

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1935

By: McCall of the House and Treat of the Senate

Title: Students; creating the Oklahoma Parental Choice Tax Credit Act; creating income tax credit for certain taxpayers; emergency.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

Respectfully submitted,

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Treat _____
McCortney _____
Daniels _____
Pugh _____
Pemberton _____
Seifried _____
Brooks _____

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1935

By: McCall, Bashore, Baker,
Luttrell, Caldwell (Chad),
Maynard, Echols, McBride,
Hilbert, and Culver of the
House

and

Treat, Jett, Pugh, Daniels,
Rosino, McCortney, Thompson
(Roger), Hall, Coleman,
Paxton, Rader, Seifried,
Green, Newhouse, Stewart,
Prieto, Murdock,
Montgomery, Pederson,
Dugger, Pemberton, Weaver,
Stanley, Haste, Garvin,
Stephens, Burns, Alvord,
Bergstrom, Thompson
(Kristen), Rogers, Bullard,
and Woods of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to students; creating the Oklahoma
Parental Choice Tax Credit Act; providing short
title; providing legislative intent; defining terms;
creating the Oklahoma Parental Choice Tax Credit
Program; providing purpose; creating income tax
credit for certain taxpayers beginning in certain tax
year; prescribing maximum credit amounts for certain
tax years; directing taxpayer to retain certain
receipts and submit them upon request; prescribing
maximum amount of credits for certain tax years;
establishing a preference for certain taxpayers;

1 prohibiting limitation on annual amount of credits
2 after certain date; authorizing the Commission to
3 prescribe certain forms; providing for advancement of
4 certain credit in installments; providing procedures
5 for claiming credit; authorizing dual participation
6 in certain program; authorizing the Commission to
7 conduct or contract for certain audit; authorizing
8 prorated recapture of credits; suspending credits if
9 certain funding levels are not met; directing credit
10 amount to be reduced if certain event occurs;
11 requiring the posting of certain credit amounts;
12 requiring the State Department of Education to
13 provide certain notice; directing implementation of
14 certain system; requiring coordination of a process
15 to verify student enrollment status; providing for
16 promulgation of rules; providing immunity from
17 liability for certain actions; allowing certain
18 parents to intervene in certain legal proceeding;
19 prohibiting severability of act provisions; creating
20 the Oklahoma Student Fund; establishing nature and
21 characteristics of fund; authorizing certain uses;
22 establishing methodology for distribution of funds;
23 providing for and limiting budgeting and expenditure
24 of monies; providing for codification; providing for
conditional enactment; and declaring an emergency.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 28-100 of Title 70, unless there
19 is created a duplication in numbering, reads as follows:

20 A. This act shall be known and may be cited as the "Oklahoma
21 Parental Choice Tax Credit Act".

22 B. It is the intent of the Legislature that parents, legal
23 guardians, custodians, and others with legal authority over children
24 in this state be able to choose educational services that meet the

1 needs of their individual children. The Legislature affirms that
2 parents and legal guardians are best suited to make choices to help
3 children in this state reach their full potential and achieve a
4 brighter future.

5 SECTION 2. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 28-101 of Title 70, unless there
7 is created a duplication in numbering, reads as follows:

8 A. As used in the Oklahoma Parental Choice Tax Credit Act:

9 1. "Commission" means the Oklahoma Tax Commission;

10 2. "Curriculum" means a complete course of study for a
11 particular content area or grade level;

12 3. "Department" means the State Department of Education;

13 4. "Education service provider" means a person, business,
14 public school district, public charter school, magnet school,
15 institution within The Oklahoma State System of Higher Education, or
16 organization that provides educational goods and/or services to
17 eligible students;

18 5. "Eligible student" means a resident of this state who is
19 eligible to enroll in a public school in this state. Eligible
20 student shall include a student who is enrolled in and attends a
21 private school accredited by the State Board of Education or another
22 accrediting association or a student who is educated pursuant to the
23 other means of education exception provided for in subsection A of
24 Section 10-105 of Title 70 of the Oklahoma Statutes;

1 6. "Qualified expense" means the following services:

- 2 a. tuition and fees at a private school accredited by the
3 State Board of Education or another accrediting
4 association,
- 5 b. tuition and fees for nonpublic online learning
6 programs,
- 7 c. academic tutoring services provided by an individual
8 or a private academic tutoring facility,
- 9 d. textbooks, curriculum, or other instructional
10 materials including, but not limited to, supplemental
11 materials or associated online instruction required by
12 an education service provider,
- 13 e. fees for nationally standardized assessments
14 including, but not limited to, assessments used to
15 determine college admission and advanced placement
16 examinations as well as tuition and fees for tutoring
17 or preparatory courses for the assessments, and
- 18 f. tuition and fees for concurrent enrollment at an
19 institution within The Oklahoma State System of Higher
20 Education; and

21 7. "Taxpayer" means a biological or adoptive parent,
22 grandparent, aunt, uncle, legal guardian, custodian, or other person
23 with legal authority to act on behalf of an eligible student.
24

1 B. There is hereby created the Oklahoma Parental Choice Tax
2 Credit Program to provide an income tax credit to a taxpayer for
3 qualified expenses to support the education of eligible students in
4 this state.

5 C. 1. For tax years beginning with 2023, there shall be
6 allowed against the tax imposed by Section 2355 of Title 68 of the
7 Oklahoma Statutes a credit for any Oklahoma taxpayer who incurs a
8 qualified expense on behalf of an eligible student, to be
9 administered subject to the following amounts for each tax year;
10 provided, the credit allowed for tax year 2023 shall only be for
11 qualified expenses made on or after July 1, 2023:

- 12 a. (1) Five Thousand Dollars (\$5,000.00) in tax year
13 2023,
14 (2) Six Thousand Dollars (\$6,000.00) in tax year
15 2024, and
16 (3) Six Thousand Five Hundred Dollars (\$6,500.00) in
17 tax year 2025 and each subsequent tax year,
18 in qualified expenses per eligible student if the eligible
19 student attends a private school accredited by the State
20 Board of Education or another accrediting association or
21 the amount of tuition and fees for the private school,
22 whichever is less, and
23 b. One Thousand Dollars (\$1,000.00) in tax year 2023 and
24 each subsequent tax year, in qualified expenses per

1 eligible student if the eligible student is educated
2 at a non-accredited private institution or educated
3 pursuant to the other means of education exception
4 provided for in subsection A of Section 10-105 of
5 Title 70 of the Oklahoma Statutes. To claim the
6 credit, the taxpayer shall submit to the Commission
7 receipts for qualified expenses as defined by
8 paragraph 6 of subsection A of this section.

9 2. The taxpayer shall retain all receipts of qualified expenses
10 as proof of the amounts paid each tax year the credit is claimed and
11 shall submit them to the Commission upon request.

12 3. If the credit exceeds the tax imposed by Section 2355 of
13 Title 68 of the Oklahoma Statutes, the excess amount shall be
14 refunded to the taxpayer.

15 D. 1. For the tax years beginning January 1, 2023, and January
16 1, 2024, the total amount of credits authorized by this section used
17 to offset tax shall be adjusted annually to limit the annual amount
18 of credits to Two Hundred Million Dollars (\$200,000,000.00). If the
19 total tax credits authorized by this section exceed Two Hundred
20 Million Dollars (\$200,000,000.00) in tax years 2023 and 2024,
21 preference shall be given to taxpayers who claim a credit authorized
22 by this section on behalf of an eligible student and whose household
23 has a total adjusted gross income during the preceding tax year
24

1 which does not exceed Two Hundred Fifty Thousand Dollars
2 (\$250,000.00).

3 2. For the tax year beginning January 1, 2025, and each tax
4 year thereafter, there shall be no limitation on the annual amount
5 of credits.

6 E. The Commission may prescribe forms for purposes of claiming
7 the credits authorized by the Oklahoma Parental Choice Tax Credit
8 Act. The Commission shall create a form for the purpose of allowing
9 taxpayers to request that the credit amount provided in subparagraph
10 a of paragraph 1 of subsection C of this section be advanced to the
11 taxpayer in two installments of not more than half of the total
12 amount authorized per semester for a maximum credit of the total
13 amount authorized per tax year or the amount of tuition and fees for
14 the private school, whichever is less. Eligible taxpayers who
15 submit the form and qualify for an advance shall be approved and
16 paid within sixty (60) days of submitting the prescribed form.

17 F. Taxpayers claiming the credit shall:

18 1. Only claim the credit for qualified expenses as defined in
19 paragraph 6 of subsection A of this section to provide an education
20 for an eligible student;

21 2. Ensure no other person is claiming a credit for the eligible
22 student;

23

24

1 3. Not claim the credit for an eligible student who enrolls as
2 a full-time student in a public school district, public charter
3 school, public virtual charter school, or magnet school; and

4 4. Comply with rules and requirements established by the
5 Commission for administration of the Oklahoma Parental Choice Tax
6 Credit Program.

7 G. Eligible students may accept a scholarship from the Lindsey
8 Nicole Henry Scholarships for Students with Disabilities Program
9 created by Section 13-101.2 of Title 70 of the Oklahoma Statutes
10 while participating in the Oklahoma Parental Choice Tax Credit
11 Program.

12 H. The Commission shall have the authority to:

13 1. Conduct an audit or contract for the auditing of receipts
14 for qualified expenses submitted pursuant to subparagraph b of
15 paragraph 1 of subsection C of this section; and

16 2. Recapture the credits otherwise authorized by the provisions
17 of this act on a prorated basis if an audit conducted pursuant to
18 this subsection shows that the credit was claimed for expenditures
19 that were not qualified expenses or it finds that the taxpayer has
20 claimed an eligible student who no longer attends a private school
21 or has enrolled in a public school in the state.

22 I. Beginning July 1, 2024, and for each succeeding July 1 if
23 the amount of money appropriated to the State Board of Education to
24 fund public schools for such fiscal year is less than the amount of

1 money appropriated to the State Board of Education to fund public
2 schools for the fiscal year ending June 30, 2024, including funds
3 appropriated pursuant to Enrolled House Bill No. 2775, (specifically
4 including but not limited to funds appropriated to the Oklahoma
5 Student Fund), enacted during the 1st Session of the 59th Oklahoma
6 Legislature, the tax credits otherwise authorized in subsection C of
7 this section shall be suspended until such amounts are appropriated
8 to the State Board of Education for such year to fund public schools
9 at an amount that is greater than or equal to the amount
10 appropriated for the fiscal year ending June 30, 2024.

11 J. In the event of a failure of revenue pursuant to the
12 Oklahoma State Finance Act, the tax credits otherwise authorized in
13 subsection C of this section shall be reduced proportionately to the
14 appropriation allocation reduction experienced by the State Board of
15 Education to fund public schools for the fiscal year in which the
16 failure of revenue occurs.

17 K. The Commission shall make available on its website the
18 amount of credits claimed each tax year pursuant to subsection C of
19 this section.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 28-102 of Title 70, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The State Department of Education shall provide parents,
24 legal guardians, custodians, or other persons with legal authority

1 of eligible students with disabilities notice that participation in
2 the Oklahoma Parental Choice Tax Credit Program shall have the same
3 effect as a parental revocation of consent pursuant to 20 U.S.C.,
4 Sections 1414(a)(1)(D) and 1414(C) of the Individuals with
5 Disabilities Education Act (IDEA) and an explanation of the rights
6 parents, legal guardians, custodians, or other persons with legal
7 authority of eligible students with disabilities have under IDEA and
8 any applicable state laws and regulations.

9 B. The Department shall implement a commercially viable, cost-
10 effective, and user-friendly system for users to publicly rate,
11 review, and share information about education service providers.

12 C. The Oklahoma Tax Commission shall coordinate with the State
13 Department of Education to develop a process to review student
14 enrollment information in order to verify that an eligible student
15 who is claimed by a taxpayer receiving a tax credit is not enrolled
16 in a public school in the state.

17 D. The Commission may promulgate rules to implement the
18 provisions of the Oklahoma Parental Choice Tax Credit Act. The
19 State Board of Education may promulgate rules to implement the
20 provisions of this section.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 28-103 of Title 70, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. No liability shall arise on the part of the Oklahoma Tax
2 Commission, State Department of Education, State Board of Education,
3 the state, a public school district, a public charter school, a
4 public virtual charter school, or a magnet school based on the award
5 of or use of a tax credit pursuant to the Oklahoma Parental Choice
6 Tax Credit Act.

7 B. If any part of the Oklahoma Parental Choice Tax Credit Act
8 is challenged in a state court as violating either the Oklahoma
9 Constitution or United States Constitution, taxpayers shall be
10 permitted to intervene for the purposes of defending the Oklahoma
11 Parental Choice Tax Credit Program's constitutionality. However,
12 for the purposes of judicial administration, a court may require
13 that all taxpayers file a joint brief so long as they are not
14 required to join any brief filed on behalf of any named state
15 defendant.

16 C. The provisions of the Oklahoma Parental Choice Tax Credit
17 Act shall not be severable, and if any provision of the Oklahoma
18 Parental Choice Tax Credit Act or the application thereof to any
19 person or circumstances is held invalid, such invalidity shall
20 invalidate the other provisions or applications of this act.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 28-104 of Title 70, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. There is hereby created in the State Treasury a revolving
2 fund for the State Board of Education to be designated the "Oklahoma
3 Student Fund". The fund shall be a continuing fund, not subject to
4 fiscal year limitations, and shall consist of all monies designated
5 for deposit to the fund by law. All monies accruing to the credit
6 of the fund are hereby appropriated and shall be distributed by the
7 State Board of Education to public school districts in the state
8 based on the weighted average daily membership for the preceding
9 school year for the district to be utilized as provided in
10 subsection B of this section, provided that in no event shall a
11 district receive greater than Two Million Dollars (\$2,000,000.00) in
12 such funds in a single state fiscal year.

13 B. Oklahoma Student Fund distributions may be utilized by
14 school districts of the state for the following:

15 1. Salaries for public school support staff and public school
16 certified personnel excluding superintendents;

17 2. Programs and facilities related to instruction in science,
18 technology, engineering, and mathematics;

19 3. Textbooks, curriculum, or other instructional materials
20 including, but not limited to, supplemental materials or associated
21 online instruction applications or materials;

22 4. Computer hardware or other technological devices,
23 educational software, and applications that are used to meet
24 curriculum needs and bolster academic outcomes of students;

1 5. Maintenance and operations, including, but not limited to,
2 increasing classroom capacity and additional institutional space for
3 academic instruction if the school is at full academic capacity;

4 6. Instruments, supplies, accessories, and materials that
5 provide instruction in drama, music, speech and debate, agriculture,
6 or other similar activities;

7 7. Fees for nationally standardized assessments including, but
8 not limited to, assessments used to determine college admission and
9 advanced placement examinations as well as tuition and fees for
10 tutoring, remediation, or preparatory courses for the assessments;

11 8. Summer education programs and specialized after-school
12 education programs; provided, however, that such expense shall not
13 include before-school or after-school child care;

14 9. Student support services, related to health, psychology,
15 guidance, therapy, and attendance; and

16 10. Tuition and fees for concurrent enrollment at an
17 institution within The Oklahoma State System of Higher Education,
18 limited to amounts that are not paid by the Oklahoma State Regents
19 for Higher Education.

20 SECTION 6. The provisions of this act shall not become
21 effective as law unless both Enrolled House Bill No. 2775 of the 1st
22 Session of the 59th Oklahoma Legislature and Enrolled Senate Bill
23 No. 561 of the 1st Session of the 59th Oklahoma Legislature become
24 effective as law.

1 SECTION 7. It being immediately necessary for the preservation
2 of the public peace, health, or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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6 59-1-8328 JM 04/26/23

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