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2 State of Arkansas
3 90th General Assembly
4 Regular Session, 2015
5

INTERIM STUDY PROPOSAL 2015-062
As Engrossed: H3/17/15 H3/27/15

A Bill

HOUSE BILL 1745

6 By: Representative Sorvillo

7 Filed with: House Committee on Revenue and Taxation
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO ESTABLISH AN INDIVIDUAL INCOME TAX CREDIT
11 OPPORTUNITY SCHOLARSHIP PROGRAM; TO CREATE AN INCOME
12 TAX CREDIT FOR TUITION PAYMENTS FOR DEPENDENTS WITH
13 CERTAIN DISABILITIES; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 TO ESTABLISH AN INDIVIDUAL INCOME TAX
17 CREDIT OPPORTUNITY SCHOLARSHIP PROGRAM;
18 AND TO CREATE AN INCOME TAX CREDIT FOR
19 TUITION PAYMENTS FOR DEPENDENTS WITH
20 CERTAIN DISABILITIES.
21
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25
26 SECTION 1. Arkansas Code Title 26, Chapter 51, is amended to add an
27 additional subchapter to read as follows:

28 Subchapter 26 – Individual Income Tax Credit Opportunity Scholarship Program

29
30 26-51-2601. Title.

31 This subchapter shall be known and may be cited as the "Individual
32 Income Tax Credit Opportunity Scholarship Program".

33
34 26-51-2602. Definitions.

35 As used in this subchapter:

1 (1) "Allocate" means reserving money for an award of a
2 multiyear educational scholarship or tuition grant for a specific student;

3 (2)(A) "Qualified school" means a:

4 (i) Preschool that offers services to students with
5 disabilities; and

6 (ii) Nongovernmental primary school or secondary
7 school that:

8 (a) Is located in this state and does not
9 discriminate on the basis of race, color, disability, familial status, or
10 national origin; and

11 (b) Requires all teaching staff and personnel
12 who have unsupervised contact with students to be fingerprinted.

13 (B) "Qualified school" does not include a charter school
14 or programs operated by a charter school; and

15 (3) "Student with a disability" means a student who has one (1)
16 or more of the following conditions:

17 (A) Hearing impairment;

18 (B) Visual impairment;

19 (C) Developmental delay;

20 (D) Preschool severe delay; or

21 (E) Speech or language impairment.

22
23 26-51-2603. Certification as a school tuition organization – Notice of
24 violation.

25 (a)(1) A nonprofit organization in this state that is exempt or has
26 applied for exemption from federal taxation under 26 U.S.C. § 501(c)(3) may
27 apply to the Department of Finance and Administration for certification as a
28 school tuition organization.

29 (2) The department shall certify a school tuition organization
30 that applies under subdivision (a)(1) of this section if it meets the
31 requirements prescribed under this subchapter.

32 (3) A nonprofit organization shall apply for certification under
33 this subsection on the form prescribed and furnished on request by the
34 department.

35 (b) The department shall:

1 (1) Maintain a public registry of currently certified school
2 tuition organizations;

3 (2) Make the registry available to the public on request; and

4 (3) Post the registry on the department's official website.

5 (c) The department shall send written notice by certified mail to a
6 school tuition organization if the department determines that the school
7 tuition organization has engaged in any of the following activities:

8 (1) Failing or refusing to allocate at least ninety percent
9 (90%) of annual revenues from contributions made for the purposes of § 26-51-
10 2607 for educational scholarships or tuition grants;

11 (2) Failing or refusing to file the annual reports required
12 under § 26-51-2605;

13 (3) Limiting the availability of scholarships to students of
14 only one (1) school;

15 (4) Encouraging, facilitating, or knowingly permitting taxpayers
16 to engage in actions prohibited under this subchapter; and

17 (5) Awarding, restricting, or reserving educational scholarships
18 or tuition grants for use by a particular student based solely on the
19 recommendation of the donor.

20 (d)(1) A school tuition organization that receives notice from the
21 department under subsection (c) of this section has ninety (90) days to
22 correct the violation identified by the department in the notice.

23 (2) If a school tuition organization fails or refuses to comply
24 after ninety (90) days, the department:

25 (A) May remove the school tuition organization from the
26 list of certified school tuition organizations; and

27 (B) Shall make available to the public notice of the
28 removal as soon as possible.

29 (3) A school tuition organization that is removed from the list
30 of certified school tuition organizations under this section shall notify any
31 taxpayer who attempts to make a contribution that the contribution is not
32 eligible for a tax credit and offer to refund all donations received after
33 the date of the notice of termination of certification.

34 (e)(1) A school tuition organization may request an administrative
35 hearing on the revocation of its certification.

1 (2) A final decision of the department under this section is
2 subject to judicial review.

3
4 26-51-2604. Operational requirements for school tuition organizations
5 – Notice – Qualified schools.

6 (a) A certified school tuition organization shall be established to:

7 (1) Receive contributions from taxpayers for the purposes of
8 income tax credits under this subchapter; and

9 (2) Pay educational scholarships or tuition grants to allow
10 students to attend a qualified school of their parents' or guardians' choice.

11 (b) To be eligible for certification and to retain certification, a
12 school tuition organization:

13 (1) Shall allocate at least ninety percent (90%) of its annual
14 revenue from contributions made for the purposes of § 26-51-2607 for
15 educational scholarships or tuition grants;

16 (2) Shall not limit the availability of educational scholarships
17 or tuition grants to only students of one (1) school;

18 (3) May allow donors to recommend student beneficiaries, but
19 shall not award, designate, or reserve scholarships solely on the basis of
20 donor recommendations;

21 (4) Shall not allow donors to designate student beneficiaries as
22 a condition of a contribution to the organization; and

23 (5) Shall not facilitate, encourage, or knowingly permit the
24 exchange of beneficiary student designations in violation of § 26-51-2607(f).

25 (c) A school tuition organization shall include the following notice
26 in any printed materials soliciting donations, in applications for
27 scholarships, and on its website:

28 "Notice

29 A school tuition organization cannot award, restrict, or reserve scholarships
30 solely on the basis of a donor's recommendation.

31 A taxpayer may not claim a tax credit if the taxpayer agrees to swap
32 donations with another taxpayer to benefit either taxpayer's own dependent."

33 (d) In evaluating applications and awarding, designating, or reserving
34 scholarships, a school tuition organization:

1 (1) Shall not award, designate, or reserve a scholarship solely
2 on the recommendation of a person contributing money to the organization, but
3 may consider the recommendation among other factors; and

4 (2) Shall consider the financial need of applicants.

5 (e) A school tuition organization shall use at least ninety percent
6 (90%) of contributions made under § 26-51-2607 for educational scholarships
7 or tuition grants for students who:

8 (1) Both:

9 (A) Attended a public primary or secondary school as a
10 full-time student or attended a preschool program that offers services to
11 students with disabilities at a public school for at least ninety (90) days
12 of the prior fiscal year; and

13 (B) Transferred from a public school to a qualified
14 school;

15 (2) Enroll in a qualified school in a kindergarten program or a
16 preschool program that offers services to students with disabilities;

17 (3) Are dependents of a member of the United States Armed Forces
18 who is stationed in this state pursuant to military orders; or

19 (4) Received an educational scholarship or tuition grant under
20 subdivisions (e)(1)–(3) of this section if the student continues to attend a
21 qualified school in a subsequent year.

22 (f) In awarding educational scholarships or tuition grants from
23 contributions made under § 26-51-2607, a school tuition organization shall
24 give priority to students and siblings of students on a waiting list for
25 scholarships if the school tuition organization maintains a waiting list.

26 (g)(1) If an individual educational scholarship or tuition grant
27 exceeds the school's tuition, the amount in excess shall be returned to the
28 school tuition organization that made the award or grant.

29 (2) The school tuition organization may allocate the returned
30 moneys:

31 (A) As a multiyear award for the student and report the
32 award under § 26-51-2605; or

33 (B) For educational scholarships or tuition grants for
34 other students.

35
36 26-51-2605. Annual report.

1 On or before September 30 of each year, each school tuition
2 organization shall report electronically to the Department of Finance and
3 Administration, in a form prescribed by the department, the following
4 information, separately compiled and identified for the purposes of § 26-51-
5 2607:

6 (1) The name, address, and contact person of the school tuition
7 organization;

8 (2) The total number of contributions received during the
9 previous fiscal year;

10 (3) The total dollar amount of contributions received during the
11 previous fiscal year;

12 (4) The total number of children awarded educational
13 scholarships or tuition grants during the previous fiscal year;

14 (5) The total dollar amount of:

15 (A) Educational scholarships and tuition grants
16 distributed during the previous fiscal year; and

17 (B) Money being held for identified students' scholarships
18 and tuition grants in future years;

19 (6) The cost of audits under § 26-51-2606 paid during the fiscal
20 year;

21 (7) The total dollar amount of educational scholarships and
22 tuition grants awarded during the previous fiscal year to:

23 (A) Students whose family income meets the economic
24 eligibility requirements established under the federal school lunch and child
25 nutrition acts for free or reduced price lunches, 42 U.S.C. §§ 1751 – 1785;
26 and

27 (B) Students whose family income exceeds the threshold
28 prescribed by subdivision (7)(A) of this section but does not exceed one
29 hundred eighty-five percent (185%) of the economic eligibility requirements
30 established under the federal school lunch and child nutrition acts for free
31 or reduced price lunches, 42 U.S.C. §§ 1751 – 1785;

32 (8) For each school to which educational scholarships or tuition
33 grants were awarded:

34 (A) The name and address of the school;

35 (B) The number of educational scholarships and tuition
36 grants awarded during the previous fiscal year; and

1 (C) The total dollar amount of educational scholarships
2 and tuition grants awarded during the previous fiscal year; and

3 (9) The names, job titles, and annual salaries of the three (3)
4 employees who receive the highest annual salaries from the school tuition
5 organization.

6
7 26-51-2606. Audits and financial reviews.

8 (a)(1) On or before September 30 of each year, each school tuition
9 organization that received at least one million dollars (\$1,000,000) in total
10 donations in the previous fiscal year shall provide for a financial audit of
11 the school tuition organization.

12 (2) The audit required under this subsection shall:

13 (A) Evaluate the organization's compliance with § 26-51-
14 2604(b)(1); and

15 (B) Be conducted:

16 (i) In accordance with generally accepted auditing
17 standards; and

18 (ii)(a) By an independent certified public
19 accountant licensed in this state.

20 (b) The certified public accountant conducting
21 the audit under this section and the firm the certified public accountant is
22 affiliated with shall be independent with respect to the school tuition
23 organization, the officers and directors of the school tuition organization,
24 the services performed by the certified public accountant, and all other
25 independent relationships prescribed by generally accepted auditing
26 standards.

27 (b)(1) On or before September 30 of each year, each school tuition
28 organization that received less than one million dollars (\$1,000,000) in
29 total donations in the previous fiscal year shall provide for a financial
30 review of the organization.

31 (2) The financial review required under this subsection shall:

32 (A) Evaluate the school tuition organization's compliance
33 with the fiscal requirements of this subchapter; and

34 (B) Be conducted:

35 (i) In accordance with standards for accounting and
36 review services; and

1 (ii)(a) By an independent certified public
2 accountant licensed in this state.

3 (b) The certified public accountant conducting
4 the audit under this section and the firm the certified public accountant is
5 affiliated with shall be independent with respect to the school tuition
6 organization, the officers and directors of the school tuition organization,
7 the services performed by the certified public accountant, and all other
8 independent relationships prescribed by generally accepted auditing
9 standards.

10 (c) Within five (5) days after receiving the audit or financial review
11 under this section, the school tuition organization shall file a signed copy
12 of the audit or financial review with the Department of Finance and
13 Administration.

14 (d)(1) A school tuition organization shall pay the fees and costs of a
15 certified public accountant under this section from the school tuition
16 organization's operating monies.

17 (2) The fees and costs of the certified public accountant shall
18 be excluded from the calculation of total revenues spent on scholarships and
19 tuition grants.

20
21 26-51-2607. Credit for contributions to school tuition organization.

22 (a)(1) An income tax credit of up to four thousand four hundred
23 dollars (\$4,400) is allowed against the taxes imposed under this chapter for
24 the amount of voluntary cash contributions by a taxpayer during the taxable
25 year to a school tuition organization that is certified under this subchapter
26 at the time of donation.

27 (2) However, the total amount of income tax credits that may be
28 claimed by all taxpayers in a tax year shall not exceed four hundred forty
29 thousand dollars (\$440,000).

30 (3) The income tax credits allowed under this section shall be
31 awarded on a first-come, first-serve basis.

32 (b) A husband and wife who file separate returns for a taxable year in
33 which they could have filed a joint return may each claim only one-half (1/2)
34 of the income tax credit that would have been allowed for a joint return.

1 (c) Any unused income tax credit under this section may be carried
2 forward for five (5) consecutive tax years following the tax year in which
3 the income tax credit was earned.

4 (d) The credit allowed by this section is in lieu of any deduction
5 under 26 U.S.C. § 170 taken for state tax purposes.

6 (e) The income tax credit under this section is not allowed if the
7 taxpayer:

8 (1) Designates the taxpayer's contribution to the school tuition
9 organization for the direct benefit of a dependent of the taxpayer or if the
10 taxpayer designates a student beneficiary as a condition of the taxpayer's
11 contribution to the school tuition organization; or

12 (2) With the intent to benefit the taxpayer's dependent, agrees
13 with one (1) or more other taxpayers to designate each taxpayer's
14 contribution to the school tuition organization for the direct benefit of the
15 other taxpayer's dependent.

16 (f) For the purposes of this section, a contribution, for which a
17 credit is claimed, that is made on or before the fifteenth day of the fourth
18 month following the close of the taxable year may be applied to either the
19 current or preceding taxable year and is considered to have been made on the
20 last day of that taxable year.

21
22 SECTION 2. EFFECTIVE DATE. Section 1 of this act is effective for tax
23 years beginning on or after January 1, 2015.

24
25 /s/Sorvillo
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28 Referred by the Arkansas House of Representatives

29 Prepared by: VJF
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