

By: Miller of Fort Bend

H.B. No. 895

A BILL TO BE ENTITLED

1 AN ACT
2 relating to a franchise or insurance premium tax credit for
3 contributions made to certain educational assistance
4 organizations.

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

6 SECTION 1. Chapter 171, Tax Code, is amended by adding
7 Subchapter K to read as follows:

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

10 Sec. 171.551. DEFINITION. In this subchapter, "educational
11 assistance organization" means an organization that:

12 (1) according to the organization's charter, has the
13 primary purpose of awarding scholarships to or paying educational
14 expenses for eligible students in:

15 (A) public elementary or secondary schools
16 located in this state; or

17 (B) nonpublic elementary or secondary schools
18 located in this state:

19 (i) that meet the requirements of Section
20 171.553;

21 (ii) at which a student may fulfill this
22 state's compulsory attendance requirements; and

23 (iii) that are not in violation of the
24 federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);

1 and

2 (2) uses its annual revenue for the purpose provided
3 by Subdivision (1).

4 Sec. 171.552. ELIGIBILITY REQUIREMENTS FOR CERTIFICATION
5 OF EDUCATIONAL ASSISTANCE ORGANIZATION. An organization may apply
6 to the comptroller for certification as a certified educational
7 assistance organization. To qualify for certification, the
8 organization:

9 (1) must:

10 (A) be exempt from federal tax under Section
11 501(a) of the Internal Revenue Code by being listed as an exempt
12 organization in Section 501(c)(3) of that code;

13 (B) be in good standing with the state;

14 (C) be located in the state;

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

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

25 (F) give each donor a receipt for money
26 contributed to the organization that includes the name of the
27 organization, the name of the donor, the amount of the

1 contribution, the information required by Section 171.556(c), and
2 any other information required by the comptroller;

3 (G) demonstrate experience and technical
4 expertise in:

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

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

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

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

16 (2) may not:

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

20 (B) provide to a student a scholarship in an
21 annual amount that exceeds the amounts provided under Section
22 171.557(a) unless the money used to provide the portion of the
23 scholarship in excess of that amount was contributed by a person
24 other than an entity that notifies the organization under Section
25 171.556(c) that the entity may apply for a tax credit for the
26 contribution; and

27 (C) provide to a student educational expense

1 assistance in excess of the amount provided under Section
2 171.557(b) per academic year, including assistance for:

- 3 (i) facility fees;
- 4 (ii) textbooks;
- 5 (iii) school supplies;
- 6 (iv) tutoring;
- 7 (v) academic after-school programs;
- 8 (vi) school or lab fees;
- 9 (vii) before-school or after-school child
10 care; and

11 (viii) transportation expenses, including
12 the cost to transfer from one public school to another.

13 Sec. 171.553. NONPUBLIC SCHOOL REQUIREMENTS. A certified
14 educational assistance organization may not award scholarships to
15 or pay educational expenses for eligible students enrolled in
16 nonpublic schools unless the nonpublic school executes a notarized
17 affidavit, with supporting documentation, concerning the school's
18 qualification for scholarships and educational expense assistance
19 for eligible students who receive assistance from a certified
20 educational assistance organization, including evidence of:

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

25 (2) annual administration of a nationally
26 norm-referenced assessment instrument or the appropriate
27 assessment instrument required under Section 39.023, Education

1 Code;

2 (3) a valid certificate of occupancy; and

3 (4) policy statements regarding:

4 (A) admissions;

5 (B) curriculum;

6 (C) safety;

7 (D) food service inspection; and

8 (E) student to teacher ratios.

9 Sec. 171.554. ELIGIBILITY. A taxable entity is eligible
10 for a credit against the tax imposed under this chapter in the
11 amount and under the conditions and limitations provided by this
12 subchapter.

13 Sec. 171.555. ELIGIBILITY OF STUDENTS; INCLUSION IN
14 CALCULATION OF EQUALIZED WEALTH LEVEL. (a) To qualify for
15 assistance from a certified educational assistance organization
16 under this subchapter:

17 (1) a student:

18 (A) must:

19 (i) be in foster care;

20 (ii) be in institutional care; or

21 (iii) have a household income not greater

22 than 200 percent of the income guidelines necessary to qualify for

23 the national free or reduced-price lunch program established under

24 42 U.S.C. Section 1751 et seq.; and

25 (B) must:

26 (i) have been enrolled in a public school

27 during the preceding school year;

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

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

5 (iv) if the person attends a nonpublic
6 school, qualify as a student who is not counted toward a public
7 school's average daily attendance during the year in which the
8 student receives the scholarship or educational expense assistance
9 to attend the school, except as provided by Subsection (b); or

10 (2) a student must have previously qualified under
11 Subdivision (1).

12 (b) A student who receives a scholarship under this
13 subchapter is included in the weighted average daily attendance of
14 the school district the student would otherwise attend for purposes
15 of determining the district's equalized wealth level under Chapter
16 41, Education Code.

17 Sec. 171.556. CREDIT FOR CONTRIBUTIONS. (a) A taxable
18 entity may claim a credit under this subchapter only for money
19 contributed to a certified educational assistance organization and
20 designated for scholarships or educational expense assistance for
21 eligible students.

22 (b) A taxable entity may not claim a credit under this
23 subchapter for a contribution made to a certified educational
24 assistance organization if:

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

27 (2) the contribution is designated to provide a

1 scholarship or educational expense assistance for a taxable entity
2 employee or for a spouse or dependent of a taxable entity employee.

3 (c) An entity shall notify a certified educational
4 assistance organization in writing when the entity makes a
5 contribution if the entity may apply for a tax credit under this
6 subchapter or Chapter 230, Insurance Code, for the contribution.
7 An entity may not claim a credit for the contribution unless the
8 entity provides the notification at the time the contribution is
9 made. The certified educational assistance organization shall
10 indicate on the receipt provided under Section 171.552(1)(F) that
11 the entity made the notification under this subsection.

12 Sec. 171.557. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL
13 EXPENSE ASSISTANCE. (a) The maximum scholarship amount a
14 certified educational assistance organization may award to a
15 student under this subchapter using money contributed by an entity
16 that notifies the organization under Section 171.556(c) that the
17 entity may apply for a tax credit for the contribution may not
18 exceed 60 percent of the amount of funding equal to the statewide
19 average amount to which a school district would be entitled under
20 the Foundation School Program under Chapter 42, Education Code, for
21 a student in average daily attendance.

22 (b) The maximum educational expense assistance a certified
23 educational assistance organization may award to a student under
24 this subchapter may not exceed \$500 for the 2016 state fiscal year,
25 increased by five percent each subsequent year.

26 Sec. 171.558. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)
27 Subject to Subsections (b) and (c), the amount of a taxable entity's

1 annual credit is equal to the lesser of the amount of the qualifying
2 contributions made by the taxable entity or 50 percent of the
3 taxable entity's tax liability under this chapter.

4 (b) For the 2016 state fiscal year, the total amount of tax
5 credits that may be claimed by all entities under this subchapter
6 and Chapter 230, Insurance Code, may not exceed \$65 million. For
7 each subsequent state fiscal year, the total amount of tax credits
8 that may be claimed is an amount equal to 105 percent of the total
9 amount of tax credits that may be claimed in the previous state
10 fiscal year.

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

16 (d) The comptroller may require a taxable entity to notify
17 the comptroller of the amount the taxable entity intends or expects
18 to claim under this subchapter before the beginning of a state
19 fiscal year or at any other time required by the comptroller.

20 Sec. 171.559. APPLICATION FOR CREDIT. (a) A taxable entity
21 must apply for a credit under this subchapter on or with the tax
22 report for the period for which the credit is claimed.

23 (b) The comptroller shall adopt a form for the application
24 for the credit. A taxable entity must use this form in applying for
25 the credit and submit with the application the receipt issued under
26 Section 171.552(1)(F), including the information required by
27 Section 171.556(c).

1 Sec. 171.560. 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. 171.561. 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 Sec. 171.562. REVOCATION. (a) The comptroller shall
14 revoke a certification provided under Section 171.552 if the
15 comptroller finds that a certified educational assistance
16 organization:

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

20 (b) Revocation of a certification under this section does
21 not affect the validity of a tax credit relating to a contribution
22 made before the date of revocation.

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

1 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

2 FOR CERTAIN CONTRIBUTIONS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 230.001. DEFINITIONS. In this chapter:

5 (1) "Educational assistance organization" has the
6 meaning assigned by Section 171.551, Tax Code.

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

9 SUBCHAPTER B. CREDIT

10 Sec. 230.051. CREDIT. (a) An entity is eligible for a
11 credit against the entity's state premium tax liability in the
12 amount and under the conditions and limitations provided by this
13 chapter.

14 (b) The amount of the credit is equal to the lesser of the
15 amount of contributions made to a certified educational assistance
16 organization or 50 percent of the entity's state premium tax
17 liability if the contributions and the organizations that received
18 the contributions meet the requirements prescribed by Subchapter K,
19 Chapter 171, Tax Code.

20 Sec. 230.052. LIMITATION. (a) Subject to Subsection (c),
21 the total credit claimed under this chapter for a taxable year may
22 not exceed the lesser of the amount determined under Subsection (b)
23 or 50 percent of the amount of the entity's state premium tax
24 liability for the taxable year after any other applicable credits.

25 (b) For the 2016 state fiscal year, the total amount of tax
26 credits that may be claimed under this chapter and Subchapter K,
27 Chapter 171, Tax Code, may not exceed \$65 million. For each

1 subsequent state fiscal year, the total amount of tax credits that
2 may be claimed is an amount equal to 105 percent of the total amount
3 of tax credits that may be claimed in the previous state fiscal
4 year.

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

10 (d) The comptroller may require an entity to notify the
11 comptroller of the amount the entity intends or expects to claim
12 under this chapter before the beginning of a state fiscal year or at
13 any other time required by the comptroller.

14 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must
15 apply for a credit under this chapter on or with the tax return for
16 the taxable year for which the credit is claimed and submit with the
17 application the receipt issued under Section 171.552(1)(F), Tax
18 Code, including the information required by Section 171.556(c), Tax
19 Code.

20 (b) The comptroller shall adopt a form for the application
21 for the credit. An entity must use this form in applying for the
22 credit.

23 Sec. 230.054. RULES; PROCEDURES. (a) The comptroller
24 shall adopt rules and procedures to implement, administer, and
25 enforce this chapter.

26 (b) A rule adopted under Subsection (a) is binding on any
27 state or local governmental entity, including a political

1 subdivision, as necessary to implement, administer, and enforce
2 this chapter.

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

7 SECTION 3. (a) The constitutionality and other validity
8 under the state or federal constitution of all or any part of
9 Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance
10 Code, as added by this Act, may be determined in an action for
11 declaratory judgment in a district court in Travis County under
12 Chapter 37, Civil Practice and Remedies Code.

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

20 (c) If the judgment or order is interlocutory, an
21 interlocutory appeal may be taken from the judgment or order and is
22 an accelerated appeal.

23 (d) A district court in Travis County may grant or deny a
24 temporary or otherwise interlocutory injunction or a permanent
25 injunction on the grounds of the constitutionality or
26 unconstitutionality, or other validity or invalidity, under the
27 state or federal constitution of all or any part of Subchapter K,

1 Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by
2 this Act.

3 (e) There is a direct appeal to the supreme court from an
4 order, however characterized, of a trial court granting or denying
5 a 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 K,
9 Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by
10 this Act.

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

12 (g) This section exercises the authority granted by Section
13 3-b, Article V, Texas Constitution.

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

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

22 (2) the applicant will suffer a probable injury that
23 is imminent and irreparable, and that the applicant has no other
24 adequate legal remedy.

25 (i) An appeal under this section, including an
26 interlocutory, accelerated, or direct appeal, is governed, as
27 applicable, by the Texas Rules of Appellate Procedure, including

1 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),
2 38.6(a) and (b), 40.1(b), and 49.4.

3 SECTION 4. A credit may be claimed under Subchapter K,
4 Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by
5 this Act, only for a contribution made on or after the effective
6 date of this Act.

7 SECTION 5. Not later than February 15, 2016, the
8 comptroller of public accounts shall adopt rules as provided by
9 Section 171.560(a), Tax Code, and Section 230.054(a), Insurance
10 Code, as added by this Act.

11 SECTION 6. This Act takes effect January 1, 2016.