

AMENDED IN SENATE JULY 2, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1161**

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

*(Principal coauthor: Senator Hertzberg)*

***(Coauthors: Assembly Members Chávez, Dodd, Gipson, Holden, and  
Waldron)***

*(Coauthor: Senator Huff)*

February 27, 2015

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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 amended, 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~~, *counties participating in the pilot program*, 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

*This* 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:

1 Article 7.5. California Preschool Investment Pilot Program

2  
3 8239.5. The Legislature finds and declares that by providing  
4 an additional source of funding, the state can expand the number  
5 of preschool slots and the number of subsidies provided to help  
6 reduce the waitlist for parents seeking prekindergarten child care  
7 assistance.

8 8239.6. For purposes of this article, the following terms have  
9 the following meanings:

- 10 (a) "Department" means the State Department of Education.  
11 (b) "Fund" means the California Preschool Investment Fund.  
12 (c) "Person" means an individual, partnership, corporation,  
13 limited liability company, association, or other group, however  
14 organized.  
15 (d) "Program" means the five-county investor funded preschool  
16 pilot program.

17 8239.7. (a) ~~No later than~~ *On or before* June 1, 2016, a county  
18 may apply to the department for consideration of inclusion in the  
19 program. For purposes of this section, a county's local child care  
20 and development planning council, established pursuant to Chapter  
21 2.3 (commencing with Section 8499), shall be responsible for  
22 making the application authorized pursuant to this section.

23 (b) ~~No later than~~ *On or before* September 1, 2016, the  
24 department shall determine, pursuant to subdivision (c), the five  
25 counties that shall be included in the program. When making this  
26 determination, the department shall ensure that urban, suburban,  
27 and rural counties are represented in the program.

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

- 31 (1) The length of the county's waitlist of individuals seeking  
32 public child care assistance.  
33 (2) The ability to increase the number of preschool slots  
34 available to children in the county.  
35 (3) Whether the county received federal Race to the Top funds,  
36 authorized under the federal American Recovery and Reinvestment  
37 Act of 2009 (Public Law 111-5), with favorable consideration  
38 going to the counties that received the funds.

39 8239.8. (a) (1) The department may accept monetary  
40 contributions made by a person for funding the purposes of this

1 article. The California Preschool Investment Fund is hereby created  
2 in the State Treasury to receive any monetary contributions made  
3 pursuant to this article.

4 (2) (A) The department shall establish a procedure for a person  
5 to make monetary contributions to the fund and for a person to  
6 obtain from the department a receipt that indicates the amount of  
7 monetary contributions made by that person. The receipt shall also  
8 contain, at minimum, the date the monetary contribution was made,  
9 the name of the person who made the contribution, the amount of  
10 the monetary contribution, and whether the person has or has not  
11 been allocated a tax credit pursuant to Section 17053.87 or 23687  
12 of the Revenue and Taxation Code.

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

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

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

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

31 (B) Second, upon appropriation:

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

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

37 (b) The moneys appropriated to the department pursuant to  
38 clause (ii) of subparagraph (B) of paragraph (3) of subdivision (a)  
39 shall be used to fund the California state preschool programs,  
40 pursuant to Article 7 (commencing with 8235). The moneys shall

1 only be used to support state preschools located in one of the five  
2 counties participating in the program.

3 8239.9. A county selected to participate in the program pursuant  
4 to Section 8239.7 shall annually report to the department’s Early  
5 Education & Support Division. The report shall contain the  
6 county’s assessment of how the program is performing.

7 8239.10. (a) This article shall remain in effect only until  
8 January 1, 2021, and as of that date is repealed, unless a later  
9 enacted statute, that is enacted before January 1, 2021, deletes or  
10 extends that date.

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

15 SEC. 2. Section 41202 of the Education Code is amended to  
16 read:

17 41202. The words and phrases set forth in subdivision (b) of  
18 Section 8 of Article XVI of the Constitution of the State of  
19 California shall have the following meanings:

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

28 (b) (1) “General Fund revenues which may be appropriated  
29 pursuant to Article XIII B,” as used in paragraph (1) of subdivision  
30 (b) of Section 8 of Article XVI of the California Constitution,  
31 means General Fund revenues that are the proceeds of taxes as  
32 defined by subdivision (c) of Section 8 of Article XIII B of the  
33 California Constitution, including, for the 1986–87 fiscal year  
34 only, any revenues that are determined to be in excess of the  
35 appropriations limit established pursuant to Article XIII B of the  
36 California Constitution for the fiscal year in which they are  
37 received. General Fund revenues for a fiscal year to which  
38 paragraph (1) of subdivision (b) is being applied shall include, in  
39 that computation, only General Fund revenues for that fiscal year  
40 that are the proceeds of taxes, as defined in subdivision (c) of

1 Section 8 of Article XIII B of the California Constitution, and shall  
2 not include prior fiscal year revenues. Commencing with the  
3 1995–96 fiscal year, and each fiscal year thereafter, “General Fund  
4 revenues that are the proceeds of taxes,” as defined in subdivision  
5 (c) of Section 8 of Article XIII B of the California Constitution,  
6 includes any portion of the proceeds of taxes received from the  
7 state sales tax that are transferred to the counties pursuant to, and  
8 only if, legislation is enacted during the 1995–96 fiscal year the  
9 purpose of which is to realign children’s programs. The amount  
10 of the proceeds of taxes shall be computed for any fiscal year in  
11 a manner consistent with the manner in which the amount of the  
12 proceeds of taxes was computed by the Department of Finance for  
13 purposes of the Governor’s Budget for the Budget Act of 1986.

14 (2) (A) For purposes of calculating the moneys to be applied  
15 by the state, as used in subdivision (b) of Section 8 of Article XVI  
16 of the California Constitution, the “General Fund revenues that  
17 are the proceeds of taxes,” as defined in subdivision (c) of Section  
18 8 of Article XIII B of the California Constitution, shall include the  
19 total annual amount of credit claimed pursuant to Sections  
20 17053.87 and 23687 of the Revenue and Taxation Code as though  
21 they were proceeds of taxes.

22 (B) This paragraph shall become inoperative on January 1, 2021.

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

37 (d) “General Fund revenues appropriated for community college  
38 districts,” as used in paragraph (1) of subdivision (b) of Section 8  
39 of Article XVI of the California Constitution, means the sum of  
40 appropriations made that are for allocation to community college

1 districts, regardless of whether those appropriations were made  
2 from the General Fund to the Controller, to the Chancellor of the  
3 California Community Colleges, or to any other fund or state  
4 agency for the purpose of allocation to community college districts.  
5 The full amount of any appropriation shall be included in the  
6 calculation of the percentage required by paragraph (1) of  
7 subdivision (b) of Article XVI of the California Constitution,  
8 without regard to any unexpended balance of any appropriation.  
9 Any reappropriation of funds appropriated in any prior year shall  
10 not be included in the sum of appropriations.

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

28 (f) “General Fund revenues appropriated for school districts  
29 and community college districts, respectively” and “moneys to be  
30 applied by the state for the support of school districts and  
31 community college districts,” as used in Section 8 of Article XVI  
32 of the California Constitution, shall include funds appropriated for  
33 part-day California state preschool programs under Article 7  
34 (commencing with Section 8235) of Chapter 2 of Part 6 of Division  
35 1 of Title 1, and the After School Education and Safety Program  
36 established pursuant to Article 22.5 (commencing with Section  
37 8482) of Chapter 2 of Part 6 of Division 1 of Title 1, and shall not  
38 include any of the following:

39 (1) Any appropriation that is not made for allocation to a school  
40 district, as defined in Section 41302.5, or to a community college

1 district, regardless of whether the appropriation is made for any  
2 purpose that may be considered to be for the benefit to a school  
3 district, as defined in Section 41302.5, or a community college  
4 district. This paragraph shall not be construed to exclude any  
5 funding appropriated for part-day California state preschool  
6 programs under Article 7 (commencing with Section 8235) of  
7 Chapter 2 of Part 6 of Division 1 of Title 1 or the After School  
8 Education and Safety Program established pursuant to Article 22.5  
9 (commencing with Section 8482) of Chapter 2 of Part 6 of Division  
10 1 of Title 1.

11 (2) Any appropriation made to the Teachers' Retirement Fund  
12 or to the Public Employees' Retirement Fund except those  
13 appropriations for reimbursable state mandates imposed on or  
14 before January 1, 1988.

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

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

22 (g) "Allocated local proceeds of taxes," as used in paragraph  
23 (2) or (3) of subdivision (b) of Section 8 of Article XVI of the  
24 California Constitution, means, for school districts as defined,  
25 those local revenues, except revenues identified pursuant to  
26 paragraph (5) of subdivision (j) of Section 42238.02, that are used  
27 to offset state aid for school districts in calculations performed  
28 pursuant to Sections 2575, 42238.02, and Chapter 7.2 (commencing  
29 with Section 56836) of Part 30.

30 (h) "Allocated local proceeds of taxes," as used in paragraph  
31 (2) or (3) of subdivision (b) of Section 8 of Article XVI of the  
32 California Constitution, means, for community college districts,  
33 those local revenues that are used to offset state aid for community  
34 college districts. In no event shall the revenues or receipts derived  
35 from student fees be considered "allocated local proceeds of taxes."

36 (i) For purposes of calculating the 4-percent entitlement pursuant  
37 to subdivision (a) of Section 8.5 of Article XVI of the California  
38 Constitution, "the total amount required pursuant to Section 8(b)"  
39 shall mean the General Fund aid required for schools pursuant to  
40 subdivision (b) of Section 8 of Article XVI of the California

1 Constitution, and shall not include allocated local proceeds of  
2 taxes.

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

5 17053.87. (a) For taxable years beginning on or after January  
6 1, 2016, and before January 1, 2020, there shall be allowed as a  
7 credit against the “net tax,” as defined in Section 17039, an amount  
8 equal to 40 percent of the amount contributed by the taxpayer  
9 during the taxable year to the California Preschool Investment  
10 Fund, created by Section 8239.8 of the Education Code.

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

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

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

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

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

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

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

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

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

3 23687. (a) For taxable years beginning on or after January 1,  
4 2016, and before January 1, 2020, there shall be allowed as a credit  
5 against the “tax,” as defined in Section 23036, an amount equal  
6 to 40 percent of the amount contributed by the taxpayer during the  
7 taxable year to the California Preschool Investment Fund, created  
8 by Section 8239.8 of the Education Code.

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

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

20 (2) A deduction otherwise allowed under this part for any  
21 amount contributed by the taxpayer upon which the credit is based  
22 shall be reduced by the amount of the credit allowed in subdivision  
23 (a).

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

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

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

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

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

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