

By: Patrick

S.B. No. 7

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Equal Opportunity  
Scholarship Program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 29, Education Code, is amended by adding  
Subchapter N to read as follows:

SUBCHAPTER N. TEXAS EQUAL OPPORTUNITY SCHOLARSHIP PROGRAM

Sec. 29.551. DEFINITIONS. In this subchapter:

(1) "Certified organization" means an organization  
certified under Section 29.552.

(2) "Eligible student" means a student who meets the  
requirements of Section 29.559.

(3) "Opportunity scholarship" means a Texas Equal  
Opportunity Scholarship Program scholarship awarded under Section  
29.557.

(4) "Qualified nonpublic school" means a school that  
meets the requirements of Section 29.560.

Sec. 29.552. CERTIFICATION OF ORGANIZATIONS;  
ADMINISTRATION OF PROGRAM. (a) The comptroller may select and  
certify not more than three organizations from geographically  
diverse areas that meet the eligibility requirements of Section  
29.553 to administer the Texas Equal Opportunity Scholarship  
Program. The comptroller shall select and certify those  
organizations that the comptroller determines are likely to best

1 administer the program from among the eligible organizations that  
2 apply.

3 (b) A certified organization may accept donations and award  
4 opportunity scholarships in this state under the conditions and  
5 limitations provided by this subchapter.

6 Sec. 29.553. ELIGIBILITY REQUIREMENTS FOR ORGANIZATIONS  
7 APPLYING FOR CERTIFICATION. (a) An organization may apply to the  
8 comptroller for certification under Section 29.552.

9 (b) An organization is eligible for selection and  
10 certification by the comptroller if the organization:

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

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

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

22 (4) is in good standing with this state;

23 (5) is located in this state;

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

27 (7) agrees to be independently audited on an annual

1 basis and file the audit report with the comptroller if certified.

2 Sec. 29.554. REQUIREMENTS FOR CERTIFIED ORGANIZATIONS.

3 (a) A certified organization shall:

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

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

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

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

17 (5) of the amount of money received from donations  
18 made by donors for the purpose of providing scholarships under this  
19 subchapter, including all money donated by entities applying for a  
20 tax credit in connection with the donation under Chapter 230,  
21 Insurance Code, or Subchapter K, Chapter 171, Tax Code:

22 (A) distribute not less than 95 percent in the  
23 form of opportunity scholarships; and

24 (B) use not more than five percent to pay  
25 expenses of operating the organization.

26 (b) A certified organization may not:

27 (1) award all opportunity scholarships to students who

1 attend a particular school; or

2 (2) provide opportunity scholarships in a manner that  
3 does not comply with Sections 29.556 and 29.557.

4 Sec. 29.555. REVOCATION OF CERTIFICATION. (a) The  
5 comptroller shall revoke a certification under Section 29.552 if  
6 the comptroller finds that a certified organization:

7 (1) is not in compliance with the requirements of  
8 Section 29.554; or

9 (2) otherwise intentionally and substantially  
10 violates this subchapter.

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

15 Sec. 29.556. ALLOCATION OF OPPORTUNITY SCHOLARSHIP MONEY.

16 (a) Except as provided by Subsection (b), of a certified  
17 organization's money available to award opportunity scholarships  
18 for each school year, the certified organization shall use:

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

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

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

26 (B) educational after-school programs, if the  
27 eligible students receiving the opportunity scholarships to attend

1 after-school programs attend public schools in this state.

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

11 Sec. 29.557. AWARD OF OPPORTUNITY SCHOLARSHIPS. (a) For  
12 each school year a certified organization shall award opportunity  
13 scholarships according to the allocations prescribed by Section  
14 29.556(a) to eligible students who apply as provided by this  
15 section.

16 (b) A certified organization shall award opportunity  
17 scholarships to applicants according to the following priority  
18 groups in the manner provided by Subsections (c) and (d):

19 (1) the certified organization shall give first  
20 priority to:

21 (A) applicants who were awarded an opportunity  
22 scholarship by the certified organization for the current school  
23 year and who are applying to renew the opportunity scholarship for  
24 the next school year; and

25 (B) siblings of applicants described by  
26 Paragraph (A);

27 (2) the certified organization shall give second

1 priority to applicants who currently attend a campus that is  
2 assigned a performance rating of unacceptable performance under  
3 Section 39.054; and

4 (3) the certified organization shall give third  
5 priority to all other applicants.

6 (c) A certified organization may not award an opportunity  
7 scholarship to an applicant in the priority group described by  
8 Subsection (b)(2) for a school year unless the certified  
9 organization awards an opportunity scholarship to each eligible  
10 student in the priority group described by Subsection (b)(1) who  
11 applies for that year. A certified organization may not award an  
12 opportunity scholarship to an applicant in the priority group  
13 described by Subsection (b)(3) for a school year unless the  
14 certified organization awards an opportunity scholarship to each  
15 eligible student in the priority groups described by Subsections  
16 (b)(1) and (2) who apply for that year.

17 (d) If a certified organization is able to award an  
18 opportunity scholarship to one or more, but not all, eligible  
19 students in a priority group described by Subsection (b) who apply,  
20 the certified organization shall use a lottery system to award  
21 opportunity scholarships to eligible students in that group who  
22 apply.

23 Sec. 29.558. LIMITATION ON AMOUNTS OF OPPORTUNITY  
24 SCHOLARSHIPS. (a) The amount of an opportunity scholarship  
25 awarded for a school year to a student to attend a qualified  
26 nonpublic school or a tuition-supported prekindergarten program at  
27 a public school may not exceed the amount of funding equal to 80

1 percent of the statewide average amount of state and local funding  
2 provided to school districts under Chapter 42 for a student in  
3 average daily attendance.

4 (b) The amount of an opportunity scholarship awarded for a  
5 school year to a student to attend an educational after-school  
6 program may not exceed \$1,000.

7 Sec. 29.559. ELIGIBILITY OF STUDENTS. (a) A student is  
8 eligible for an opportunity scholarship if the student:

9 (1) resides in this state;

10 (2) attended a public school for the majority of the  
11 preceding school year; and

12 (3) either:

13 (A) is at risk of dropping out of school, as  
14 defined by Section 29.081; or

15 (B) has a household income, according to the most  
16 recently filed federal income tax returns for members of the  
17 household, not greater than 200 percent of the income guidelines  
18 necessary to qualify for the national free or reduced-price lunch  
19 program established under 42 U.S.C. Section 1751 et seq.

20 (b) A student who establishes eligibility under Subsection  
21 (a) and receives an opportunity scholarship may continue to receive  
22 an opportunity scholarship until the earlier of the date the  
23 student graduates from high school or reaches 21 years of age.

24 Sec. 29.560. NONPUBLIC SCHOOL REQUIREMENTS. (a) A  
25 certified organization may not award an opportunity scholarship for  
26 a student to attend a nonpublic school unless the nonpublic school:

27 (1) is accredited by an organization that is

1 recognized by the Texas Private School Accreditation Commission;

2 (2) annually administers a nationally norm-referenced  
3 assessment instrument or each appropriate assessment instrument  
4 required under Section 39.023;

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

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

9 (5) holds a valid certificate of occupancy; and

10 (6) has written policy statements regarding:

11 (A) admissions;

12 (B) curriculum;

13 (C) safety;

14 (D) food service inspection; and

15 (E) student to teacher ratios.

16 (b) A nonpublic school that enrolls or accepts for  
17 enrollment a student who applies for or is awarded an opportunity  
18 scholarship shall provide to the certified organization to which  
19 the student applies or that awards the opportunity scholarship a  
20 notarized affidavit, with supporting documents, showing that the  
21 nonpublic school meets the requirements of Subsection (a).

22 Sec. 29.561. RULES; PROCEDURES. (a) The comptroller shall  
23 adopt rules and procedures to implement, administer, and enforce  
24 this subchapter.

25 (b) A rule adopted under Subsection (a) is binding on any  
26 state or local governmental entity, including a political  
27 subdivision, as necessary to implement, administer, and enforce

1 this subchapter.

2 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended  
3 by adding Chapter 230 to read as follows:

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

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 230.001. DEFINITIONS. In this chapter:

8 (1) "Certified organization" has the meaning assigned  
9 by Section 29.551, Education Code.

10 (2) "State premium tax liability" means any liability  
11 incurred by an entity under Chapters 221 through 226.

12 SUBCHAPTER B. CREDIT

13 Sec. 230.051. ELIGIBILITY. An entity is eligible for a  
14 credit against the entity's state premium tax liability in the  
15 amount and under the conditions and limitations provided by this  
16 chapter.

17 Sec. 230.052. AMOUNT OF CREDIT; LIMITATION ON RETURN OF  
18 CREDIT. (a) The amount of the credit is equal to the lesser of the  
19 amount of donations made to a certified organization or 15 percent  
20 of the entity's state premium tax liability after applying any  
21 other applicable credits.

22 (b) An entity is not entitled to have a donation to a  
23 certified organization returned because of a change in the entity's  
24 state premium tax liability or in the amount of the entity's tax  
25 credit allowed under this chapter as a result of a federal or state  
26 audit, assessment, redetermination, amended return, or similar  
27 change in the entity's tax liability. The certified organization

1 to which an entity makes a donation shall notify the entity of this  
2 provision.

3 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must  
4 apply for a credit under this chapter on or with the tax return for  
5 the taxable year for which the credit is claimed.

6 (b) The comptroller shall adopt a form for the application  
7 for the credit. An entity must use this form in applying for the  
8 credit. The comptroller shall make the form available in  
9 electronic and paper format in the same manner as other tax forms.

10 Sec. 230.054. RULES; PROCEDURES. (a) The comptroller  
11 shall adopt rules and procedures to implement, administer, and  
12 enforce this chapter.

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

17 Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. An entity  
18 may not convey, assign, or transfer the credit allowed under this  
19 chapter to another entity unless all of the assets of the entity are  
20 conveyed, assigned, or transferred in the same transaction.

21 SECTION 3. Chapter 171, Tax Code, is amended by adding  
22 Subchapter K to read as follows:

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

25 Sec. 171.601. DEFINITION. In this subchapter, "certified  
26 organization" has the meaning assigned by Section 29.551, Education  
27 Code.

1       Sec. 171.602. ENTITLEMENT TO CREDIT. A taxable entity is  
2 entitled to a credit in the amount and under the conditions and  
3 limitations provided by this subchapter against the tax imposed  
4 under this chapter.

5       Sec. 171.603. QUALIFICATION. A taxable entity qualifies  
6 for a credit under this subchapter if the taxable entity donates  
7 money to a certified organization.

8       Sec. 171.604. AMOUNT OF CREDIT; LIMITATION ON RETURN OF  
9 CREDIT. (a) The amount of the credit is equal to the lesser of the  
10 amount of donations made to a certified organization during the  
11 privilege period or 15 percent of the amount of franchise tax due,  
12 after applying any other applicable credits.

13       (b) A taxable entity is not entitled to have a donation  
14 returned because of a change in the taxable entity's tax liability  
15 under this chapter or in the amount of the taxable entity's tax  
16 credit allowed under this subchapter as a result of a federal or  
17 state audit, assessment, redetermination, amended return, or  
18 similar change in the taxable entity's tax liability. The  
19 certified organization to which a taxable entity makes a donation  
20 shall notify the taxable entity of this provision.

21       Sec. 171.605. APPLICATION FOR CREDIT. (a) A taxable  
22 entity must apply for a credit under this subchapter on or with the  
23 tax report for the period for which the credit is claimed.

24       (b) The comptroller shall adopt a form for the application  
25 for the credit. A taxable entity must use this form in applying for  
26 the credit. The comptroller shall make the form available in  
27 electronic and paper format in the same manner as other tax forms.

1       Sec. 171.606. RULES; PROCEDURES. (a) The comptroller  
2 shall adopt rules and procedures to implement, administer, and  
3 enforce this subchapter.

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

8       Sec. 171.607. ASSIGNMENT PROHIBITED; EXCEPTION. A taxable  
9 entity may not convey, assign, or transfer the credit allowed under  
10 this subchapter to another taxable entity unless all assets of the  
11 taxable entity are conveyed, assigned, or transferred in the same  
12 transaction.

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

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

1 (c) If the judgment or order is interlocutory, an  
2 interlocutory appeal may be taken from the judgment or order and is  
3 an accelerated appeal.

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

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

19 (f) The direct appeal is an accelerated appeal.

20 (g) This section exercises the authority granted by Section  
21 3-b, Article V, Texas Constitution.

22 (h) The filing of a direct appeal under this section will  
23 automatically stay any temporary or otherwise interlocutory  
24 injunction or permanent injunction granted in accordance with this  
25 section pending final determination by the supreme court, unless  
26 the supreme court makes specific findings that the applicant  
27 seeking such injunctive relief has pleaded and proved that:

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

3           (2) the applicant will suffer a probable injury that  
4 is imminent and irreparable, and that the applicant has no other  
5 adequate legal remedy.

6           (i) An appeal under this section, including an  
7 interlocutory, accelerated, or direct appeal, is governed, as  
8 applicable, by the Texas Rules of Appellate Procedure, including  
9 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),  
10 38.6(a) and (b), 40.1(b), and 49.4.

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

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

17           SECTION 7. (a) Except as provided by Subsection (b) of  
18 this section:

19           (1) this Act takes effect immediately if it receives a  
20 vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution; and

22           (2) if this Act does not receive the vote necessary for  
23 immediate effect, this Act takes effect on the 91st day after the  
24 last day of the legislative session.

25           (b) Chapter 230, Insurance Code, and Subchapter K, Chapter  
26 171, Tax Code, as added by this Act, take effect January 1, 2014.