

Date of Hearing: April 24, 2023

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION  
Jacqui Irwin, Chair

AB 1400 (Bryan) – As Amended March 23, 2023

Majority vote. Fiscal committee.

**SUBJECT:** Student financial aid: College Access Tax Credit Fund: community college student transfers: Historically Black Colleges and Universities

**SUMMARY:** Provides that moneys in the College Access Tax Credit (CATC) Fund be continuously appropriated to the California Student Aid Commission (Commission) to provide grants for qualifying California Community College (CCC) students who transfer to Historically Black Colleges and Universities (HBCUs), as specified. Specifically, the tax-related provisions of **this bill**:

- 1) Make several legislative findings and declarations, including but not limited to, the following:
  - a) The CATC Fund Program seeks to increase Cal Grant B funding to provide a greater level of support for low-income students. However, the CATC Fund Program lacks adequate resources to accommodate the overwhelming student demand for Cal Grant B awards;
  - b) The CATC Fund Program cannot currently meet its goal of providing meaningful award increases to Cal Grant B recipients; and,
  - c) By reducing the pool of eligible CATC Fund-funded grant applicants to less than 100 students, this measure would enable the CATC Fund Program to issue awards of up to \$5,000.
- 2) Modify the use of moneys allocated from the CATC Fund from supporting Cal Grant awards to instead support grants for CCC transfer students that attend HBCUs that have an Associate Degree for Transfer (ADT) memoranda of understanding (MOU) with the CCC Chancellor's Office (CCCCO).

**EXISTING LAW:**

- 1) Establishes the Commission for the purpose of administering specified student financial aid programs (Education Code (EDC) Section 69510 *et seq.*)
- 2) Establishes the Cal Grant program, administered by the Commission, to provide grants to financially needy students to attend a college or university. The Cal Grant programs include both the entitlement and the competitive Cal Grant awards. The program consists of the Cal Grant A, Cal Grant B, and Cal Grant C programs, and eligibility is based upon financial need, grade point average (GPA), California residency, and other criteria. Maximum award

amounts for CSU and UC are established in the annual Budget Act and have traditionally covered all systemwide tuition and fees. Supplemental Cal Grant awards programs are available to students with dependent child(ren) and former and current foster youth attending CSU, UC, or a CCC to assist with non-tuition costs such as living expenses (EDC Sections 69430 – 69433 and Sections 69465 - 69470).

- 3) Allows, for taxable years beginning on or after January 1, 2017, and before January 1, 2028, a credit in an amount equal to 50% of the amount contributed by a taxpayer to the CATC Fund, as allocated and certified by the California Educational Facilities Authority (CEFA).

Additionally, this credit:

- a) Limits the maximum aggregate amount of credit that may be allocated and certified by CEFA to \$500 million;
- b) Provides that any unused credits may be carried forward for up to six years; and,
- c) Creates the CATC Fund as a special fund in the State Treasury, and allocates revenues as follows:
  - i) First to the General Fund in an amount equal to the aggregate amount of credits allowed, as specified;
  - ii) Second, upon appropriation, to the Department of Insurance, Franchise Tax Board (FTB), CEFA, State Controller, and Commission for reimbursement of all administrative costs incurred in connection with the CATC and CATC Fund;
  - iii) Third, upon appropriation, to CEFA for outreach purposes to inform taxpayers about the CATC Fund and the credits allowed; and,
  - iv) Fourth, continuous appropriation of remaining revenue to the Commission for purposes of awarding Cal Grants, as specified (Revenue and Taxation Code (R&TC) Section 17053.87).

**FISCAL EFFECT:** None, according to the FTB.

**COMMENTS:**

- 1) The author has provided the following statement in support of this bill:

The many programs established under the California Student Aid Commission and by other legislation seek to provide pathways to higher education that are responsive to the unique backgrounds and barriers faced by California students, such as the California Chafee Grant for Foster Youth, the Law Enforcement Personnel Dependents Grant Program, the California Dream Act, and others. Decades of studies show the persistent social and economic barriers Black students face resulting in overall lower academic performance and educational attainment than their peers as well as the long term effects of lower income and less professional stability and growth. Attendance at an HBCU is one of the clear positive influences on these academic and professional outcomes for Black students. They provide culturally responsive, racially sensitive environments where they can fully engage with confidence.

Today, in part due to changes in Federal tax law, the College Access Tax Credit (CATC) as currently structured provides only \$1.50 to each eligible student. AB 1400 would allocate this existing funding stream in a more targeted fashion, providing meaningful financial support (a \$5,000 award per eligible student) to Californians transferring from Community College to HBCUs. By refocusing this support on students committed to returning to California after graduation, we will help build a valuable educational and economic pipeline from California to HBCUs nationwide and back to California.

2) The California Student Aid Commission, the sponsor of this bill, notes, in part:

AB 1400 would enhance the College Access Tax Credit to transform the lives of students from disadvantaged and low-income backgrounds. In 2017, a federal law, H.R. 1 (The Tax Cuts and Jobs Act), represented the most significant tax code overhaul in over three decades; however, after its enactment the annual revenue derived from the College Access Tax Credit fell from approximately \$5.9 million to \$412,000 due to the impact of the change in the federal tax code on the financial benefit of this tax credit. At this new level of revenue, the Commission cannot provide a meaningful augmentation to the Cal Grant B awards that the program was initially designed to supplement. In 2021-22, there were 268,901 Cal Grant B recipients and with only \$412,000 in CATC funds it would have provided only a \$1.50 for each recipient. This bill would not change existing law regarding the tax credit mechanism that allows taxpayers to make contributions to the CATC Fund.

3) In support of this bill, the African American Male Education Network and Development (A2MEND) notes, in part:

HBCUs offer a unique experience for students that is not available in California and require students to enroll out of state to pursue. While HBCUs primarily serve Black students, the campuses also have a vibrant and diverse mix of students from many cultural and ethnic backgrounds. AB 1400 not only enhances the impact of the College Access Tax Credit but will also support California students in making the choice to enroll at an HBCU – and to return to California afterward – more viable.

4) Committee Staff Comments:

- a) *Double referred*: This bill was double referred with the Assembly Committee on Higher Education, which passed this bill on April 18, 2023 by a vote of 11 to 0. For a complete summary of the higher education provisions of this bill, please refer to that Committee's analysis.
- b) *History of the College Access Tax Credit*: Established by SB 798 (De León), Chapter 367, Statutes of 2014, the CATC is designed to encourage taxpayers to make charitable contributions to the Cal Grant program, which provides financial aid to low-income California students pursuing post-secondary education.

The structure of the credit is based on a 2013 publication by Phillip Blackman, then Associate Director of Development at the Penn State Dickinson School of Law, and Kirk Stark, Professor and then Vice Dean at the UCLA School of Law, which detailed a means for states to leverage federal funds at minimal cost by creating a state tax credit for cash contributions to a state entity. Titled *Capturing Federal Dollars with State Charitable*

*Tax Credits*, this concept was based on the Internal Revenue Service (IRS) position that charitable contributions to non-profits, state governments, or local governments are eligible to be federally deducted as a charitable contribution.

The original CATC provided a 60% credit, 55% credit, and 50% credit in the 2014, 2015, and 2016 taxable years, respectively, to offset state tax obligations under the Personal Income Tax Law and the Corporation Tax Law. For instance, a taxpayer making a \$100 contribution in 2014 would receive a \$60 credit from the state to reduce state tax liability. The taxpayer could then deduct the full \$100 amount as a charitable contribution on their federal return, which could be worth as much as \$28 depending on the taxpayer's federal tax rate. Thus, the \$100 contribution would only cost the taxpayer \$12, while the remaining \$40 from the contribution could then, upon appropriation, reimburse relevant state agencies for their costs resulting from administration of CATC and CATC Fund, with the remaining revenue allocated to the Commission for awarding Cal Grants.

SB 81 (Committee on Budget and Fiscal Review), Chapter 22, Statutes 2015, recast certain provisions of the CATC and extended its operation to taxable years beginning on or after January 1, 2017, and before January 1, 2018. Changes to the CATC included expansion to the Insurance Tax Law so insurers could apply the credit to their annual tax on gross premiums and continuous appropriation of funds from the CATC Fund to the Commission for purposes of awarding Cal Grants, rather than upon appropriation. Additionally, for taxable year 2017, SB 81 fixed the CATC at 50% of the amount contributed by a taxpayer and limited the annual maximum aggregate amount of credit that could be allocated and certified by CEFA to \$500 million, rather than rolling over amounts of unallocated and uncertified credits from the previous year.

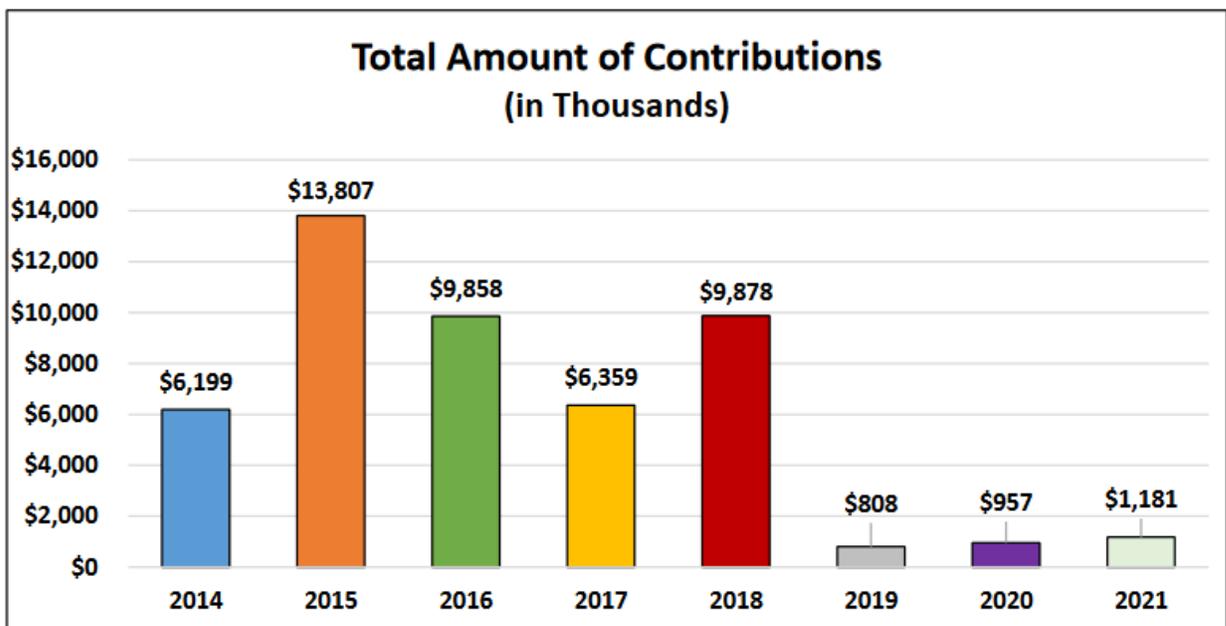
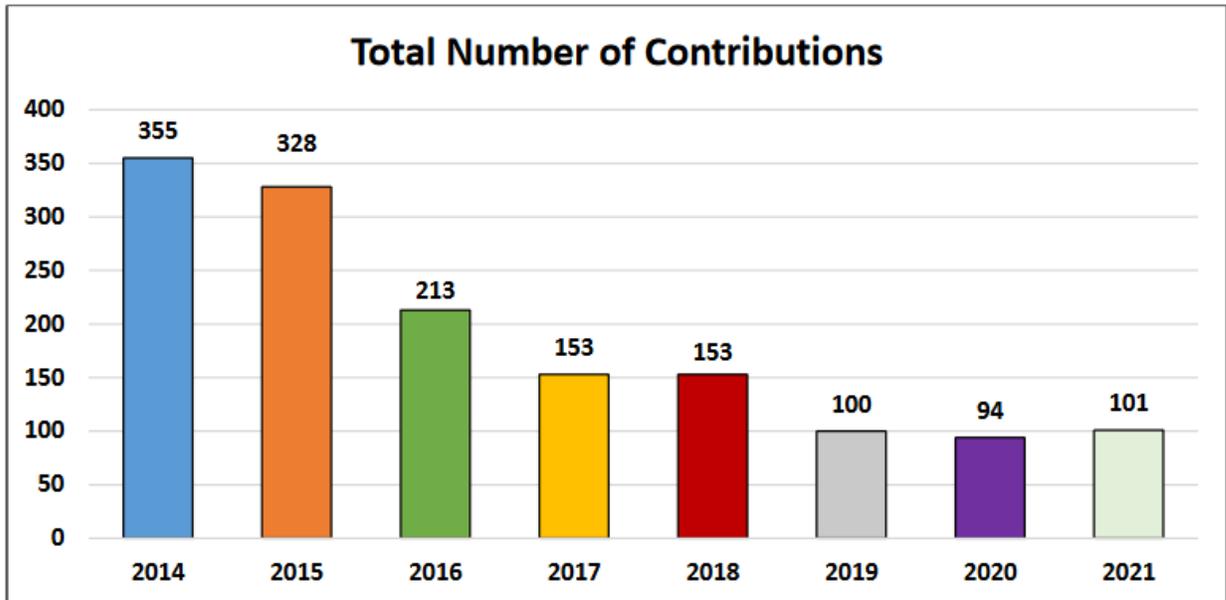
The latest extension of the credit was enacted by AB 2880 (Mia Bonta), Chapter 976, Statutes of 2022, which amended the sunset date of the CATC from taxable years beginning before January 1, 2023 to taxable years beginning before January 1, 2028. Additionally, AB 2880 allocated a portion of the moneys in the CATC Fund, upon appropriation by the Legislature, to CEFA for outreach purposes to inform taxpayers about the CATC Fund and specified tax credits allowed.

- c) *The Tax Cuts and Jobs Act and subsequent IRS rulings:* In 2017, the Tax Cuts and Jobs Act (TCJA) was signed into law. Among other provisions, the TCJA limited the amount of the State and Local Tax (SALT) deduction that may be taken as an itemized deduction on a federal return to \$10,000, or \$5,000 if married and filing separately. In response, a number of states attempted to partially circumvent this limitation by utilizing the same incentive structure as the CATC. In California, two bills, SB 227 (De León), of the 2017-18 Legislative Session, and AB 2217 (Burke), of the 2017-18 Legislative Session, sought to enact programs that would have mitigated the impact of changes in the TCJA for taxpayers who itemize their deductions. While slightly different in structure, both bills would have implemented state tax credits to acknowledge contribution amounts by taxpayers who could then deduct those amounts on their federal return.

However, before either measure was enacted, the IRS issued a series of rulings which addressed the federal treatment of contribution amounts that are acknowledged with state tax credits. Specifically, in 2019, Treasury Decision 9864 finalized a 2018 proposed regulation that generally required a taxpayer to reduce the amount of federal charitable

contribution deduction by the amount of state tax credit provided for the same contribution. Therefore, a \$100 contribution made to the CATC Fund in 2019 would entitle the taxpayer to a \$50 state tax credit and the taxpayer would be allowed to claim \$50 as a deduction on their federal return, rather than the whole \$100. Ultimately, this ruling likely reduced the overall incentive to contribute to the CATC Fund.

- d) *Contributions to the CATC Fund:* According to the most recent report by CEFA to the Treasurer, contributions to the CATC Fund have dropped precipitously:



The Treasurer notes that just over \$1.1 million was contributed to the CATC Fund in the 2021 taxable year. These statistics largely confirm that Treasury Decision 9864 has significantly limited the overall incentive of the CATC. Nevertheless, the number of

contributions and the total amount contributed in 2021 was slightly higher than the preceding two years.

- e) *What problem is this bill attempting to solve?* As noted by the sponsor, the declining contributions to the CATC Fund have reduced the benefit provided to Cal Grant awards, resulting in augmentations of as little as \$1.50 for each recipient. According to the author, this bill recognizes the diminished incentive for taxpayers to contribute to the CATC Fund and seeks to reallocate the funding that results from contributions to the CATC Fund to a smaller population of students. Specifically, this bill is targeted toward CCC students who are transferring to a qualifying HBCU. This population of students is approximately 50 in a given year, according to the author and sponsor of this bill.
- f) *Repurposing funds:* Historically, taxpayers who contributed to the CATC Fund did so under the impression that their contribution would support students attending college in California through the augmentation to Cal Grant awards. The Committee may wish to consider whether changing the purpose of these funds to supporting students attending HBCUs, which happen to be located outside of California, could conflict with the expectations of taxpayers who had previously contributed to the CATC Fund.
- g) *Prior legislation:*
  - i) AB 2880 (Mia Bonta), Chapter 976, Statutes of 2022, extended the operation of the CATC to taxable years beginning before January 1, 2028, and allocated a portion of the moneys in the CATC Fund to be used by CEFA for outreach purposes to increase contributions from taxpayers.
  - ii) AB 490 (Quirk-Silva), Chapter 527, Statutes of 2017, extended the operation of the CATC to taxable years beginning before January 1, 2023.
  - iii) SB 81 (Committee on Budget and Fiscal Review), Chapter 22, Statutes 2015, recast certain provisions of the CATC and extended its operation to taxable years beginning on or after January 1, 2017, and before January 1, 2018.
  - iv) SB 798 (De León), Chapter 367, Statutes of 2014, created the CATC Fund, allowed a credit equal to a certain percentage of a qualifying taxpayer's contribution to the CATC Fund for taxable years 2014 through 2017, and required CEFA to perform certain duties with regard to allocating and certifying the tax credits allowed.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

African American Male Education Network and Development (A2MEND)  
California Community Colleges Transfer Guarantee Agreement to Historically Black Colleges & Universities  
California Community Colleges, Chancellor's Office  
California Student Aid Commission  
Campaign for College Opportunity  
Community College League of California  
Compton Community College District

Greater Sacramento Urban League  
Howe & Associates  
Initiate Justice  
Los Angeles Community College District  
Los Rios Community College District  
North Orange County Community College District  
Riverside Community College District  
Solano Community College  
Southern University Alumni Federation, Sacramento Chapter  
uAspire

**Opposition**

None on file

**Analysis Prepared by:** Wesley Whitaker / REV. & TAX. / (916) 319-2098