

BILL ANALYSIS

Senate Research Center

S.B. 23
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Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

With limited exceptions, students cannot attend a school outside of the school district boundary lines.

S.B. 23 enables businesses to donate a portion (up to 15 percent) of the amount they owe for the franchise tax or state premium tax to fund education scholarships for students to attend a school of their choice. The bill directs the comptroller of public accounts of the State of Texas to certify a maximum of three nonprofit organizations, whose primary purpose would be to award these educational scholarships to eligible public school students. Student eligibility is limited to those at-risk of dropping out of school or who reside in a household that is at or below 200 percent of the federal poverty level.

As proposed, S.B. 23 amends current law relating to the establishment of the Texas Equal Opportunity Scholarship Program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Section 29.561, Education Code), SECTION 2 (Section 230.054, Insurance Code), and SECTION 3 (Section 171.606, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 29, Education Code, by adding Subchapter N, as follows:

SUBCHAPTER N. TEXAS EQUAL OPPORTUNITY SCHOLARSHIP PROGRAM

Sec. 29.551. DEFINITIONS. Defines "certified organization," "eligible student," "opportunity scholarship," and "qualified nonpublic school" for this subchapter.

Sec. 29.552. CERTIFICATION OF ORGANIZATIONS; ADMINISTRATION OF PROGRAM. (a) Authorizes the comptroller of public accounts of the State of Texas (comptroller) to select and certify not more than three organizations that meet the eligibility requirements of Section 29.553 to administer the Texas Equal Opportunity Scholarship Program. Requires the comptroller to select and certify three geographically diverse organizations that the comptroller determines are likely to best administer the program from among the eligible organizations that apply.

(b) Authorizes a certified organization to accept donations and award opportunity scholarships in this state under the conditions and limitations provided by this subchapter.

Sec. 29.553. ELIGIBILITY REQUIREMENTS FOR ORGANIZATIONS APPLYING FOR CERTIFICATION. (a) Authorizes an organization to apply to the comptroller for certification under Section 29.552.

(b) Provides that an organization is eligible for selection and certification by the comptroller if the organization:

(1) according to the organization's charter, has the primary purpose of awarding scholarships to or paying educational expenses for eligible students in public elementary or secondary schools located in this state;

(2) uses its annual revenue for the purpose provided by Subdivision (1), except for a portion of the revenue that may be used for reasonable operating expenses;

(3) is exempt from federal tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization in Section 501(c)(3) of that code and meeting all other applicable requirements for that exemption;

(4) is in good standing with this state;

(5) is located in this state;

(6) demonstrates, within the previous five-year period, experience and expertise in awarding scholarships to students in elementary and secondary schools; and

(7) agrees to be independently audited on an annual basis and file the audit report with the comptroller if certified.

Sec. 29.554. REQUIREMENTS FOR CERTIFIED ORGANIZATIONS. (a) Requires a certified organization to:

(1) comply at all times with the eligibility requirements under Section 29.553(b);

(2) submit to an annual independent audit under guidelines provided by the comptroller and file the audit report with the comptroller;

(3) except as provided by Section 29.556(b), distribute all money received from donations under this subchapter within two school years of receipt;

(4) give each donor a receipt for money donated to the certified organization under this subchapter that includes the name of the certified organization, the name of the donor, the amount of the donation, and any other information required by the comptroller; and

(5) of the amount of money received from donations made by donors for the purpose of providing scholarships under this subchapter including all money donated by entities applying for a tax credit in connection with the donation under Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax Code, distribute not less than 95 percent in the form of opportunity scholarships and use not more than five percent to pay expenses of operating the organization.

(b) Prohibits a certified organization from awarding all opportunity scholarships to students who attend a particular school or providing opportunity scholarships in a manner that does not comply with Sections 29.556 and 29.557.

Sec. 29.555. REVOCATION OF CERTIFICATION. (a) Requires the comptroller to revoke a certification under Section 29.552 if the comptroller finds that a certified organization is not in compliance with the requirements of Section 29.554 or otherwise intentionally and substantially violates this subchapter.

(b) Provides that revocation of a certification under this section does not affect the validity of a tax credit under Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax Code, relating to a donation made before the date of revocation.

Sec. 29.556. ALLOCATION OF OPPORTUNITY SCHOLARSHIP MONEY. (a) Requires the certified organization, except as provided by Subsection (b), of a certified organization's money available to award opportunity scholarships for each school year, to use:

(1) not more than 80 percent to award opportunity scholarships under Section 29.557 to eligible students to attend qualified nonpublic schools in this state; and

(2) not more than 20 percent to award opportunity scholarships under Section 29.557 to eligible students to attend:

(A) tuition-supported prekindergarten programs at public schools in this state; or

(B) educational after-school programs, if the eligible students receiving the opportunity scholarships to attend after-school programs attend public schools in this state.

(b) Requires a certified organization, if the certified organization awards the maximum opportunity scholarship to each eligible student described by Subsection (a)(1) or (2) who applies for a school year but does not award the maximum amount of the organization's money allowed by the applicable subdivision for the year, to carry forward the remaining money available under the applicable subdivision for the year and use the money to award opportunity scholarships to eligible students described by the applicable subdivision for subsequent school years.

Sec. 29.557. AWARD OF OPPORTUNITY SCHOLARSHIPS. (a) Requires a certified organization, for each school year, to award opportunity scholarships according to the allocations prescribed by Section 29.556(a) to eligible students who apply as provided by this section.

(b) Requires a certified organization to award opportunity scholarships to applicants according to the following priority groups in the manner provided by Subsections (c) and (d):

(1) requires the certified organization to give first priority to applicants, and the siblings of those applicants, who were awarded an opportunity scholarship by the certified organization for the current school year and who are applying to renew the opportunity scholarship for the next school year;

(2) requires the certified organization to give second priority to applicants who currently attend a campus that is assigned a performance rating of unacceptable performance under Section 39.054 (Methods and Standards for Evaluating Performance); and

(3) requires the certified organization to give third priority to all other applicants.

(c) Prohibits a certified organization from awarding an opportunity scholarship to an applicant in the priority group described by Subsection (b)(2) for a school year unless the certified organization awards an opportunity scholarship to each eligible student in the priority group described by Subsection (b)(1) who applies for that year. Prohibits a certified organization from awarding an opportunity scholarship to an applicant in the priority group described by Subsection (b)(3) for

a school year unless the certified organization awards an opportunity scholarship to each eligible student in the priority groups described by Subsections (b)(1) and (2) who apply for that year.

(d) Requires a certified organization, if a certified organization is able to award an opportunity scholarship to one or more, but not all, eligible students in a priority group described by Subsection (b) who apply, to use a lottery system to award opportunity scholarships to eligible students in that group who apply.

Sec. 29.558. LIMITATION ON AMOUNTS OF OPPORTUNITY SCHOLARSHIPS.

(a) Prohibits the amount of an opportunity scholarship awarded for a school year to a student to attend a qualified nonpublic school or a tuition-supported prekindergarten program at a public school from exceeding the amount of funding equal to 80 percent of the statewide average amount of state and local funding provided to school districts under Chapter 42 (Foundation School Program) for a student in average daily attendance.

(b) Prohibits the amount of an opportunity scholarship awarded for a school year to a student to attend an educational after-school program from exceeding \$1,000.

Sec. 29.559. ELIGIBILITY OF STUDENTS. (a) Provides that a student is eligible for an opportunity scholarship if the student:

(1) resides in the State of Texas;

(2) attended a public school for the majority of a preceding year; and either is at risk of dropping out of school as defined in Section 29.081 (Compensatory, Intensive, and Accelerated Instruction), or resides in a household that had, in the household's most recently filed federal income tax return, a household income not greater than 200 percent of the income guidelines necessary to qualify for the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.

(b) Entitles a child who establishes eligibility under Subsection (a) to continue participating until the earlier of the date on which the child graduates from high school or the child's 21st birthday.

Sec. 29.560. NONPUBLIC SCHOOL REQUIREMENTS. (a) Prohibits a certified organization from awarding an opportunity scholarship for a student to attend a nonpublic school unless the nonpublic school:

(1) is accredited by an organization that is recognized by the Texas Private School Accreditation Commission;

(2) annually administers a nationally norm-referenced assessment instrument or each appropriate assessment instrument required under Section 39.023 (Adoption and Administration of Instruments);

(3) qualifies as a school at which a student may fulfill this state's compulsory attendance requirements;

(4) is not in violation of the federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);

(5) holds a valid certificate of occupancy; and

(6) has written policy statements regarding admissions; curriculum; safety; food service inspection; and student to teacher ratios.

(b) Requires a nonpublic school that enrolls or accepts for enrollment a student who applies for or is awarded an opportunity scholarship to provide to the

certified organization to which the student applies or that awards the opportunity scholarship a notarized affidavit, with supporting documents, showing that the nonpublic school meets the requirements of Subsection (a).

Sec. 29.561. RULES; PROCEDURES. (a) Requires the comptroller to adopt rules and procedures to implement, administer, and enforce this subchapter.

(b) Provides that a rule adopted under Subsection (a) is binding on any state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce this subchapter.

SECTION 2. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 230, as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR DONATIONS TO TEXAS
EQUAL OPPORTUNITY SCHOLARSHIP PROGRAM

SUBTITLE A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. Defines "certified organization" and "state premium tax liability" for this chapter.

SUBTITLE B. CREDIT

Sec. 230.051. ELIGIBILITY. Provides that an entity is eligible for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter.

Sec. 230.052. AMOUNT OF CREDIT; LIMITATION ON RETURN OF CREDIT. (a) Provides that the amount of the credit is equal to the lesser of the amount of donations made to a certified organization or fifteen percent of the entity's state premium tax liability after applying any other applicable credits.

(b) Provides that an entity is not entitled to have a donation to a certified organization returned because of a change in the entity's state premium tax liability or in the amount of the entity's tax credit allowed under this chapter as a result of a federal or state audit, assessment, redetermination, amended return, or similar change in the entity's tax liability. Requires the certified organization to which an entity makes a donation to notify the entity of this provision.

Sec. 230.053. APPLICATION FOR CREDIT. (a) Requires an entity to apply for a credit under this chapter on or with the tax return for the taxable year for which the credit is claimed.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires an entity to use this form in applying for the credit. Requires the comptroller to make the form available in electronic and paper format in the same manner as other tax forms.

Sec. 230.054. RULES; PROCEDURES. (a) Requires the comptroller to adopt rules and procedures to implement, administer, and enforce this chapter.

(b) Provides that a rule adopted under Subsection (a) is binding on any state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce this chapter.

Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. Prohibits an entity from conveying, assigning, or transferring the credit allowed under this chapter to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

SECTION 3. Amends Chapter 171, Tax Code, by adding Subchapter K, as follows:

SUBCHAPTER K. TAX CREDIT FOR DONATIONS TO TEXAS EQUAL OPPORTUNITY SCHOLARSHIP PROGRAM

Sec. 171.601. DEFINITION. Defines "certified organization" in this subchapter.

Sec. 171.602. ENTITLEMENT TO CREDIT. Entitles a taxable entity to a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Sec. 171.603. QUALIFICATION. Provides that a taxable entity qualifies for a credit under this subchapter if the taxable entity donates money to a certified organization.

Sec. 171.604. AMOUNT OF CREDIT; LIMITATION ON RETURN OF CREDIT. (a) Provides that the amount of the credit is equal to the lesser of the amount of donations made to a certified organization during the privilege period or fifteen percent of the amount of franchise tax due, after applying any other applicable credits.

(b) Provides that a taxable entity is not entitled to have a donation returned because of a change in the taxable entity's tax liability under this chapter or in the amount of the taxable entity's tax credit allowed under this subchapter as a result of a federal or state audit, assessment, redetermination, amended return, or similar change in the taxable entity's tax liability. Requires the certified organization to which a taxable entity makes a donation to notify the taxable entity of this provision.

Sec. 171.605. APPLICATION FOR CREDIT. (a) Requires a taxable entity to apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires a taxable entity to use this form in applying for the credit. Requires the comptroller to make the form available in electronic and paper format in the same manner as other tax forms.

Sec. 171.606. RULES; PROCEDURES. (a) Requires the comptroller to adopt rules and procedures to implement, administer, and enforce this subchapter.

(b) Provide that a rule adopted under Subsection (a) is binding on any state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce this subchapter.

Sec. 171.607. ASSIGNMENT PROHIBITED; EXCEPTION. Prohibits a taxable entity from conveying, assigning, or transferring the credit allowed under this subchapter to another taxable entity unless all assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

SECTION 4. (a) Provides that constitutionality and other validity under the state or federal constitution of all or any part of Subchapter N, Chapter 29, Education Code, Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax Code, as added by this Act, may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code.

(b) Provides that an appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining that all or any part of Subchapter N, Chapter 29, Education Code, Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax Code, as added by this Act, is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) Provides that, if the judgment or order is interlocutory, a interlocutory appeal may be taken from the judgment or order and is an accelerated appeal.

(d) Authorizes a district court in Travis County to grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter N, Chapter 29, Education Code, Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax Code, as added by this Act.

(e) Provides that there is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter N, Chapter 29, Education Code, Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax Code, as added by this Act.

(f) Provides that the direct appeal is an accelerated appeal.

(g) Provides that this section exercises the authority granted by Section 3-b (Appeal from Order Granting or Denying Injunction), Article V, Texas Constitution.

(h) Provides that the filing of a direct appeal under this section will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction granted in accordance with this section pending final determination by the supreme court, unless the supreme court makes specific findings that the applicant seeking such injunctive relief has pleaded and proved that the applicant has a probable right to the relief it seeks on final hearing and the applicant will suffer a probable injury that is imminent and irreparable, and that the applicant has no other adequate legal remedy.

(i) Provides that an appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 5. Authorizes a credit to be claimed under Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax Code, as added by this Act, only for a donation made on or after January 1, 2014.

SECTION 6. Provides that Subchapter N, Chapter 29, Education Code, as added by this Act, applies beginning with the 2013-2014 school year.

SECTION 7. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2013.

(b) Effective date, Chapter 230, Insurance Code, and Subchapter K, Chapter 171, Tax Code, as added by this Act: January 1, 2014.