations.

6 (e) “Total allocations to school districts and community college
7 districts from General Fund proceeds of taxes appropriated pursuant
8 to Article XIII B,” as used in paragraph (2) or (3) of subdivision
9 (b) of Section 8 of Article XVI of the California Constitution,
10 means the sum of appropriations made that are for allocation to
11 school districts, as defined in Section 41302.5, and community
12 college districts, regardless of whether those appropriations were
13 made from the General Fund to the Controller, to the
14 Superintendent, to the Chancellor of the California Community
15 Colleges, or to any other fund or state agency for the purpose of
16 allocation to school districts and community college districts. The
17 full amount of any appropriation shall be included in the calculation
18 of the percentage required by paragraph (2) or (3) of subdivision
19 (b) of Section 8 of Article ~~XVI~~, *XVI of the California Constitution*,
20 without regard to any unexpended balance of any appropriation.
21 Any reappropriation of funds appropriated in any prior year shall
22 not be included in the sum of appropriations.

23 (f) “General Fund revenues appropriated for school districts
24 and community college districts, respectively” and “moneys to be
25 applied by the state for the support of school districts and
26 community college districts,” as used in Section 8 of Article XVI
27 of the California Constitution, shall include funds appropriated for
28 part-day California state preschool programs under Article 7
29 (commencing with Section 8235) of Chapter 2 of Part 6 of Division
30 1 of Title 1, and the After School Education and Safety Program
31 established pursuant to Article 22.5 (commencing with Section
32 8482) of Chapter 2 of Part 6 of Division 1 of Title 1, and shall not
33 include any of the following:

34 (1) Any appropriation that is not made for allocation to a school
35 district, as defined in Section 41302.5, or to a community college
36 district, regardless of whether the appropriation is made for any
37 purpose that may be considered to be for the benefit to a school
38 district, as defined in Section 41302.5, or a community college
39 district. This paragraph shall not be construed to exclude any
40 funding appropriated for part-day California state preschool

1 programs under Article 7 (commencing with Section 8235) of
 2 Chapter 2 of Part 6 of Division 1 of Title 1 or the After School
 3 Education and Safety Program established pursuant to Article 22.5
 4 (commencing with Section 8482) of Chapter 2 of Part 6 of Division
 5 1 of Title 1.

6 (2) Any appropriation made to the Teachers’ Retirement Fund
 7 or to the Public Employees’ Retirement Fund except those
 8 appropriations for reimbursable state mandates imposed on or
 9 before January 1, 1988.

10 (3) Any appropriation made to service any public debt approved
 11 by the voters of this state.

12 (4) With the exception of the programs identified in paragraph
 13 (1), commencing with the 2011–12 fiscal year, any funds
 14 appropriated for the Child Care and Development Services Act,
 15 pursuant to Chapter 2 (commencing with Section 8200) of Part 6
 16 of Division 1 of Title 1.

17 (g) “Allocated local proceeds of taxes,” as used in paragraph
 18 (2) or (3) of subdivision (b) of Section 8 of Article XVI of the
 19 California Constitution, means, for school districts as defined,
 20 those local revenues, except revenues identified pursuant to
 21 paragraph (5) of subdivision ~~(h)~~ (j) of Section ~~42238~~, 42238.02,
 22 that are used to offset state aid for school districts in calculations
 23 performed pursuant to Sections ~~2558~~, ~~42238~~, 2575, 42238.02, and
 24 Chapter 7.2 (commencing with Section 56836) of Part 30.

25 (h) “Allocated local proceeds of taxes,” as used in paragraph
 26 (2) or (3) of subdivision (b) of Section 8 of Article XVI of the
 27 California Constitution, means, for community college districts,
 28 those local revenues that are used to offset state aid for community
 29 college ~~districts in calculations performed pursuant to Section~~
 30 ~~84700~~. *districts*. In no event shall the revenues or receipts derived
 31 from student fees be considered “allocated local proceeds of taxes.”

32 (i) For purposes of calculating the 4-percent entitlement pursuant
 33 to subdivision (a) of Section 8.5 of Article XVI of the California
 34 Constitution, “the total amount required pursuant to Section 8(b)”
 35 shall mean the General Fund aid required for schools pursuant to
 36 subdivision (b) of Section 8 of Article XVI of the California
 37 Constitution, and shall not include allocated local proceeds of
 38 taxes.

39 ~~(j) This section shall become inoperative on December 15, 2012,~~
 40 ~~and, as of January 1, 2013, is repealed, only if the Schools and~~

1 ~~Local Public Safety Protection Act of 2012 (Attorney General~~
2 ~~reference number 12-0009) is not approved by the voters at the~~
3 ~~November 6, 2012, statewide general election, or if the provisions~~
4 ~~of that act that modify personal income tax rates do not become~~
5 ~~operative due to a conflict with another initiative measure that is~~
6 ~~approved at the same election and receives a greater number of~~
7 ~~affirmative votes.~~

8 SEC. 3. Section 17053.87 is added to the Revenue and Taxation
9 Code, to read:

10 17053.87. (a) For taxable years beginning on or after January
11 1, 2016, and before January 1, 2020, there shall be allowed as a
12 credit against the “net tax,” as defined in Section 17039, an amount
13 equal to 40 percent of the amount contributed by the taxpayer
14 during the taxable year to the California Preschool Investment
15 Fund, created by Section 8239.8 of the Education Code.

16 (b) A credit shall only be allowed if the taxpayer has received
17 a receipt from the State Department of Education pursuant to
18 Section 8239.8 of the Education Code that indicates that the
19 taxpayer has made a contribution to the California Preschool
20 Investment Fund and that a credit would be allowed under this
21 section. The taxpayer shall provide the receipt upon request to the
22 Franchise Tax Board.

23 (c) (1) In the case where the credit allowed by this section
24 exceeds the “net tax,” the excess may be carried over to reduce
25 the “net tax” in the following year, and succeeding four years if
26 necessary, until the credit is exhausted.

27 (2) A deduction otherwise allowed under this part for any
28 amount contributed by the taxpayer upon which the credit is based
29 shall be reduced by the amount of the credit allowed in subdivision
30 (a).

31 (d) Credit under this section shall be allowed only for credits
32 claimed on a timely filed original return of the taxpayer.

33 (e) (1) The Franchise Tax Board may prescribe rules, guidelines,
34 or procedures necessary or appropriate to carry out the purposes
35 of this section.

36 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
37 Division 3 of Title 2 of the Government Code does not apply to
38 any standard, criterion, procedure, determination, rule, notice, or
39 guideline established or issued by the Franchise Tax Board
40 pursuant to this section.

1 (f) The aggregate amount of credit that may be allowed pursuant
2 to this section and Section 23687 shall not exceed two hundred
3 fifty million dollars (\$250,000,000) for each calendar year.

4 (g) This section is repealed on December 1, 2020.

5 SEC. 4. Section 23687 is added to the Revenue and Taxation
6 Code, to read:

7 23687. (a) For taxable years beginning on or after January 1,
8 2016, and before January 1, 2020, there shall be allowed as a credit
9 against the “tax,” as defined in Section 23036, an amount equal
10 to 40 percent of the amount contributed by the taxpayer during the
11 taxable year to the California Preschool Investment Fund, created
12 by Section 8239.8 of the Education Code.

13 (b) A credit shall only be allowed if the taxpayer has received
14 a receipt from the State Department of Education pursuant to
15 Section 8239.8 of the Education Code that indicates that the
16 taxpayer has made a contribution to the California Preschool
17 Investment Fund and that a credit would be allowed under this
18 section. The taxpayer shall provide the receipt upon request to the
19 Franchise Tax Board.

20 (c) (1) In the case where the credit allowed by this section
21 exceeds the “tax,” the excess may be carried over to reduce the
22 “tax” in the following year, and succeeding four years if necessary,
23 until the credit is exhausted.

24 (2) A deduction otherwise allowed under this part for any
25 amount contributed by the taxpayer upon which the credit is based
26 shall be reduced by the amount of the credit allowed in subdivision
27 (a).

28 (d) Credit under this section shall be allowed only for credits
29 claimed on a timely filed original return of the taxpayer.

30 (e) (1) The Franchise Tax Board may prescribe rules, guidelines,
31 or procedures necessary or appropriate to carry out the purposes
32 of this section.

33 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
34 Division 3 of Title 2 of the Government Code does not apply to
35 any standard, criterion, procedure, determination, rule, notice, or
36 guideline established or issued by the Franchise Tax Board
37 pursuant to this section.

38 (f) The aggregate amount of credit that may be allowed pursuant
39 to this section and Section 17053.87 shall not exceed two hundred
40 fifty million dollars (\$250,000,000) for each calendar year.

- 1 (g) This section is repealed on December 1, 2020.

O