

Hall of the House of Representatives
88th General Assembly - Regular Session, 2011
Amendment Form

Subtitle of House Bill No. 1771

TO PROVIDE AN INCOME TAX CREDIT TO BUSINESSES FOR CONTRIBUTIONS TO
NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS.

Amendment No. 2 to House Bill No. 1771

Amend House Bill No. 1771 as engrossed, H3/18/11 (version: 3/18/2011 03:08:07 PM)

Delete the title in its entirety and substitute the following:

"AN ACT TO PROVIDE KINDERGARTEN THROUGH TWELFTH GRADE (K-12) SCHOLARSHIPS TO ECONOMICALLY DISADVANTAGED CHILDREN BY PROVIDING A TAX CREDIT FOR CORPORATE OR INDIVIDUAL DONORS FOR CONTRIBUTIONS TO NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute the following:

"TO PROVIDE K-12 SCHOLARSHIPS FOR ECONOMICALLY DISADVANTAGED CHILDREN THROUGH A CORPORATE INCOME TAX CREDIT."

AND

Page 1, line 34, delete "taxpayer, subject" and substitute "taxpayer or corporation, subject"

AND

Page 2, delete lines 9 through 16, and substitute the following:

"(3) "Eligible private school" means a nonpublic school that:
(A) Provides education to elementary or secondary students
and has notified the department of its intention to participate and comply
with the program's requirements;
(B) Is located in Arkansas; and
(C) Is not a home school;"

AND

Page 2, delete line 17, and substitute the following:

"(4) "Eligible taxpayer" means a business or individual,
including without"



AND

Page 2, delete line 19, and substitute "proprietorship; and"

AND

Page 2, delete lines 27 through 34, and substitute the following:
"over an eligible private school."

AND

Page 2, line 35, delete "subdivisions (c)(2) and (3)" and substitute "subsection (e)"

AND

Page 3, delete lines 5 through 20, and substitute the following:

"(2) An eligible student is a student who:

(A) Is a member of a household whose total annual income the year before he or she receives an educational scholarship under this program does not exceed an amount equal to two hundred percent (200%) of the federal poverty level income standard;

(B) Meets requirements to enroll in public school in Arkansas;

(C) Received a scholarship from an eligible nonprofit scholarship-funding organization or from the state during the previous school year;

(D) Is eligible to enter kindergarten; or

(E) Is starting school in Arkansas for the first time.

(3) Once a student receives a scholarship under this program, the student will remain eligible regardless of household income until the student graduates from high school or reaches twenty-one (21) years of age.

(d) A student is not eligible for a scholarship while he or she is:

(1) Receiving a scholarship from another eligible nonprofit"

AND

Page 3, line 22, delete "(3)" and substitute "(2)"

AND

Page 3, line 24, delete "(4)" and substitute "(3)"

AND

Page 3, line 28, delete "(5)" and substitute "(4)"

AND

Page 3, line 30, delete "seventy-" and substitute "fifty percent (50%)"

AND

Page 3, line 31, delete "five percent (75%)"

AND

Page 4, delete lines 5 through 9 and substitute the following:
"is limited to thirty million dollars (\$30,000,000) in tax year 2011 and may expand by no more than ten million dollars (\$10,000,000) each year until it reaches a cap of ninety million dollars (\$90,000,000). Expansion of credit is limited to the amount of revenue necessary to fulfill projected scholarship applications as determined by the eligible nonprofit scholarship-funding organization each year."

AND

Page 5, delete line 2, and substitute the following:
"and the Federal Bureau of Investigation."

AND

Page 5, delete line 12, and substitute the following:
"the Federal Bureau of Investigation;"

AND

Page 5, delete lines 27 through 32

AND

Page 5, line 33, delete "(iv)" and substitute "(iii)"

AND

Page 5, line 33, delete "shall" and substitute "may"

AND

Page 6, line 2, delete "(v)" and substitute "(iv)"

AND

Page 6, line 18, delete "seventy-five percent (75%)" and substitute "ninety percent (90%)"

AND

Page 6, line 20, delete "who received" and substitute "who previously received"

AND

Page 6, delete lines 22 through 25, and substitute the following:

"(6) Shall give priority to the sibling or siblings of a student who has received a scholarship under the tax credit program and is currently enrolled in a private school through the tax credit program;

(7) Shall provide a scholarship to an eligible student through a random, anonymous student selection method unless the eligible student qualifies for priority under subdivision (f)(5) or subdivision (f)(6) of this section;

(8) May not restrict or reserve scholarships for use at a"

AND

Page 6, line 28, delete "(8)" and substitute "(9)"

AND

Page 6, delete line 33, and substitute the following:

"(10)(A) Except as provided in subdivision (f)(10)(B) of this"

AND

Page 7, delete lines 11 and 12, and substitute the following:

"(E) No more than nine and one-half percent (9 1/2%) of eligible contributions may be used for administrative expenses of the eligible nonprofit scholarship-funding organization."

AND

Page 7, line 15, delete "(10)" and substitute "(11)"

AND

Page 7, line 17, delete "(11)" and substitute "(12)"

AND

Page 7, line 17, delete "Education," and substitute "Finance and Administration,"

AND

Page 7, delete line 31, and substitute the following:

"(13)(A) Shall provide to the Department of Finance and Administration an annual"

AND

Page 7, delete lines 33 and 34, and substitute the following:

"independent certified public accountant."

AND

Page 8, line 7, delete "Education" and substitute "Finance and Administration"

AND

Page 8, line 9, delete "(13)(A)" and substitute "(14)"

AND

Page 8, line 10, delete "Education" and substitute "Finance and Administration"

AND

Page 8, line 11, delete "program." and substitute "program. This information shall also be made available on the website prepared by the eligible nonprofit scholarship-funding organization."

AND

Page 8, delete lines 12 through 15, and substitute the following:

"(15) Require an annual notarized, sworn compliance statement by participating eligible private schools certifying compliance with state laws and shall retain such records;

(16) Cooperate with the Department of Education to cross-check the list of participating scholarship students with the public school enrollment lists to avoid duplication;

(17) Annually verify the eligibility of nonprofit scholarship-funding organizations;

(18) Annually verify the eligibility of private schools that meet the requirements of subsection (h) of this section;

(19) Establish a website that provides parents and private schools with information on participation in the scholarship program;

(20)(A) Establish a process by which individuals may notify the eligible nonprofit scholarship-funding organization of any violation by a parent, eligible private school, or school district of state laws relating to program participation.

(B)(i) The eligible nonprofit scholarship-funding organization shall conduct an inquiry of any written complaint of a violation of this section or make a referral to the appropriate agency for an investigation, if the complaint is signed by the complainant and is legally sufficient.

(ii) A complaint is legally sufficient if it contains ultimate facts that show a violation of this section.

(iii) In order to determine legal sufficiency, the eligible nonprofit scholarship-funding organization may require supporting information or documentation from the complainant;

(21)(A)(i) Conduct random site visits to eligible private schools participating in the corporate tax credit scholarship program.

(ii) The purpose of the site visits is solely to verify the information reported by the eligible private schools concerning

the enrollment and attendance of students, background screening of teachers, and teachers' fingerprinting results.

(iii) The eligible nonprofit scholarship-funding organization may not make more than seven (7) random site visits each year and may not make more than one (1) random site visit each year to the same eligible private school.

(B) Annually by December 15, report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives the eligible nonprofit scholarship-funding organization's actions with respect to implementing accountability in the scholarship program under this section any substantiated allegations or violations of law or rule by an eligible private school under this program concerning the enrollment and attendance of students, background screening of teachers, and teachers' fingerprinting results, and the corrective action taken by the eligible nonprofit scholarship-funding organization;

(22)(A)(i) The owner or operator shall deny, suspend, or revoke an eligible private school's participation in the scholarship program if it is determined that the eligible private school has failed to comply with this section.

(ii) In instances in which the noncompliance is correctable within a reasonable amount of time and in which the health, safety, or welfare of the students is not threatened, the owner or operator may issue a notice of noncompliance that shall provide the eligible private school with a timeframe within which to provide evidence of compliance before taking action to suspend or revoke the eligible private school's participation in the scholarship program.

(B) The owner's or operator's determination is subject to the following:

(i) If the owner or operator intends to deny, suspend, or revoke an eligible private school's participation in the scholarship program, the eligible nonprofit scholarship-funding organization shall notify the eligible private school of such proposed action in writing by certified mail and regular mail to the eligible private school's address of record with the eligible nonprofit scholarship-funding organization. The notification shall include the reasons for the proposed action and notice of the timelines and procedures set forth in this subdivision (i)(2); and

(ii) The eligible private school that is adversely affected by the proposed action shall have the right to appeal the decision to the Department of Finance and Administration.

(C) The eligible nonprofit scholarship-funding organization may immediately suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is:

(i) An imminent threat to the health, safety, and welfare of the students; or

(ii) Fraudulent activity on the part of the eligible private school.

(D) In incidents of alleged fraudulent activity, the eligible nonprofit scholarship-funding organization may release personally identifiable records or reports of students to the following persons or organizations:

(i) A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a

lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g), as in effect on January 1, 2011;

(ii) A person or entity authorized by a court of competent jurisdiction in compliance with an order of that court or the attorney of record under a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g), as in effect on January 1, 2011; and

(iii) Any person, entity, or authority issuing a subpoena for law enforcement purposes when the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g), as in effect of January 1, 2011, and 34 C.F.R. § 99.31, as in effect January 1, 2011.

(E) The eligible nonprofit scholarship-funding organization order suspending payment under this subsection may be appealed to the Department of Finance and Administration;

(23) Identify and select the nationally norm-referenced tests that are comparable to the norm-referenced provisions of the Arkansas Comprehensive Testing, Assessment, and Accountability Program provided that the Arkansas Comprehensive Testing, Assessment, and Accountability Program assessments may be one (1) of the tests selected; and

(24)(A) Select an independent research organization, which may be a public or private entity or university, to which participating eligible private schools shall report the scores of participating students on the nationally norm-referenced tests administered by the eligible private school.

(B) The independent research organization shall report annually to the Department of Education on the year-to-year improvements of participating students.

(C) The independent research organization shall analyze and report student performance data in a manner that protects the rights of students and parents as mandated in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g), as in effect on January 1, 2011, and shall not disaggregate data to a level that will disclose the academic level of individual students or of individual schools.

(D) To the extent possible, the independent research organization shall accumulate historical performance data on students from the Department of Education and private schools to describe baseline performance and to conduct longitudinal studies.

(E) To minimize costs and reduce time required for third-party analysis and evaluation, the Department of Education shall conduct analyses of matched students from public school assessment data and calculate control group learning gains using an agreed-upon methodology outlined in the contract with the third-party evaluator.

(F) The sharing of student data shall be in accordance with requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g), as in effect on January 1, 2011, and shall be for the sole purpose of conducting the evaluation.

(G) All parties shall preserve the confidentiality of such information as required by law.

(H) May solicit grants or donations to provide for any costs that may be associated for this evaluation."

AND

Page 8, delete lines 27 through 36

AND

Page 9, delete line 1

AND

Page 9, line 2, delete "(6)(A)" and substitute "(5)(A)"

AND

Page 9, line 11, delete "(g)(6)" and substitute "(g)(5)"

AND

Page 9, line 23, delete "progress;" and substitute "progress; and"

AND

Page 9, line 25, delete "to take one of the" and substitute "to either take a"

AND

Page 9, delete line 26, and substitute the following:
"nationally norm-referenced test or take statewide assessments under Arkansas Comprehensive Testing, Assessment, and Accountability Act."

AND

Page 9, line 29, delete "requirement." and substitute "requirement. However, the participating eligible private school must prepare a portfolio that provides information to the parent or parents of a student's progress each year."

AND

Page 9, line 33, delete "(i)(10)" and substitute "(f)(21)"

AND

Page 9, line 34, delete "and"

AND

Page 9, delete lines 35 and 36

AND

Page 10, delete lines 1 through 5 and substitute the following:

"(4) Comply with all requirements and laws for private schools in Arkansas; and"

AND

Page 10, line 11, delete "Education" and substitute "Finance and Administration"

AND

Page 10, delete line 12, and substitute the following:

"(1) By July 15, 2011, and by March 15 each year thereafter, list the eligible nonprofit"

AND

Page 10, delete lines 16 and 17

AND

Page 10, line 18, delete "(4)" and substitute "(3)"

AND

Page 10, line 20, delete "(f)(12)" and substitute "(f)(13)"

AND

Page 10, delete lines 21 through 36

AND

Page 11, delete lines 1 through 36

AND

Page 12, delete lines 1 through 9

AND

Page 12, line 10, delete "(12)" and substitute "(4)"

AND

Page 12, delete line 14, and substitute "organizations; and"

AND

Page 12, line 15, delete "(13)" and substitute "(5)"

AND

Page 12, line 19, delete "Education; and" and substitute "Finance and Administration."

AND

Page 12, delete lines 20 through 36

AND

Page 13, delete lines 1 through 36

AND

Page 14, delete lines 1 through 16 and substitute the following:

"(j)(1) The amount of a scholarship provided to any student for any"

AND

Page 15, line 3, delete "(l)(1)(A)" and substitute "(k)(1)(A)"

AND

Page 15, delete lines 29 through 31 and substitute the following:

"(5) An eligible taxpayer claiming a credit granted by this section shall not take a deduction under the Arkansas income tax law or the premium tax law for the same contribution.

SECTION 2. Section 1 of this act is effective for tax years beginning on or after January 1, 2011.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that attendance at a private school is often cost prohibitive for many Arkansas children; that these children should be allowed to attend a private school; that providing scholarships would allow many to attend private schools who are not currently financially able to do so; and that allowing an income tax credit would encourage donations that could be used for scholarships for these children. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read
By: Representative Collins
MMC/MMC - 03/25/11 12:15
MMC361

Chief Clerk