

ASSEMBLY BILL NO. 165—COMMITTEE ON EDUCATION

FEBRUARY 13, 2015

Referred to Committee on Education

SUMMARY—Establishes the Nevada Educational Choice Scholarship Program. (BDR 34-747)

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 a scholarship organization and for schools that receive grants from a scholarship organization; requiring a scholarship 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 the 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 amount of the tax credits approved for the fiscal year is the amount authorized by statute for that fiscal year. For Fiscal Year 2015-2016, the amount authorized is \$10 million. The amount authorized for each succeeding fiscal year is 110 percent of the amount authorized for the immediately preceding fiscal year.

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



(26 U.S.C. § 501 (c)(3)); (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 pupils 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 attend schools in this State, including private schools, chosen by the parents or legal guardians of those pupils; (6) must not limit to a single school the schools for which it provides grants; and (7) must not limit grants to specific pupils. 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. For each pupil who is a beneficiary of a grant, **section 5** requires that the school in which the pupil is enrolled maintain a record of the pupil's academic progress in such a manner that the information may be aggregated for all such pupils enrolled in the school.

Section 6 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 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*



1 application, approve or deny the application and provide to the
2 scholarship organization notice of the decision and, if the
3 application is approved, the amount of the credit authorized. Upon
4 receipt of notice that the application has been approved, the
5 scholarship organization shall provide notice of the approval to
6 the taxpayer who must, not later than 10 days after receiving the
7 notice, make the donation of money to the scholarship
8 organization. If the taxpayer does not make the donation of money
9 to the scholarship organization within 10 days after receiving the
10 notice, the scholarship organization shall provide notice of the
11 failure to the Department of Taxation and the taxpayer forfeits
12 any claim to the credit authorized by subsection 1.

13 3. The Department of Taxation shall approve or deny
14 applications for the credit authorized by subsection 1 in the order
15 in which the applications are received. The Department of
16 Taxation may, for each fiscal year, approve applications for
17 the credit authorized by subsection 1 until the total amount of the
18 credits authorized by subsection 1 and approved by the
19 Department of Taxation is:

20 (a) For Fiscal Year 2015-2016, \$10,000,000;

21 (b) For Fiscal Year 2016-2017, \$11,000,000; and

22 (c) For each succeeding fiscal year, an amount equal to 110
23 percent of the amount authorized for the immediately preceding
24 fiscal year.

25 ➡ The amount of any credit which is forfeited pursuant to
26 subsection 2 must not be considered in calculating the amount of
27 credits authorized for any fiscal year.

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

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

44 **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 pupils 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 allow those pupils to attend schools in this State chosen by the parents or legal guardians of those pupils, including, without limitation, private schools as defined in NRS 394.103. The total amount of a grant provided by the scholarship organization on behalf of a pupil pursuant to this paragraph must not exceed:

(1) The tuition charged for enrollment in the school chosen by the parent or legal guardian of the pupil; or

(2) The sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235,

↳ whichever is less.

(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 pupils the grants provided pursuant to that paragraph.

2. A grant provided on behalf of a pupil pursuant to subsection 1 must be paid directly to the school chosen by the parent or legal guardian of the pupil.

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. Each school in which a pupil is enrolled for whom a grant is provided by a scholarship organization shall maintain a record of the academic progress of the pupil. The record must be maintained in such a manner that the information may be



1 aggregated and reported for all such pupils if reporting is required
2 by the regulations of the Department of Education.

3 5. The Department of Education:

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

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

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

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

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

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

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

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

25 6. For each school for which such a grant was made during
26 the immediately preceding calendar year:

27 (a) The name and address of the school;

28 (b) The number of pupils enrolled in the school for whom such
29 a grant was made; and

30 (c) The total dollar amount of such grants provided for pupils
31 enrolled in the school.

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

33 363A.130 1. There is hereby imposed an excise tax on each
34 employer at the rate of 2 percent of the wages, as defined in NRS
35 612.190, paid by the employer during a calendar quarter with
36 respect to employment in connection with the business activities of
37 the employer.

38 2. The tax imposed by this section:

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

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

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



1 employer is required to pay a contribution pursuant to
2 NRS 612.535:

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

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

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

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

16 363B.110 1. There is hereby imposed an excise tax on each
17 employer at the rate of 0.63 percent of the wages, as defined in NRS
18 612.190, paid by the employer during a calendar quarter with
19 respect to employment in connection with the business activities of
20 the employer.

21 2. The tax imposed by this section:

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

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

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

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

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

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

43 **Sec. 9.** This act becomes effective:



- 1 1. Upon passage and approval for the purpose of adopting
- 2 regulations and performing any other preparatory administrative
- 3 tasks that are necessary to carry out the provisions of this act; and
- 4 2. On January 1, 2016, for all other purposes.

