Department of Finance and Administration

Legislative Impact Statement

Bill: SB746 Amendment Number: S2
Bill Subtitle: TO ESTABLISH THE PARENTAL CHOICE SCHOLARSHIP PROGRAM.

Basic Change :

Sponsor: Senator B. Johnson

SB746 has been engrossed to incorporate the language in Senate Amendment 2.

Amendment 2 to SB746 makes technical corrections to the title to reflect that this is a pilot program. The amendment clarifies the federal antidiscrimination provisions are applicable when approving educational savings accounts and that nonprofit organizations (NPO) may not charge any fees for administering the education savings accounts.

The amendment adds a provision that if a student is enrolled in a nonpublic school which the primary method of delivering instruction is virtual technology, then only one-third (1/3) of the foundation funding amount will be made available for those students. Also, an NPO shall make available for an eligible student who contracts with a public school to enroll for an academic course, only one-sixth (1/6) of the foundation funding amount for each academic course taken by the eligible student.

The bill is also amended to stipulate that the NPO shall not make available to an eligible student an aggregate amount of new funds for an academic year that exceeds the foundation funding amount, and the NPO shall verify that the student meets the requirements for the amount of funding that is to be made available.

The bill is amended to require that the NPO obtains certification from the Department of Education certifying that the application for an eligible student is in compliance of the requirement that the maximum of one percent (1%) of eligible students enrolled in a public school district has not been exceeded.

The amendment removes contributions to a college savings account as being an eligible expense for use of the funds. The amendment also clarifies that only tuition, fees and textbooks paid to an institution of higher education are eligible if attributable for academic courses in which concurrent credit is awarded by a public or nonpublic school..

A new requirement has been added which provides that the aggregate amount of funds that may be carried over to the next academic year shall not exceed the amount of new funds the eligible student received in the previous year.

The amendment also stipulates that a nonpublic school or a provider of educational services receiving payments shall comply with federal antidiscrimination provisions.

The amendment clarifies the conditions for closing education savings accounts and when to stop making additional funds available .

The bill is also amended to remove the requirement that a public school or provider of education services to certify "under oath", that eligible students have been enrolled and attending the public school for which payments have been received..

A provision has been added to the bill that any personally identifiable information collected concerning an eligible student is an education record and is exempt from the Freedom of Information Act of 1967.

Bill: SB746 Amendment Number: S2
Bill Subtitle: TO ESTABLISH THE PARENTAL CHOICE SCHOLARSHIP PROGRAM.

SB746 has been engrossed to incorporate the language in Senate Amendment 1.

Amendment 1 to SB746 provides that eligible nonprofit organizations (NPO) may establish education savings accounts for use in paying the non-public school education expenses for a eligible student. The bill requires the nonprofit organization to apply to DFA for initial certification or to renew as an eligible nonprofit by March 1 before the academic year and that the certification would renew automatically unless DFA revokes the certification. DFA will certify the initial application of the charitable organization within 30 days of receipt with no more than five (5) organizations certified as eligible nonprofit organizations at any given time. The organizations are required to conduct annual audits of all education savings accounts and to conduct random audits of some education savings accounts throughout the year.

Parents may apply to an NPO to establish an education savings account for an eligible student. The parent must use the funds from the account for educational expenses at a nonpublic school. Eligible education expenses are outlined in the bill. The NPO may contract with financial institutions to establish the savings accounts and would transfer into the account for the eligible student an equivalent amount of the foundation funding as provided in state law for each academic year. For the 2016-2017 school year, that amount was $6,646.

The amended bill creates an income tax credit for contributions for education savings accounts. The income tax credit will be equal to sixty-five percent (65%) of the contribution amount approved by DFA. The state income tax credit taken may not exceed fifty percent (50%) of the tax due for the taxable year, after any other allowable state tax credits have been applied. Unused credits may be carried forward for five consecutive tax years following the tax year in which the credit was earned. Contributions are not eligible for a charitable contribution deduction for state income tax purposes. A contribution that is made on or before the fifteenth day of the fourth month following the close of the tax year may be applied to either the current or preceding tax year. The bill directs DFA to adopt rules necessary to administer the income tax credits including rules for allocation of the credits and carryforward credits on a first-come, first-served basis.

Before making a contribution to the organization, the taxpayer must notify the organization of the total amount of contribution they intend to make during the year, and from March 1 through April 15, the organization must request certification from DFA for the intended amount. DFA must certify or deny the requested amount within 20 days of receipt and if DFA certifies the request, the charitable organization shall immediately notify the contributor that the requested amount was certified. The contributor must make the contribution within 20 days after receiving notice. The charitable organization would then notify DFA of their receipt of funds in order for the income tax credit to be recorded on the taxpayer's account. If the charitable organization does not receive the timely contribution, the organization will notify DFA and the certified contribution becomes void.

The bill requires the organization to develop a system of payment for direct payment from an education savings account to education service providers or other entities for expenses and to provide reimbursement to a parent by check, electronic funds transfer, or other payment method after receiving from the parent receipts for expenses.

The bill provides the order of priority to receive funding for applicants of education savings accounts, as follows: (1) to students who received funding in the previous academic year; (2) to siblings of a eligible student who has a savings account: (3) those from the previous year's wait list who meet the qualifications as a national school lunch student if they were enrolled in a public school; (4) new applicants who meet the qualifications as a national school lunch student if they were enrolled in a public school; (5) students who are dependents of military members deployed in this state if the dependents are eligible to enroll in a public school in Arkansas; (6) to all other eligible students retained on the wait list; and (7) to all other new applicants. During the first year of the program as well as in subsequent years, the organization must approve a minimum of two applications from eligible students who attend a public school during the prior year for every one application the organization approves from eligible students who attended a nonpublic school during the prior year. The amendment also provides eligibility order during subsequent years.

The bill stipulates the responsibilities of the eligible nonprofit organization to include: that the eligible nonprofit organization must file an annual report to the Department of Education reflecting that eligible students take the state-mandated assessment of nationally recognized norm-referenced tests that measure learning gains in math and language arts; that the eligible nonprofit organization must gather student data regarding grade level, gender, and race for reporting purposes; and place certain information regarding student results on their website.

The bill specifies that this program is a four-year pilot program that is being created for the awarding of education savings accounts. The education savings account pilot program would be first implemented for the 2018-2019 school year. The income tax credits authorized would be limited to a maximum of three million dollars ($3,000,000) per fiscal year for FY2019, FY2020, and FY2021.

Original Bill: Senate Bill 746 creates the Parental Choice Scholarship Act. This bill allows an eligible student to receive a scholarship to attend a participating private school. The scholarship will be equal to the lesser of the amount of tuition and fees for the participating private school; or the foundation funding amount under §6-20-2305. Funding of the scholarship payments will be disbursed by the Department of Education or another state agency, person, firm, or corporation designated by the department to administer and disburse funds. The program shall be funded separately from the Public School Fund and other funds designated for public schools, and shall not be funded with county, city, or school district tax revenues.

The Department of Education shall ensure that eligible students and their parents are informed each year of which schools will be participating in the program.

<u>Revenue Impact :</u>

FY2019 $3.0M Reduction in State General Revenues. It is anticipated that full amount of the credit would be utilized every year

FY2020 $3.0M Reduction in State General Revenues

FY2021 $3.0M Reduction in State General Revenues

[Tax credits may not be redeemed until FY2019. Therefore, no impact to State General Revenues for FY2017 and FY2018.]

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Taxpayer Impact :

Individuals and corporations may offset up to 50% of their state income tax for contributions to an education savings account (ESA). The bill provides that for an eligible contribution to an ESA an income tax credit of 65% of the eligible contribution is allowed for a $3.0M total maximum amount of credits in FY2019, FY2020 and FY2021. $4.615M in eligible contributions would be required to create the $3.0M maximum of tax credits in FY2019. In FY17 there were 19,490 students in private schools. In FY2019, the program will allow approximately 694 students to benefit from this Act ($4.615M in contributions ÷ $6,646 = 694). Of the students that may participate, the bill requires at least two public school students to transfer to a private school for each private school student that is entered into the program. Therefore, of the 694 expected number of students eligible students, a minimum of 463 students would be required to transfer from public schools. In addition, students currently in public schools may seek to take advantage of this Act. Recipients and parents of recipients will not be taxed on ESA that are granted.

Resources Required :

None.

Time Required :

DFA will develop procedures and promulgate rules for the proper administration of the program. Adequate time is provided for implementation for the academic year beginning in the fall of 2018.

Procedural Changes :

Computer programs, tax forms, training manuals and procedures manuals would need to be updated. DFA employees must be trained.

Other Comments :

The bill does not specifically provide for an end date of the pilot program. As drafted in the bill, it appears that the program could possibly continue indefinitely with no annual limitation as to tax credits issued after FY2021.

Legal Analysis :

SB746-S2 creates "education savings accounts" (ESA) that may be used to pay for private school costs and other related costs. The ESAs would be administered by "eligible nonprofit organizations." A NPO seeking to administer education savings accounts is required to apply to DFA for initial or renewal certification. The ESAs would be funded by "eligible taxpayer contributions" made to eligible NPOs in exchange for income tax credits. This bill creates a maximum of $3M in state income tax credits in fiscal years 2019, 2020, and 2021 and carry forwards for later tax years.