

By: Bettencourt

S.B. No. 642

A BILL TO BE ENTITLED

AN ACT

relating to a franchise or insurance premium tax credit for contributions made to certain educational assistance organizations.

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

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

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

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

(1) has the ability according to the organization's charter, to award scholarships to or pay educational expenses for eligible students in:

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

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

(i) that meet the requirements of Section 171.553;

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

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

1 and

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

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

8 (b) To be eligible for certification, the 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 amount 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 (c) The comptroller may certify as a certified educational
14 assistance organization an organization that applies under
15 Subsection (a) if the organization meets the requirements of
16 Subsection (b). The comptroller has broad discretion in determining
17 whether to grant or deny an application for certification.

18 (d) The comptroller shall notify an organization in writing
19 of the comptroller's decision to grant or deny the application
20 under Subsection (a). If the comptroller denies an organization's
21 application, the comptroller shall include in the notice of denial
22 the reasons for the comptroller's decision.

23 (e) If the comptroller denies an organization's application
24 under Subsection (a), the organization may request in writing a
25 reconsideration of the application not later than the 10th day
26 after the date of the notice under Subsection (d). If the
27 organization does not request a reconsideration of the application

1 on or before that date, the comptroller's decision is final.

2 (f) An organization that requests a reconsideration under
3 Subsection (e) may submit to the comptroller not later than the 30th
4 day after the date the request for reconsideration is submitted
5 additional information and documents to support the organization's
6 request for reconsideration.

7 (g) The comptroller's reconsideration of an application
8 under this section is not a contested case under Chapter 2001,
9 Government Code. The comptroller's decision on a request for
10 reconsideration of an application is final and is not appealable.

11 (h) This section does not create a cause of action to
12 contest a decision of the comptroller to deny an application for
13 certification as a certified educational assistance organization.

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

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

26 (2) annual administration of a nationally
27 norm-referenced assessment instrument or the appropriate

1 assessment instrument required under Section 39.023, Education
2 Code;

3 (3) valid certificate of occupancy; and

4 (4) policy statements regarding:

5 (A) admissions;

6 (B) curriculum;

7 (C) safety;

8 (D) food service inspection; and

9 (E) student to teacher ratios.

10 Sec. 171.554. ELIGIBILITY. A taxable entity may apply for a
11 credit against the tax imposed under this chapter in the amount and
12 under the conditions and limitations provided by this subchapter.
13 The comptroller shall award credits as provided by Section 171.559.

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

21 (1) the student:

22 (A) must:

23 (i) be in foster care;

24 (ii) be in institutional care; or

25 (iii) have a household income not greater

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

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

1 42 U.S.C. Section 1751 et seq.; and

2 (B) must:

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

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

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

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

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

16 (b) A certified educational assistance organization shall
17 award scholarships and educational expense assistance to eligible
18 students who apply in accordance with this subchapter.

19 (c) A student who receives a scholarship under this
20 subchapter is included in the weighted average daily attendance of
21 the school district the student would otherwise attend for purposes
22 of determining the district's equalized wealth level under Chapter
23 41, Education Code.

24 Sec. 171.556. CREDIT FOR CONTRIBUTIONS. (a) A taxable
25 entity may apply for a credit under this subchapter only for money
26 contributed to a certified educational assistance organization and
27 designated for scholarships or educational expense assistance for

1 eligible students.

2 (b) A taxable entity may not apply for a credit under this
3 subchapter for a contribution made to a certified educational
4 assistance organization if:

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

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

10 (c) An entity shall notify a certified educational
11 assistance organization in writing when the entity makes a
12 contribution if the entity may apply for a tax credit under this
13 subchapter or Chapter 230, Insurance Code, for the contribution. An
14 entity may not apply for a credit for the contribution unless the
15 entity provides the notification at the time the contribution is
16 made. The certified educational assistance organization shall
17 indicate on the receipt provided under Section 171.552(b)(1)(F)
18 that the entity made the notification under this subsection.

19 Sec. 171.557. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL
20 EXPENSE ASSISTANCE. (a) The maximum scholarship amount a
21 certified educational assistance organization may award to a
22 student under this subchapter using money contributed by an entity
23 that notifies the organization under Section 171.556(c) that the
24 entity may apply for a tax credit for the contribution may not
25 exceed 75 percent of the amount of funding equal to the statewide
26 average amount to which a school district would be entitled under
27 the Foundation School Program under Chapter 42, Education Code, for

1 a student in average daily attendance.

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

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

11 (b) For the 2016 state fiscal year, the total amount of tax
12 credits that may be awarded under this subchapter and Chapter 230,
13 Insurance Code, may not exceed \$100 million. For each subsequent
14 state fiscal year, the total amount of tax credits that may be
15 awarded is an amount equal to 105 percent of the total amount of tax
16 credits that may be awarded in the previous state fiscal year.

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

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

26 Sec. 171.559. APPLICATION FOR CREDIT. (a) A taxable entity
27 must apply for a credit under this subchapter on or with the tax

1 report for the period.

2 (b) The comptroller shall adopt a form for the application
3 for the credit. A taxable entity must use this form in applying for
4 the credit and submit with the application the receipt issued under
5 Section 171.552(b)(1)(F), including the information required by
6 Section 171.556(c).

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

12 (d) The comptroller shall notify a taxable entity in writing
13 of the comptroller's decision to grant or deny the application
14 under Subsection (a). If the comptroller denies a taxable entity's
15 application, the comptroller shall include in the notice of denial
16 the reasons for the comptroller's decision.

17 (e) If the comptroller denies a taxable entity's
18 application under Subsection (a), the taxable entity may request in
19 writing a reconsideration of the application not later than the
20 10th day after the date of the notice under Subsection (d). If the
21 taxable entity does not request a reconsideration of the
22 application on or before that date, the comptroller's decision is
23 final.

24 (f) A taxable entity that requests a reconsideration under
25 Subsection (e) may submit to the comptroller not later than the 30th
26 day after the date the request for reconsideration is submitted
27 additional information and documents to support the taxable

1 entity's request for reconsideration.

2 (g) The comptroller's reconsideration of an application
3 under this section is not a contested case under Chapter 2001,
4 Government Code. The comptroller's decision on a request for
5 reconsideration of an application is final and is not appealable.

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

9 Sec. 171.560. RULES; PROCEDURES. (a) The comptroller
10 shall adopt rules and procedures to implement, administer, and
11 enforce this subchapter.

12 (b) A rule adopted under Subsection (a) is binding on an
13 organization that applies for certification as an educational
14 assistance organization, a taxable entity that applies for a
15 credit, and a state or local governmental entity, including a
16 political subdivision, as necessary to implement, administer, and
17 enforce this subchapter.

18 Sec. 171.561. ASSIGNMENT PROHIBITED; EXCEPTION. A taxable
19 entity may not convey, assign, or transfer the credit allowed under
20 this subchapter to another taxable entity unless all assets of the
21 taxable entity are conveyed, assigned, or transferred in the same
22 transaction.

23 Sec. 171.562. REVOCATION. (a) The comptroller shall
24 revoke a certification provided under Section 171.552 if the
25 comptroller finds that a certified educational assistance
26 organization:

27 (1) is no longer eligible under Section 171.552; or

1 (2) intentionally and substantially violates this
2 subchapter.

3 (b) The comptroller has broad discretion in determining
4 whether to revoke a certification under Subsection (a).

5 (c) The comptroller shall notify a certified educational
6 assistance organization in writing of the comptroller's decision to
7 revoke the organization's certification. If the comptroller
8 revokes an organization's certification, the comptroller shall
9 include in the notice of revocation the reasons for the revocation.

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

15 (e) An organization that requests a reconsideration under
16 Subsection (d) may submit to the comptroller not later than the 30th
17 day after the date the request for reconsideration is submitted
18 additional information and documents to support the organization's
19 request for reconsideration.

20 (f) The comptroller's reconsideration of a revocation under
21 this section is not a contested case under Chapter 2001, Government
22 Code. The comptroller's decision on a request for reconsideration
23 of a revocation is final and is not appealable.

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

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

4 Sec. 171.563. REPORT OF NET SAVINGS TO PUBLIC EDUCATION.

5 (a) In this section, "net savings" means any positive difference in
6 a state fiscal year between:

7 (1) the amount by which state spending on public
8 education for that year is reduced as a result of students receiving
9 scholarships and educational expense assistance from certified
10 educational assistance organizations under this subchapter; and

11 (2) the amount by which state revenue derived from
12 this chapter and Chapter 230, Insurance Code, is reduced as a result
13 of tax credits under this subchapter and Chapter 230, Insurance
14 Code.

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

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

21 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

22 FOR CERTAIN CONTRIBUTIONS

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 230.001. DEFINITIONS. In this chapter:

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

27 (2) "State premium tax liability" means any liability

1 incurred by an entity under Chapters 221 through 226.

2 SUBCHAPTER B. CREDIT

3 Sec. 230.051. CREDIT. An entity may apply for a credit
4 against the entity's state premium tax liability in the amount and
5 under the conditions and limitations provided by this chapter. The
6 comptroller shall award credits as provided by Section 230.053.

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

15 (b) For the 2016 state fiscal year, the total amount of tax
16 credits that may be awarded under this chapter and Subchapter K,
17 Chapter 171, Tax Code, may not exceed \$100 million. For each
18 subsequent state fiscal year, the total amount of tax credits that
19 may be awarded is an amount equal to 105 percent of the total amount
20 of tax credits that may be applied for in the previous state fiscal
21 year.

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

27 (d) The comptroller may require an entity to notify the

1 comptroller of the amount the entity intends or expects to apply for
2 under this chapter before the beginning of a state fiscal year or at
3 any other time required by the comptroller.

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

9 (b) The comptroller shall adopt a form for the application
10 for the credit. An entity must use this form in applying for the
11 credit.

12 (c) The comptroller may award a credit to an entity that
13 applies for the credit under Subsection (a) if the entity is
14 eligible for the credit and the credit is available under Section
15 230.052(b). The comptroller has broad discretion in determining
16 whether to grant or deny an application for a credit.

17 (d) The comptroller shall notify an entity in writing of the
18 comptroller's decision to grant or deny the application under
19 Subsection (a). If the comptroller denies an entity's application,
20 the comptroller shall include in the notice of denial the reasons
21 for the comptroller's decision.

22 (e) If the comptroller denies an entity's application under
23 Subsection (a), the entity may request in writing a reconsideration
24 of the application not later than the 10th day after the date of the
25 notice under Subsection (d). If the entity does not request a
26 reconsideration of the application on or before that date, the
27 comptroller's decision is final.

1 (f) An entity that requests a reconsideration under
2 Subsection (e) may submit to the comptroller not later than the 30th
3 day after the date the request for reconsideration is submitted
4 additional information and documents to support the entity's
5 request for reconsideration.

6 (g) The comptroller's reconsideration of an application
7 under this section is not a contested case under Chapter 2001,
8 Government Code. The comptroller's decision on a request for
9 reconsideration of an application is final and is not appealable.

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

13 Sec. 230.054. RULES; PROCEDURES. (a) The comptroller
14 shall adopt rules and procedures to implement, administer, and
15 enforce this chapter.

16 (b) A rule adopted under Subsection (a) is binding on an
17 organization that applies for certification as an educational
18 assistance organization, an entity that applies for a credit, and a
19 state or local governmental entity, including a political
20 subdivision, as necessary to implement, administer, and enforce
21 this chapter.

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

26 SECTION 3. (a) The constitutionality and other validity
27 under the state or federal constitution of all or any part of

1 Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance
2 Code, as added by this Act, may be determined in an action for
3 declaratory judgment in a district court in Travis County under
4 Chapter 37, Civil Practice and Remedies Code, except that this
5 section does not authorize an award of attorney's fees against this
6 state and Section 37.009, Civil Practice and Remedies Code, does
7 not apply to an action filed under this section. This section does
8 not authorize a taxpayer suit to contest the denial of a tax credit
9 by the comptroller of public accounts.

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

17 (c) If the judgment or order is interlocutory, an
18 interlocutory appeal may be taken from the judgment or order and is
19 an accelerated appeal.

20 (d) A district court in Travis County may grant or deny a
21 temporary or otherwise interlocutory injunction or a permanent
22 injunction on the grounds of the constitutionality or
23 unconstitutionality, or other validity or invalidity, under the
24 state or federal constitution of all or any part of Subchapter K,
25 Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by
26 this Act.

27 (e) There is a direct appeal to the supreme court from an

1 order, however characterized, of a trial court granting or denying
2 a temporary or otherwise interlocutory injunction or a permanent
3 injunction on the grounds of the constitutionality or
4 unconstitutionality, or other validity or invalidity, under the
5 state or federal constitution of all or any part of Subchapter K,
6 Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by
7 this Act.

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

9 (g) This section exercises the authority granted by Section
10 3-b, Article V, Texas Constitution.

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

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

19 (2) the applicant will suffer a probable injury that
20 is imminent and irreparable, and that the applicant has no other
21 adequate legal remedy.

22 (i) An appeal under this section, including an
23 interlocutory, accelerated, or direct appeal, is governed, as
24 applicable, by the Texas Rules of Appellate Procedure, including
25 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),
26 38.6(a) and (b), 40.1(b), and 49.4.

27 SECTION 4. An entity may apply for a credit under Subchapter

1 K, Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added
2 by this Act, only for an expenditure made on or after the effective
3 date of this Act.

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

8 SECTION 6. The comptroller of public accounts shall make
9 the initial determination of net savings and report regarding that
10 savings as required by Section 171.563, Tax Code, as added by this
11 Act, not later than December 31, 2018, based on the state fiscal
12 biennium ending August 31, 2017.

13 SECTION 7. This Act takes effect January 1, 2016.