

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1222

Amendment Number: H5

Bill Subtitle: THE ARKANSAS PARENTAL EMPOWERMENT FOR EDUCATION CHOICE ACT OF 2017.

Basic Change :

Sponsor: Representative Dotson

Amendment 5 to HB1222 amends the bill to clarify the responsibilities of the eligible nonprofit organization to provide that the eligible nonprofit organization must file an annual report to the Department of Education reflecting that eligible students take the state-mandated assessment of nationally recognized norm-referenced tests that measure learning gains in math and language arts; that the eligible nonprofit organization must gather student data regarding grade level, gender, and race for reporting purposes; and place certain information regarding student results on their website. The amendment also makes various technical corrections.

HB1222 has been engrossed to incorporate the language in House Amendment 4.

Amendment 4 to HB1222 adds Representatives Boyd, Womack, Davis and Senator Bledsoe as cosponsors of the bill. The amendment makes technical changes and reduces the maximum amount of income tax credits to be granted in the initial year of the program.

The bill is amended to require the nonprofit organization to apply to DFA for initial certification or to renew as an eligible nonprofit by March 1 before the academic year and that the certification would renew automatically unless DFA revokes the certification. DFA will certify the initial application of the charitable organization within 30 days of receipt with no more than five (5) organizations certified as eligible nonprofit organizations at any given time. The organizations are required to conduct annual audits of all education savings accounts and to conduct random audits of some education savings accounts throughout the year.

The amendment provides that amounts within the education savings accounts may be carried over from previous academic years will also be available for each eligible student in addition to the equivalent of the foundation funding amount under § 6-20-2305(a)(2) with the amounts deposited in quarterly installments. The organization must maintain a single account for education savings account funds to be made available for each eligible student and separate accounts for all other funds of the organization. The bill is also amended to require the organization to develop a system of payment for direct payment from an education savings account to education service providers or other entities for expenses and to provide reimbursement to a parent by check, electronic funds transfer, or other payment method after receiving from the parent receipts for expenses.

The bill modifies the order of priority to receive funding by removing the weighted lottery provisions and establishes the following order of priority for applicants of education savings accounts: (1) to students who received funding in the previous academic year; (2) to siblings of a eligible student who has a savings account; (3) those from the previous year's wait list who meet the qualifications as a national school lunch student if they were enrolled in a public school; (4) new applicants who meet the qualifications as a national school lunch student if they were enrolled in a public school; (5) students who are dependents of military members deployed in this state if the dependents are eligible to enroll in a public school in Arkansas; (6) to all other eligible students retained on the wait list; and (7) to all other new applicants. During the first year of the program as well as in subsequent years, the organization must approve a minimum of two applications from eligible students who attend a public school during the prior year for every one application the organization approves from eligible students

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who attended a nonpublic school during the prior year. The amendment also provides eligibility order during subsequent years.

The amendment changes the procedures for receiving an income tax credit for contributions for education savings accounts. The income tax credit will be equal to 65% of the contribution amount approved by DFA and is capped at \$6,500,000 in fiscal year 2019.

Before making a contribution to the organization, the taxpayer must notify the organization of the total amount of contribution they intend to make during the year, and from March 1 through April 15, the organization must request certification from DFA for the intended amount. DFA must certify or deny the requested amount within 20 days of receipt and if DFA certifies the request, the charitable organization shall immediately notify the contributor that the requested amount was certified. The contributor must make the contribution within 20 days after receiving notice. The charitable organization would then notify DFA of their receipt of funds in order for the income tax credit to be recorded on the taxpayer's account. If the charitable organization does not receive the timely contribution, the organization will notify DFA and the certified contribution becomes void.

After the first year of income tax credit issuance, the income tax credits will be equal to 10% more than the total amount certified from the previous fiscal year minus the difference between the total amount of certified contributions and the amount of certified contributions that the eligible nonprofit organization reported to DFA by November 1.

The bill provides that the income tax credit used by the contributors cannot exceed 50% of the income tax due and that unused credits may be carried forward for 5 consecutive years following the tax year in which the credit was earned. A contribution that is made on or before the fifteenth day of the fourth month following the close of the tax year may be applied to either the current or preceding tax year. The bill directs DFA to adopt rules necessary to administer the income tax credits including rules for allocation of the credits and carryforward credits on a first-come, first-served basis.

HB1222 has been engrossed to incorporate the language in Amendment 3.

Amendment 3 to HB1222 eliminates the language "throughout the academic year" from the language requiring quarterly transfers of payments to education savings accounts by eligible nonprofit organizations, and adds language that receipts from education savings accounts by an eligible parent or student does not constitute taxable income.

HB1222 has been engrossed to incorporate the language in Amendment 2.

Amendment 2 to HB1222 replaces all references to "a quality education" with "an appropriate educational opportunity," and substitutes language claiming that "every child has a civil right to a quality education that fits his or her individual needs" with language that "allowing a parent the means and choice to provide an appropriate educational opportunity that fits his or her child's individual needs is important to the civic and economic health of the state."

HB1222, as amended by H-1 provides that eligible nonprofit organizations (NPO) may establish education savings accounts for use in paying the non-public school education expenses for a student. The NPO must satisfy various criteria outlined in the Act and must file an application with DFA by May

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1 before the academic year for which the NPO intends to fund education savings accounts. Within sixty (60) days after receipt of the application, DFA would certify the eligible NPO if it meets all necessary requirements.

Parents may apply to a NPO to establish an education savings account for an eligible student. The parent must use the funds from the account for educational expenses at a nonpublic school. Eligible education expenses are outlined in the bill. The NPO may contract with financial institutions to establish the savings accounts and would transfer into the account for the eligible student an equivalent amount of the foundation funding as provided in state law for each academic year. For the 2016-2017 school year, that amount was \$6,646.

Taxpayers who make eligible contributions will receive a state income tax credit equal to 100% of the contribution amount. The tax credit may be used to offset up to 50% of the income tax due for the tax year. Unused credits may be carried forward for five consecutive tax years following the tax year in which the credit was earned. Contributions are not eligible for a charitable contributions deduction for state income tax purposes. The act is effective for tax year 2017 and following. The bill limits the available tax credit in 2017 to \$10M to be allowed on a first-come, first-served basis. The bill does not account for the fact that some taxpayers file returns early, some file on the due date, and some file with an extension. Consequently, individual income tax returns are filed from January through October of the filing year and all of those returns are timely under state law. Those taxpayers making contributions under this Act who do not file until later will expect to receive the tax credit and may file too late to benefit from this Act because the \$10M limit has been reached. In addition, corporate income tax returns are due throughout the year based on whether the corporation is a calendar year or fiscal year filer. Corporations with a later due date may be denied the tax credit.

Revenue Impact :

FY2019 \$6.5M Reduction in State General Revenues. It is anticipated that full amount of the credit would be utilized every year and the impact would increase by the maximum of 10% in each subsequent fiscal year. The estimated revenue impact for subsequent fiscal years is as follows:

FY2020 \$7.1M Reduction in State General Revenues
FY2021 \$7.8M Reduction in State General Revenues
FY2022 \$8.6M Reduction in State General Revenues
FY2023 \$9.5M Reduction in State General Revenues
FY2024 \$10.4M Reduction in State General Revenues
FY2025 \$11.5M Reduction in State General Revenues

[Tax credits may not be redeemed until FY2019. Therefore, no impact to State General Revenues for FY2017 and FY2018.]

Taxpayer Impact :

Individuals and corporations may offset up to 50% of their state income tax for contributions to an education savings account (ESA). The bill provides that for an eligible contribution to an ESA an income tax credit of 65% of the eligible contribution is allowed for a \$6.5M total maximum amount of credits that may be redeemed in FY2019. \$10M in eligible contributions would be required to create the

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\$6.5M maximum of credits in FY2019. In FY17 there were 19,490 students in private schools. The \$6.5M limit in FY2019 will allow approximately 1,504 students to benefit from this Act ($\$10M \div \$6,646 = 1,504$). Of the students that may participate, the bill requires at least two public school students to transfer to a private school for each private school student that is entered into the program. Therefore, of the 1,504 expected number of students eligible students, a minimum of 1,003 students would be required to transfer from public schools. In addition, students currently in public schools may seek to take advantage of this Act. Recipients and parents of recipients will not be taxed on ESA that are granted.

Resources Required :

None.

Time Required :

DFA will develop procedures and promulgate rules for the proper administration of the program. Adequate time is provided for implementation for the academic year beginning in the fall of 2018.

Procedural Changes :

Computer programs, tax forms, training manuals and procedures manuals would need to be updated. DFA employees must be trained.

Other Comments :

None.

Legal Analysis :

HB1222 creates "education savings accounts" (ESA) that may be used to pay for private school costs and other related costs. The ESAs would be administered by "eligible nonprofit organizations." A NPO seeking to administer education savings accounts is required to apply to DFA for initial or renewal certification. The ESAs would be funded by "eligible taxpayer contributions" made to eligible NPOs in exchange for income tax credits. This bill creates a maximum of \$6.5M in state income tax credits in fiscal year 2019 and carry forwards for later tax years. The bill provides that the available tax credits for years subsequent to the 2019 fiscal year will increase by up to a maximum of 10% in subsequent years.