SENATE BILL NO. 445–COMMITTEE ON EDUCATION

(ON BEHALF OF THE GOVERNOR)

MARCH 25, 2013

Referred to Committee on Revenue and Economic Development

SUMMARY—Establishes the Nevada Educational Choice Scholarship Program. (BDR 34-907)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to education; establishing a credit against the modified business tax for taxpayers who donate money to a scholarship organization; setting forth certain requirements for such an organization; requiring an organization to submit an annual report to the Department of Education; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, financial institutions and other employers are required to pay an excise tax (the modified business tax) on wages paid by them. (NRS 363A.130, 363B.110) With respect to that tax, **section 4** of this bill establishes a tax credit equal to an amount approved by the Department of Taxation, which must not exceed the amount of any donation of money made by a taxpayer to a scholarship organization. To claim the tax credit, **section 4** requires a scholarship organization to apply to the Department for approval of the credit for a taxpayer who intends to make a donation to the scholarship organization. If the Department approves the application, the scholarship organization must provide notice to the prospective donor, who must make the donation within 10 days after receiving such notice. If the donor does not make the donation within the requisite period, the donor forfeits eligibility for the credit. The Department: (1) must approve or deny applications for the tax credit in the order in which the applications are received by the Department; and (2) is authorized to approve applications for each fiscal year until the total amount of the tax credits approved for the fiscal year is $5 million.

Section 5 of this bill provides that a scholarship organization: (1) must be exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code; (2) must not own or operate any school that receives grants pursuant to **sections 2-6**

of this bill; (3) must accept donations and may also solicit and accept gifts and grants in addition to donations; (4) must not expend for administrative expenses more than 5 percent of the money it receives; (5) must provide grants on behalf of children who are members of a household with a household income which is not more than 300 percent of the federally designated level signifying poverty to allow those children to attend schools in this State, including private schools, chosen by the parents or legal guardians of those children, or to allow the parents or legal guardians of those children to pay for educational expenses associated with an accredited program of homeschool study; (6) must not limit to a single school the schools for which it provides grants; and (7) must not limit grants to specific children. With respect to donations, gifts and grants governed by this bill, **section 5** also requires the organization to provide each person who makes a donation, gift or grant with an affidavit attesting to certain information.

Section 6 of this bill requires a scholarship organization to submit an annual report to the Department of Education concerning the donations, gifts and grants received by the organization and the grants made by it during the preceding year. **Sections 7 and 8** of this bill provide specifically for the application of the credit against the taxes affected by this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. ***Sections 2 to 6, inclusive, of this act may be cited as the Nevada Educational Choice Scholarship Program.***

Sec. 3. ***As used in sections 2 to 6, inclusive, of this act, unless the context otherwise requires, "scholarship organization" means an organization in this State that meets the requirements set forth in section 5 of this act.***

Sec. 4. ***1. Any taxpayer who is required to pay a tax pursuant to NRS 363A.130 or 363B.110 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.***

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the

application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer, who must, not later than 10 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 10 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received. The Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation is equal to $5 million. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

4. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

5. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

Sec. 5. ***1. A scholarship organization must:***

(a) Be exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

(b) Not own or operate any school in this State, including, without limitation, a private school as defined in NRS 394.103, which receives any grant money pursuant to the Nevada Educational Choice Scholarship Program.

(c) Accept donations from taxpayers and other persons and may also solicit and accept gifts and grants.

(d) Not expend more than 5 percent of the total amount of money accepted pursuant to paragraph (c) to pay its administrative expenses.

(e) Provide grants on behalf of children who are members of a household that has a household income which is not more than 300 percent of the federally designated level signifying poverty to:

(1) Allow those children to attend schools in this State chosen by the parents or legal guardians of those children, including, without limitation, private schools as defined in NRS 394.103; or

(2) Allow the parents or legal guardians of those children to pay for educational costs associated with an accredited program of homeschool study recognized by the board of trustees of a school district.

➥ The total amount of a grant provided by the scholarship organization pursuant to this paragraph must not exceed, for a grant provided pursuant to subparagraph (1), the tuition charged for enrollment in the school chosen by the parent or legal guardian or, for a grant provided pursuant to subparagraph (2), the verified educational expenses incurred by the parent or legal guardian.

(f) Not limit to a single school the schools for which it provides grants.

(g) Except as otherwise provided in paragraph (e), not limit to specific children the grants provided pursuant to that paragraph.

2. A grant provided on behalf of a child pursuant to:

(a) Subparagraph (1) of paragraph (e) of subsection 1 must be paid directly to the school chosen by the parent or legal guardian of the child.

(b) Subparagraph (2) of paragraph (e) of subsection 1 must be paid in the manner prescribed by regulations adopted by the Department of Education pursuant to subsection 4.

3. A scholarship organization shall provide each taxpayer and other person who makes a donation, gift or grant of money to the scholarship organization pursuant to paragraph (c) of subsection 1 with an affidavit, signed under penalty of perjury, which includes, without limitation:

(a) A statement that the scholarship organization satisfies the requirements set forth in subsection 1; and

(b) The total amount of the donation, gift or grant made to the scholarship organization.

4. The Department of Education:

(a) Shall adopt regulations prescribing the contents of and procedures for applications for grants provided pursuant to subsection 1.

(b) Shall adopt regulations prescribing the manner in which a grant provided by a scholarship organization pursuant to subparagraph (2) of paragraph (e) of subsection 1 must be paid.

(c) May adopt such other regulations as the Department determines necessary to carry out the provisions of this section.

Sec. 6. ***A scholarship organization which receives a donation, gift or grant of money described in section 5 of this act shall report to the Department of Education, on or before January 31 of each year, on a form prescribed by the Department:***

1. The name, address and contact information of the scholarship organization;

2. The total number of such donations, gifts and grants received by the scholarship organization during the immediately preceding calendar year;

3. The total dollar amount of such donations, gifts and grants received during the immediately preceding calendar year;

4. The total number of children for whom the scholarship organization made grants during the immediately preceding calendar year pursuant to section 5 of this act;

5. The total dollar amount of such grants made during the immediately preceding calendar year; and

6. For each school or program of homeschool study for which such a grant was made during the immediately preceding calendar year:

(a) The name and address of the school or the program of homeschool study;

(b) The number of children enrolled in the school or program of homeschool study for whom such a grant was made; and

(c) The total dollar amount of such grants provided for children enrolled in the school or program of homeschool study.

Sec. 7. NRS 363A.130 is hereby amended to read as follows:

363A.130 1. There is hereby imposed an excise tax on each employer at the rate of 2 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which

the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

4. An employer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with section 4 of this act, to a credit equal to the amount authorized pursuant to section 4 of this act against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in section 3 of this act.

Sec. 8. NRS 363B.110 is hereby amended to read as follows:

363B.110 1. There is hereby imposed an excise tax on each employer at the rate of 0.63 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this chapter for that calendar quarter.

4. An employer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with section 4 of this act, to a credit equal to the amount authorized pursuant to section 4 of this act against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in section 3 of this act.

Sec. 9. This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On January 1, 2014, for all other purposes.