

BILL ANALYSIS

Senate Research Center
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S.B. 642
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Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A school choice tax credit scholarship allows corporations to invest in their future workforce by receiving a franchise tax credit from state taxes when they contribute to nonprofit agencies that award K-12 scholarships to students with financial and academic need. These scholarships help defray educational costs so parents can choose the best academic option for their children, in either private or public schools.

Since the Tax Credit Scholarship was first launched in Florida and Pennsylvania in 2001, a total of 12 states have also successfully implemented the scholarship into their educational systems: Alabama, Arizona, Florida, Georgia, Indiana, Kansas, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Carolina, and Virginia. S.B. 642 is modeled after the Florida Tax Credit program, which is means tested and has seen a steady growth in student enrollment and private school participation.

A school choice tax credit is not a voucher. A school choice scholarship tax credit simply allows businesses to write off donations to nonprofit organizations that provide scholarships and tuition assistance to low-income, working class families who demonstrate academic or financial need.

Tax credits are not new to education or family expenses. State and federal governments often use the tax code to promote positive public policy. Every year, millions of Americans take advantage of tax credits to pay for their children's college tuition, child care expenses, Earned Income Tax Credits for low-income families, and countless other useful programs. Unlike vouchers, the courts have upheld that parental-choice tax credits are not "public money." (*Kotterman v. Killian*, Arizona Supreme Court, 1999; *Illinois Teachers Federation v. State of Illinois*, 1999; *Illinois Education Association v. State of Illinois*, 2000).

As proposed, S.B. 642 amends current law relating to a franchise or insurance premium tax credit for contributions made to certain educational assistance organizations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Sections 171.558 and 171.560, Tax Code) of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 2 (Section 230.052 and 230.054, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 171, Tax Code, by adding Subchapter K, as follows:

SUBCHAPTER K. TAX CREDIT FOR CONTRIBUTIONS TO CERTAIN EDUCATIONAL ASSISTANCE ORGANIZATIONS

Sec. 171.551. DEFINITION. Defines "educational assistance organization."

Sec. 171.552. ELIGIBILITY REQUIREMENTS FOR CERTIFICATION OF EDUCATIONAL ASSISTANCE ORGANIZATION. (a) Authorizes an organization to

apply to the comptroller of public accounts of the State of Texas (comptroller) for certification as a certified educational assistance organization.

(b) Provides that the organization, to be eligible for certification:

(1) must:

(A) be exempt from federal tax under Section 501(a) of the Internal Revenue Code by being listed as an exempt organization in Section 501(c)(3) of that code;

(B) be in good standing with the state;

(C) be located in the state;

(D) allocate at least 90 percent of its annual revenue from contributions that are designated for scholarships or educational expense assistance for eligible students under this subchapter for student scholarships and assistance for educational expenses, including tuition, transportation, textbooks, and other supplies, and for other related educational expense assistance as described by this section;

(E) award scholarships and assistance for qualifying educational expenses to eligible students who demonstrate the greatest financial and academic need;

(F) give each donor a receipt for money contributed to the organization that includes the name of the organization, the name of the donor, the amount of the contribution, the information required by Section 171.556(c), and any other information required by the comptroller;

(G) demonstrate experience and technical expertise in:

(i) accepting, processing, and tracking applications for scholarships or educational expense assistance; and

(ii) awarding scholarships to students in primary or secondary schools;

(H) agree to be independently audited on an annual basis and file the audit with the comptroller; and

(I) disburse within two academic years of receipt contributions received from and designated by taxable entities for scholarships or educational expense assistance under this subchapter; and

(2) may not:

(A) award all scholarships under this subchapter to students who attend a particular school or pay educational expenses incurred only at a particular school;

(B) provide to a student a scholarship in an annual amount that exceeds the amount provided under Section 171.557(a) unless the money used to provide the portion of the scholarship in excess of that amount was contributed by a person other than an entity that notifies the organization under Section 171.556(c) that the entity may apply for a tax credit for the contribution; and

(C) provide to a student educational expense assistance in excess of the amount provided under Section 171.557(b) per academic year, including assistance for:

- (i) facility fees;
- (ii) textbooks;
- (iii) school supplies;
- (iv) tutoring;
- (v) academic after-school programs;
- (vi) school or lab fees;
- (vii) before-school or after-school child care; and
- (viii) transportation expenses, including the cost to transfer from one public school to another.

(c) Authorizes the comptroller to certify as a certified educational assistance organization an organization that applies under Subsection (a) if the organization meets the requirements of Subsection (b). Provides that the comptroller has broad discretion in determining whether to grant or deny an application for certification.

(d) Requires the comptroller to notify an organization in writing of the comptroller's decision to grant or deny the application under Subsection (a). Requires the comptroller, if the comptroller denies an organization's application, to include in the notice of denial the reasons for the comptroller's decision.

(e) Authorizes an organization, if the comptroller denies the organization's application under Subsection (a), to request in writing a reconsideration of the application not later than the 10th day after the date of the notice under Subsection (d). Provides that the comptroller's decision is final if the organization does not request a reconsideration of the application on or before that date.

(f) Authorizes an organization that requests a reconsideration under Subsection (e) to submit to the comptroller, not later than the 30th day after the date the request for reconsideration is submitted, additional information and documents to support the organization's request for reconsideration.

(g) Provides that the comptroller's reconsideration of an application under this section is not a contested case under Chapter 2001 (Administrative Procedure), Government Code. Provides that the comptroller's decision on a request for reconsideration of an application is final and is not appealable.

(h) Provides that this section does not create a cause of action to contest a decision of the comptroller to deny an application for certification as a certified educational assistance organization.

Sec. 171.553. NONPUBLIC SCHOOL REQUIREMENTS. Prohibits a certified educational assistance organization from awarding scholarships to or paying educational expenses for eligible students enrolled in a nonpublic school unless the nonpublic school executes a notarized affidavit, with supporting documents, concerning the school's qualification for scholarships and educational expense assistance for eligible students who receive assistance from a certified educational assistance organization, including evidence of:

(1) accreditation or of actively being in the process of accreditation by the Texas Education Agency or by an organization recognized by the Texas Private School Accreditation Commission;

(2) annual administration of a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Section 39.023 (Adoption and Administration of Instruments), Education Code;

(3) valid certificate of occupancy; and

(4) policy statements regarding:

(A) admissions;

(B) curriculum;

(C) safety;

(D) food service inspection; and

(E) student to teacher ratios.

Sec. 171.554. ELIGIBILITY. Authorizes a taxable entity to apply for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter. Requires the comptroller to award credits as provided by Section 171.559.

Sec. 171.555. ELIGIBILITY OF STUDENTS; INCLUSION IN CALCULATION OF EQUALIZED WEALTH LEVEL. (a) Requires that a student, to be eligible to apply for assistance from a certified educational assistance organization under this subchapter, be assigned to attend a public school campus with an enrollment of more than 100 students located in a county with a population greater than 50,000 and:

(1) the student:

(A) must:

(i) be in foster care;

(ii) be in institutional care; or

(iii) have 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.; and

(B) must:

(i) have been enrolled in a public school during the preceding school year;

(ii) be starting school in the state for the first time;

(iii) be the sibling of a student who is eligible; or

(iv) if the person attends a nonpublic school, qualify as a student who is not counted toward a public school's average daily attendance during the year in which the student receives the scholarship or educational expense assistance

to attend the school, except as provided by Subsection (c);
or

(2) the student must have previously qualified under Subdivision (1).

(b) Requires a certified educational assistance organization to award scholarships and educational expense assistance to eligible students who apply in accordance with this subchapter.

(c) Provides that a student who receives a scholarship under this subchapter is included in the weighted average daily attendance of the school district the student would otherwise attend for purposes of determining the district's equalized wealth level under Chapter 41 (Equalized Wealth Level), Education Code.

Sec. 171.556. CREDIT FOR CONTRIBUTIONS. (a) Authorizes a taxable entity to apply for a credit under this subchapter only for money contributed to a certified educational assistance organization and designated for scholarships or educational expense assistance for eligible students.

(b) Prohibits a taxable entity from applying for a credit under this subchapter for a contribution made to a certified educational assistance organization if:

(1) the taxable entity requires that the contribution benefit a particular person or school; or

(2) the contribution is designated to provide a scholarship or educational expense assistance for a taxable entity employee or for a spouse or dependent of a taxable entity employee.

(c) Requires an entity to notify a certified educational assistance organization in writing when the entity makes a contribution if the entity may apply for a tax credit under this subchapter or Chapter 230, Insurance Code, for the contribution. Prohibits an entity from applying for a credit for the contribution unless the entity provides the notification at the time the contribution is made. Requires the certified educational assistance organization to indicate on the receipt provided under Section 171.552(b)(1)(F) that the entity made the notification under this subsection.

Sec. 171.557. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL EXPENSE ASSISTANCE. (a) Prohibits the maximum scholarship amount a certified educational assistance organization may award to a student under this subchapter using money contributed by an entity that notifies the organization under Section 171.556(c) that the entity may apply for a tax credit for the contribution from exceeding 75 percent of the amount of funding equal to the statewide average amount to which a school district would be entitled under the Foundation School Program under Chapter 42 (Foundation School Program), Education Code, for a student in average daily attendance.

(b) Prohibits the maximum educational expense assistance a certified educational assistance organization may award to a student under this subchapter from exceeding \$500 for the 2016 state fiscal year, increased by five percent each subsequent year.

Sec. 171.558. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a) Provides that the amount of a taxable entity's annual credit, subject to Subsections (b) and (c), is equal to the lesser of the amount of the qualifying contributions made by the taxable entity or 50 percent of the taxable entity's tax liability under this chapter.

(b) Prohibits the total amount of tax credits that may be awarded under this subchapter and Chapter 230, Insurance Code, for the 2016 state fiscal year, from

exceeding \$100 million. Provides that the total amount of tax credits that may be awarded, for each subsequent state fiscal year, is an amount equal to 105 percent of the total amount of tax credits that may be awarded in the previous state fiscal year.

(c) Requires the comptroller by rule to prescribe procedures by which the comptroller may allocate credits under this subchapter. Requires that the procedures must provide that credits are allocated on a first-come, first-served basis, based on the date the contribution was initially made.

(d) Authorizes the comptroller to require a taxable entity to notify the comptroller of the amount the taxable entity intends or expects to apply for under this subchapter before the beginning of a state fiscal year or at any other time required by the comptroller.

Sec. 171.559. APPLICATION FOR CREDIT. (a) Requires that a taxable entity apply for a credit under this subchapter on or with the tax report for the period.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires that a taxable entity use this form in applying for the credit and submit with the application the receipt issued under Section 171.552(b)(1)(F), including the information required by Section 171.556(c).

(c) Authorizes the comptroller to award a credit to a taxable entity that applies for the credit under Subsection (a) if the taxable entity is eligible for the credit and the credit is available under Section 171.558(b). Provides that the comptroller has broad discretion in determining whether to grant or deny an application for a credit.

(d) Requires the comptroller to notify a taxable entity in writing of the comptroller's decision to grant or deny the application under Subsection (a). Requires the comptroller, if the comptroller denies a taxable entity's application, to include in the notice of denial the reasons for the comptroller's decision.

(e) Authorizes a taxable entity, if the comptroller denies the taxable entity's application under Subsection (a), to request in writing a reconsideration of the application not later than the 10th day after the date of the notice under Subsection (d). Provides that the comptroller's decision is final if the taxable entity does not request a reconsideration of the application on or before that date.

(f) Authorizes a taxable entity that requests a reconsideration under Subsection (e) to submit to the comptroller, not later than the 30th day after the date the request for reconsideration is submitted, additional information and documents to support the taxable entity's request for reconsideration.

(g) Provides that the comptroller's reconsideration of an application under this section is not a contested case under Chapter 2001, Government Code. Provides that the comptroller's decision on a request for reconsideration of an application is final and is not appealable.

(h) Provides that this section does not create a cause of action to contest a decision of the comptroller to deny an application for a credit under this subchapter.

Sec. 171.560. 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 an organization that applies for certification as an educational assistance organization, a taxable entity that applies for a credit, and a state or local

governmental entity, including a political subdivision, as necessary to implement, administer, and enforce this subchapter.

Sec. 171.561. 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.

Sec. 171.562. REVOCATION. (a) Requires the comptroller to revoke a certification provided under Section 171.552 if the comptroller finds that a certified educational assistance organization:

- (1) is no longer eligible under Section 171.552; or
- (2) intentionally and substantially violates this subchapter.

(b) Provides that the comptroller has broad discretion in determining whether to revoke a certification under Subsection (a).

(c) Requires the comptroller to notify a certified educational assistance organization in writing of the comptroller's decision to revoke the organization's certification. Requires the comptroller to, if the comptroller revokes an organization's certification, include in the notice of revocation the reasons for the revocation.

(d) Authorizes a certified educational assistance organization, if the comptroller revokes a certified educational assistance organization's certification under Subsection (a), to request in writing a reconsideration of the revocation not later than the 10th day after the date of the notice under Subsection (c) or the revocation is final.

(e) Authorizes an organization that requests a reconsideration under Subsection (d) to submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the organization's request for reconsideration.

(f) Provides that the comptroller's reconsideration of a revocation under this section is not a contested case under Chapter 2001, Government Code. Provides that the comptroller's decision on a request for reconsideration of a revocation is final and is not appealable.

(g) Provides that this section does not create a cause of action to contest a decision of the comptroller to revoke a certified educational assistance organization's certification under this subchapter.

(h) Provides that revocation of a certification under this section does not affect the validity of a tax credit relating to a contribution made before the date of revocation.

Sec. 171.563. REPORT OF NET SAVINGS TO PUBLIC EDUCATION. (a) Defines "net savings."

(b) Requires the comptroller, not later than December 31 of each even-numbered year, to determine the amount of net savings for the previous state fiscal biennium and make available to the public a report of that amount of savings.

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

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES
FOR CERTAIN CONTRIBUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. In this chapter:

- (1) Defines "educational assistance organization."
- (2) Defines "state premium tax liability."

SUBCHAPTER B. CREDIT

Sec. 230.051. CREDIT. Authorizes an entity to apply for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter. Requires the comptroller to award credits as provided by Section 230.053.

Sec. 230.052. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a) Provides that the amount of an entity's credit, subject to Subsections (b) and (c), is equal to the lesser of the amount of the qualifying contributions made to a certified educational assistance organization or 50 percent of the entity's state premium tax liability if the contributions and the organizations that received the contributions meet the requirements prescribed by Subchapter K, Chapter 171, Tax Code.

(b) Prohibits the total amount of tax credits that may be awarded under this chapter and Subchapter K, Chapter 171, Tax Code, for the 2016 state fiscal year, from exceeding \$100 million. Provides that the total amount of tax credits that may be awarded, for each subsequent state fiscal year, is an amount equal to 105 percent of the total amount of tax credits that may be applied for in the previous state fiscal year.

(c) Requires the comptroller by rule to prescribe procedures by which the comptroller may allocate credits under this chapter. Requires that the procedures must provide that credits are allocated on a first-come, first-served basis, based on the date the contribution was initially made.

(d) Authorizes the comptroller to require an entity to notify the comptroller of the amount the entity intends or expects to apply for under this chapter before the beginning of a state fiscal year or at any other time required by the comptroller.

Sec. 230.053. APPLICATION FOR CREDIT. (a) Requires that an entity apply for a credit under this chapter on or with the tax return for the taxable year and submit with the application the receipt issued under Section 171.552(b)(1)(F), Tax Code, including the information required by Section 171.556(c), Tax Code.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires that an entity use this form in applying for the credit.

(c) Authorizes the comptroller to award a credit to an entity that applies for the credit under Subsection (a) if the entity is eligible for the credit and the credit is available under Section 230.052(b). Provides that the comptroller has broad discretion in determining whether to grant or deny an application for a credit.

(d) Requires the comptroller to notify an entity in writing of the comptroller's decision to grant or deny the application under Subsection (a). Requires the comptroller, if the comptroller denies an entity's application, to include in the notice of denial the reasons for the comptroller's decision.

(e) Authorizes an entity, if the comptroller denies the entity's application under Subsection (a), to request in writing a reconsideration of the application not later than the 10th day after the date of the notice under Subsection (d). Provides that

the comptroller's decision is final, if the entity does not request a reconsideration of the application on or before that date.

(f) Authorizes an entity that requests a reconsideration under Subsection (e) to submit to the comptroller, not later than the 30th day after the date the request for reconsideration is submitted, additional information and documents to support the entity's request for reconsideration.

(g) Provides that the comptroller's reconsideration of an application under this section is not a contested case under Chapter 2001, Government Code. Provides that the comptroller's decision on a request for reconsideration of an application is final and is not appealable.

(h) Provides that this section does not create a cause of action to contest a decision of the comptroller to deny an application for a credit under this chapter.

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 an organization that applies for certification as an educational assistance organization, an entity that applies for a credit, and a 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. (a) Authorizes the constitutionality and other validity under the state or federal constitution of all or any part of Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by this Act, to be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, except that this section does not authorize an award of attorney's fees against this state and Section 37.009 (Costs), Civil Practice and Remedies Code, does not apply to an action filed under this section. Prohibits this section from authorizing a taxpayer suit to contest the denial of a tax credit by the comptroller of public accounts.

(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 K, Chapter 171, Tax Code, or Chapter 230, Insurance 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) Authorizes an interlocutory appeal, if the judgment or order is interlocutory, to 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 K, Chapter 171, Tax Code, or Chapter 230, Insurance 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 K, Chapter 171, Tax Code, or Chapter 230, Insurance 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, 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:

(1) the applicant has a probable right to the relief it seeks on final hearing; and

(2) 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 4. Authorizes an entity to apply for a credit under Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by this Act, only for an expenditure made on or after the effective date of this Act.

SECTION 5. Requires the comptroller, not later than February 15, 2016, to adopt rules as provided by Section 171.560(a), Tax Code, and Section 230.054(a), Insurance Code, as added by this Act.

SECTION 6. Requires the comptroller to make the initial determination of net savings and report regarding that savings as required by Section 171.563, Tax Code, as added by this Act, not later than December 31, 2018, based on the state fiscal biennium ending August 31, 2017.

SECTION 7. Effective date: January 1, 2016.