An Act

ENROLLED SENATE
BILL NO. 969

By: Newberry, Ford, Holt, Jolley, Stanislawski, Simpson, Russell, Brown, Eason McIntyre, Brinkley, Shortey and David of the Senate

and

Denney, Richardson, Shumate, Wright, Billy, Ortega, Newell, Hickman, Kern, Jackson, Brumbaugh, Derby, Holland, Hall, Hamilton, Nelson and Cooksey of the House

An Act relating to income tax; creating the Oklahoma Equal Opportunity Education Scholarship Act; providing credit for donation to certain scholarship-granting organizations; limiting percentage of credit; limiting amount of credit based on filing status; limiting amount of total credits annually; providing credit for donation to certain improvement grant organizations; limiting percentage of credit; limiting amount of credit based on filing status; allowing for increase in credit percentage based on certain commitment; limiting amount of total credits annually; requiring organizations to award certain percentage of contributions; providing for calculation of percentage; delaying ability to claim credits; defining terms; providing for allocation of credits; allowing for allocation of unused credit pool under certain circumstances; prohibiting refund; requiring certain application; requiring certain

consultation; requiring report containing certain information; providing for carryover of unused credit; requiring Tax Commission to promulgate rules in consultation with State Department of Education; and providing for codification.

SUBJECT: Oklahoma Equal Opportunity Education Scholarship Act

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.206 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Equal Opportunity Education Scholarship Act".

B. 1. Except as provided in subsection E of this section, after the effective date of this act, there shall be allowed a credit for any taxpayer who makes a contribution to an eligible scholarship-granting organization. The credit shall be equal to fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000.00) for single individuals, Two Thousand Dollars ($2,000.00) for married individuals filing jointly, or One Hundred Thousand Dollars ($100,000.00) for any taxpayer which is a legal business entity including limited and general partnerships, corporations, and limited liability companies; provided, if total credits claimed pursuant to this paragraph exceed the caps established pursuant to paragraph 2 of this subsection, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year, as determined pursuant to subsection G of this section.

2. a. The total credits authorized by paragraph 1 of this subsection for all single individuals and married individuals filing jointly shall not exceed One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00) annually.

b. The total credits authorized by paragraph 1 of this subsection for all other taxpayers not subject to subparagraph a of this paragraph shall not exceed One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00) annually.

c. Each cap on total credits as provided for in this paragraph shall be allocated by the Oklahoma Tax Commission as provided in subsection G of this section.

C. 1. Except as provided in subsection E of this section, after the effective date of this act, there shall be allowed a credit for any taxpayer who makes a contribution to an eligible educational improvement grant organization. The credit shall be equal to fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000.00) for single individuals, Two Thousand Dollars ($2,000.00) for married individuals filing jointly, or One Hundred Thousand Dollars ($100,000.00) for any taxpayer which is a legal business entity including limited and general partnerships, corporations, and limited liability companies; provided, if total credits claimed pursuant to this paragraph exceed the cap established pursuant to paragraph 3 of this subsection, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year, as determined pursuant to subsection G of this section.

2. For any taxpayer who makes a contribution to an eligible educational improvement grant organization and makes a written commitment to contribute the same amount for two (2) additional consecutive years the credit shall be equal to seventy-five percent (75%) of the total amount of the contribution established in paragraph 1 of this subsection, not to exceed the amounts established in paragraph 1 of this subsection for the taxable year in which the credit provided in this subsection is claimed; provided, if total credits claimed pursuant to this paragraph exceed the cap established pursuant to paragraph 3 of this subsection, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year, as determined pursuant to subsection G of this section. The taxpayer shall provide evidence of the written

commitment to the Oklahoma Tax Commission at the time of filing the refund claim.

3. a. The total credits authorized by paragraph 1 of this subsection for all single individuals, married individuals filing jointly and for all other taxpayers shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) annually.

b. The cap on total credits as provided for in this paragraph shall be allocated by the Oklahoma Tax Commission as provided in subsection G of this section.

D. For credits claimed for eligible contributions made during tax year 2014 and thereafter, a credit shall not be allowed by the Oklahoma Tax Commission for contributions made to a scholarship-granting organization or an educational improvement grant organization if that organization's percentage of funds actually awarded is less than ninety percent (90%). For purposes of this section, the "percentage of funds actually awarded" shall be determined by dividing the total amount of funds actually awarded as educational scholarships or educational improvement grants over the most recent twenty-four (24) months by the total amount available to award as educational scholarships or educational improvement grants over the most recent twenty-four (24) months.

E. Any tax credits which are earned by a taxpayer pursuant to this section during the time period beginning on the effective date of this act through December 31, 2012, may not be claimed for any period prior to the taxable year beginning January 1, 2013. No credits which accrue during the time period beginning on the effective date of this act through December 31, 2012, may be used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2013.

F. As used in this section:

1. "Eligible student" means a child of school age who is lawfully present in the United States and who is a member of a household in which the total annual income during the preceding tax year does not exceed an amount equal to three hundred percent (300%)

of the income standard used to qualify for a free or reduced school lunch or who, during the immediately preceding school year, attended or, by virtue of the location of such student's place of residence, was eligible to attend a public school in this state which has been identified for school improvement as determined by the State Board of Education pursuant to the requirements of the No Child Left Behind Act of 2001, P.L. No. 107-110. Once a student has received an educational scholarship, as defined in paragraph 3 of this subsection, the student and any siblings who are members of the same household shall remain eligible until they graduate from high school or reach twenty-one (21) years of age, whichever occurs first;

2. "Eligible special needs student" means a child of school age who has attended public school in our state with an individualized education program pursuant to the Individuals With Disabilities Education Act, 20 U.S.C.A., Section 1400 et seq.;

3. "Educational scholarships" means:

a. scholarships to an eligible student of up to Five Thousand Dollars ($5,000.00) or eighty percent (80%) of the average per-pupil expenditure in the school district where the recipient student resides, whichever is greater, to cover all or part of the tuition, fees and transportation costs of a qualified school which is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes, or

b. scholarships to an eligible special needs student of up to Twenty-five Thousand Dollars ($25,000.00) to cover all or part of the tuition, fees and transportation costs of a qualified school for eligible special needs students which is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes;

4. "Low-income eligible student" means an eligible student or eligible special needs student who qualifies for a free or reduced-price lunch;

5. "Qualified school" means an elementary or secondary private school in this state, including schools which provide prekindergarten educational programs for four-year-olds, which:

a. is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes,

b. is in compliance with all applicable health and safety laws and codes,

c. has a stated policy against discrimination in admissions on the basis of race, color, national origin or disability, and

d. ensures academic accountability to parents and guardians of students through regular progress reports;

6. "Qualified school for eligible special needs students" means an elementary or secondary private school in a county in this state;

7. "Scholarship-granting organization" means an organization which:

a. is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),

b. distributes periodic scholarship payments as checks made out to an eligible student's or eligible special needs student's parent or guardian and mailed to the qualified school where the student is enrolled,

c. spends no more than ten percent (10%) of its annual revenue on expenditures other than educational scholarships as defined in paragraph 3 of this subsection,

d. spends each year a portion of its expenditures on educational scholarships for low-income eligible

students, as defined in paragraph 4 of this subsection, in an amount equal to or greater than the percentage of low-income eligible students in the state,

e. ensures that scholarships are portable during the school year and can be used at any qualified school that accepts the eligible student or at any qualified school for special needs students that accepts the eligible special needs student,

f. registers with the Oklahoma Tax Commission as a scholarship-granting organization, and

g. has policies in place to:

(1) carry out criminal background checks on all employees and board members to ensure that no individual is involved with the organization who might reasonably pose a risk to the appropriate use of contributed funds, and

(2) maintain full and accurate records with respect to the receipt of contributions and expenditures of those contributions and supply such records and any other documentation required by the Tax Commission to demonstrate financial accountability;

8. "Annual revenue" means the total amount or value of contributions received by an organization from taxpayers awarded credits during the organization's fiscal year and all amounts earned from interest or investments;

9. "Public school" means public schools as defined in Section 1-106 of Title 70 of the Oklahoma Statutes;

10. "Eligible school" means any public school that is not located within a ten-mile radius of a qualified school in this state, or any public school that is located within a ten-mile radius of a qualified school in this state but offers grade-level instruction different from the qualified school or any public school

located within a public school district with fewer than four thousand five hundred (4,500) students;

11. "Early childhood education program" means a program provided to children who are at least four (4) years of age but not more than five (5) years of age on or before September 1;

12. "Innovative educational program" means an advanced academic or academic improvement program that is not part of the regular coursework of a public school but that enhances the curriculum or academic program of the school or provides early childhood education programs to students;

13. "Educational improvement grant" means a grant to an eligible public school to implement an innovative educational program for students, including the ability for multiple public schools to make an application and be awarded a grant to jointly provide an innovative educational program; and

14. "Educational improvement grant organization" means an organization which:

a. is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and

b. contributes at least ninety percent (90%) of its annual receipts as grants to eligible schools for innovative educational programs. For purposes of this subparagraph, an educational improvement grant organization contributes its annual cash receipts when it expends or otherwise irrevocably encumbers those funds for expenditure during the then current fiscal year of the organization or during the next succeeding fiscal year of the organization.

G. Total credits authorized by this section shall be allocated as follows:

1. By January 10 of the year immediately following each calendar year, a scholarship-granting organization or an educational improvement grant organization which accepts contributions pursuant

to this section shall provide electronically to the Tax Commission information on each contribution accepted during such taxable year. At least once each taxable year, the scholarship-granting organization or the educational improvement grant organization shall notify each contributor that Oklahoma law provides for a total, statewide cap on the amount of income tax credits allowed annually;

2. a. If the Tax Commission determines the total combined credits claimed for contributions made to scholarship-granting organizations during the most recently completed calendar year by all single individual taxpayers and married individuals filing jointly are in excess of One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00), plus any additional amount allocated pursuant to subsection H of this section, the Tax Commission shall determine the percentage of the contribution which establishes the proportionate share of the credit which may be claimed by any taxpayer so that the maximum credits authorized by subparagraph a of paragraph 2 of subsection B of this section are not exceeded.

b. If the Tax Commission determines the total combined credits claimed for contributions made to scholarship-granting organizations during the most recently completed calendar year by all taxpayers not subject to subparagraph a of this paragraph are in excess of One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00), plus any additional amount allocated pursuant to subsection H of this section, the Tax Commission shall determine the percentage of the contribution which establishes the proportionate share of the credit which may be claimed by any taxpayer so that the maximum credits authorized by subparagraph b of paragraph 2 of subsection B of this section are not exceeded.

c. If the Tax Commission determines the total combined credits claimed for contributions made to educational improvement grant organizations during the most recently completed calendar year by all single individual taxpayers, married individuals filing

jointly and all other taxpayers are in excess of One Million Five Hundred Thousand Dollars ($1,500,000.00), plus any additional amount allocated pursuant to subsection H of this section, the Tax Commission shall determine the percentage of the contribution which establishes the proportionate share of the credit which may be claimed by any taxpayer so that the maximum credits authorized by subparagraph a of paragraph 3 of subsection C of this section are not exceeded; and

3. The Tax Commission shall publish the percentage of the contribution which may be claimed as a credit by contributors for the most recently completed calendar year on the Tax Commission website no later than February 15 of each calendar year for contributions made the previous year. Each scholarship-granting organization or educational improvement grant organization shall notify contributors of that amount annually.

H. The provisions of this subsection shall be applicable with respect to any calendar year for which any one of the tax credit pools is fully utilized and for which one or both of the remaining tax credit pool amounts are not fully utilized.

1. If for any calendar year there is any amount of available credit remaining pursuant to the provisions of paragraph 2 of subsection G of this section, and only one of the other tax credit pools has been fully utilized, the remaining amount from the tax credit pool which was not fully utilized shall be allocated to and added to the total tax credit pool amount for the other tax credit.

2. If for any calendar year there is any amount of available credit remaining pursuant to the provisions of paragraph 2 of subsection G of this section, and the other two tax credit pools have both been fully utilized, the remaining amount from the tax credit pool which was not fully utilized shall be divided by the whole number two (2) and the resulting amount shall be allocated to and added to the amount of available tax credits for each of the other tax credit pools.

I. The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

J. Any credits allowed but not used in any tax year may be carried over, in order, to each of the three (3) years following the year of qualification.

K. 1. In order to qualify under this section, an educational improvement grant organization shall submit an application with information to the Oklahoma Tax Commission on a form prescribed by the Tax Commission that:

a. enables the Tax Commission to confirm that the organization is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and

b. describes the proposed innovative educational program or programs supported by the organization.

2. The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

3. In order to maintain eligibility under this section, an educational improvement grant organization shall annually report the following information to the Tax Commission by September 1 of each year:

a. the name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year,

b. a description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements,

c. the names of the public school and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented,

d. where the organization collects information on a county-by-county basis, and

e. the total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.

4. The information required under paragraph 3 of this subsection shall be submitted on a form provided by the Tax Commission. No later than May 1 of each year, the Tax Commission shall annually distribute sample forms together with the forms on which the reports are required to be made to each approved organization.

5. The Tax Commission shall not require any other information be provided by an organization, except as expressly authorized in this section.

L. In consultation with the State Department of Education, the Tax Commission shall promulgate rules necessary to implement this act. The rules shall include procedures for the registration of a scholarship-granting organization or an educational improvement grant organization for purposes of determining if the organization meets the requirements of this act, for the revocation of the registration of an organization, if applicable, and for notice as required in subsection G of this section.

Passed the Senate the 5th day of May, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2011.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 10th

day of May, 20 11,

at 12:58 o'clock P M.

By: Jessica R Byers

Approved by the Governor of the State of Oklahoma the 16th day of

May, 20 11, at 2:28 o'clock P M.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

16th day of May, 20 11,

at 3:03 o'clock P M.

By: Michelle R Day