

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1935

6 By: McCall and McBride

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to students; creating the Oklahoma
10 Parental Choice Tax Credit Act; providing short
11 title; providing legislative intent; defining terms;
12 establishing the Oklahoma Parental Choice Tax Credit
13 Program; providing for purpose of program; creating
14 income tax credit for certain taxpayers; prescribing
15 maximum credit amount; directing taxpayer to retain
16 certain receipts; authorizing Tax Commission to
17 prescribe forms; permitting advancement of certain
18 credit; listing procedures for taxpayers claiming
19 credit; authorizing dual participation in certain
20 programs; authorizing prorated recapture of credits;
21 suspending credits if certain funding levels are not
22 met; reducing credit amount if certain event occurs;
23 providing for confidentiality of certain records;
24 requiring Department to provide notice to certain
taxpayers; directing Department to implement certain
system; mandating coordination of a process to verify
student enrollment status; providing for promulgation
of rules; providing immunity from liability for
certain actions; allowing certain parents to
intervene in certain legal proceeding; prohibiting
severability of act provisions; creating the Oklahoma
Student Fund; making the fund a continuing fund;
stating source of funds; providing for budgeting and
expenditure of monies; stating purpose; requiring
expenditures to be made upon warrants; including
certain schools in funding eligibility; including
appropriations in per-pupil expenditure calculations;
providing for conditional enactment; providing for
noncodification; providing for codification;

1 providing an effective date; and declaring an
2 emergency.

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

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

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

10 B. It is the intent of the Legislature that parents, legal
11 guardians, custodians, and others with legal authority over children
12 in this state be able to choose educational services that meet the
13 needs of their individual children. The Legislature affirms that
14 parents and legal guardians are best suited to make choices to help
15 children in this state reach their full potential and achieve a
16 brighter future.

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

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

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

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

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

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

6 5. "Eligible student" means a resident of this state who is
7 eligible to enroll in a public school in this state. Eligible
8 student shall include a student who is enrolled in and attends a
9 private school in the state or a student who is educated pursuant to
10 the other means of education exception provided for in subsection A
11 of Section 10-105 of Title 70 of the Oklahoma Statutes;

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

- 13 a. tuition and fees at a private school accredited by the
14 State Board of Education or another accrediting
15 association,
- 16 b. tuition and fees for nonpublic online learning
17 programs,
- 18 c. tutoring services provided by an individual or a
19 private tutoring facility,
- 20 d. services contracted for and provided by a public
21 school district, public charter school, or magnet
22 school including, but not limited to, classes and
23 extracurricular activities and programs,

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- 1 e. textbooks, curriculum, or other instructional
2 materials including, but not limited to, supplemental
3 materials or associated online instruction required by
4 an education service provider,
- 5 f. fees for nationally standardized assessments
6 including, but not limited to, assessments used to
7 determine college admission and advanced placement
8 examinations as well as tuition and fees for tutoring
9 or preparatory courses for the assessments, and
- 10 g. tuition and fees for concurrent enrollment at an
11 institution within The Oklahoma State System of Higher
12 Education; and

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

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

20 C. For tax years beginning after January 1, 2023, there shall
21 be allowed against the tax imposed by Section 2355 of Title 68 of
22 the Oklahoma Statutes a credit for any Oklahoma taxpayer who incurs
23 a qualified expense on behalf of an eligible student. The credit
24 shall be administered subject to the following:

1 1. The maximum credit amount shall be:

2 a. Five Thousand Dollars (\$5,000.00) in qualified expenses
3 per eligible student in each tax year if the eligible
4 student attends a private school accredited by the
5 State Board of Education or another accrediting
6 association, and

7 b. Two Thousand Five Hundred Dollars (\$2,500.00) in
8 qualified expenses per eligible student in each tax
9 year if the eligible student is educated pursuant to
10 the other means of education exception provided for in
11 subsection A of Section 10-105 of Title 70 of the
12 Oklahoma Statutes;

13 2. The taxpayer shall retain all receipts of qualified expenses
14 as proof of the amounts paid each tax year the credit is claimed;
15 and

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

19 D. The Commission may prescribe forms for purposes of claiming
20 the credits authorized by the Oklahoma Parental Choice Tax Credit
21 Act. The Commission shall create a form for the purpose of allowing
22 taxpayers to request that the credit amount provided in subparagraph
23 a of paragraph 1 of subsection C of this section be advanced to the
24 taxpayer in two installments of not more than Two Thousand Five

1 Hundred Dollars (\$2,500.00) per semester for a maximum credit of
2 Five Thousand Dollars (\$5,000.00) per tax year. Eligible taxpayers
3 who submit the form and qualify for an advance shall be approved and
4 paid within sixty (60) days of submitting the prescribed form.

5 E. Taxpayers claiming the credit shall:

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

9 2. Ensure no other person is claiming a credit for the eligible
10 student;

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

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

17 F. Eligible students may accept a scholarship from the Lindsey
18 Nicole Henry Scholarships for Students with Disabilities Program
19 created by Section 13-101.2 of Title 70 of the Oklahoma Statutes
20 while participating in the Oklahoma Parental Choice Tax Credit
21 Program.

22 G. The Commission shall be authorized to recapture the credits
23 otherwise authorized by the provisions of this act on a prorated
24 basis if it finds that the taxpayer has claimed an eligible student

1 who no longer attends a private school or has enrolled in a public
2 school in the state or that the credit does not meet the
3 requirements of the Oklahoma Parental Choice Tax Credit Act.

4 H. Beginning July 1, 2024, and beginning on each succeeding
5 July 1 if the amount of money appropriated to the State Board of
6 Education for the financial support of public schools for the fiscal
7 year which begins July 1, 2024, is less than the amount of money
8 appropriated to the State Board of Education for the financial
9 support of public schools for the fiscal year ending June 30, 2024,
10 including funds appropriated pursuant to Sections 1, 2, and 3 of
11 Enrolled House Bill No. 2775 enacted by the 1st Session of the 59th
12 Oklahoma Legislature, the tax credits otherwise authorized in
13 subsection C of this section shall be suspended until the amount of
14 money appropriated to the State Board of Education for the financial
15 support of public schools is greater than or equal to the amount
16 appropriated for the fiscal year ending June 30, 2024.

17 I. In the event of a failure of revenue pursuant to the
18 Oklahoma State Finance Act, the tax credits otherwise authorized in
19 subsection C of this section shall be reduced proportionately to the
20 reduction in the amount of money appropriated to the State Board of
21 Education for the financial support of public schools for the fiscal
22 year in which the failure of revenue occurs.

1 J. The Tax Commission shall keep all records relating to the
2 Oklahoma Parental Choice Tax Credit Act confidential including, but
3 not limited to, the Social Security numbers of eligible students.

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

7 A. The State Department of Education shall provide parents,
8 legal guardians, custodians, or other persons with legal authority
9 of eligible students with disabilities notice that participation in
10 the Oklahoma Parental Choice Tax Credit Program shall have the same
11 effect as a parental revocation of consent pursuant to 20 U.S.C.,
12 Sections 1414(a)(1)(D) and 1414(C) of the Individuals with
13 Disabilities Education Act (IDEA) and an explanation of the rights
14 parents, legal guardians, custodians, or other persons with legal
15 authority of eligible students with disabilities have under IDEA and
16 any applicable state laws and regulations.

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

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

1 D. The Commission and Department may promulgate rules to
2 implement the provisions of the Oklahoma Parental Choice Tax Credit
3 Act.

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

7 A. No liability shall arise on the part of the Oklahoma Tax
8 Commission, State Department of Education, State Board of Education,
9 the state, a public school district, a public charter school, a
10 public virtual charter school, or a magnet school based on the award
11 of or use of a tax credit pursuant to the Oklahoma Parental Choice
12 Tax Credit Act.

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

22 C. The provisions of the Oklahoma Parental Choice Tax Credit
23 Act shall not be severable, and if any provision of the Oklahoma
24 Parental Choice Tax Credit Act or the application thereof to any

1 person or circumstances is held invalid, such invalidity shall
2 invalidate the other provisions or applications of this act.

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

6 There is hereby created in the State Treasury a revolving fund
7 for the State Board of Education to be designated the "Oklahoma
8 Student Fund". The fund shall be a continuing fund, not subject to
9 fiscal year limitations, and shall consist of all monies designated
10 for deposit to the fund by law. All monies accruing to the credit
11 of the fund are hereby appropriated and may be budgeted and expended
12 by the State Board of Education for the purpose of funding public
13 school districts as provided in Sections 2 and 3 of Enrolled House
14 Bill No. 2775 enacted by the 1st Session of the 59th Oklahoma
15 Legislature. Expenditures from the fund shall be made upon warrants
16 issued by the State Treasurer against claims filed as prescribed by
17 law with the Director of the Office of Management and Enterprise
18 Services for approval and payment.

19 SECTION 6. NEW LAW A new section of law not to be
20 codified in the Oklahoma Statutes reads as follows:

21 A. For the purposes of funds appropriated pursuant to Sections
22 1, 2, and 3 of Enrolled House Bill No. 2775 enacted by the 1st
23 Session of the 59th Oklahoma Legislature, the Oklahoma School for
24 the Blind and the Oklahoma School for the Deaf shall be considered

1 public schools and public school districts that are eligible to
2 receive the funds appropriated in Sections 1, 2, and 3 of Enrolled
3 House Bill No. 2775 enacted by the 1st Session of the 59th Oklahoma
4 Legislature.

5 B. The funds appropriated pursuant to Sections 1, 2, and 3 of
6 Enrolled House Bill No. 2775 enacted by the 1st Session of the 59th
7 Oklahoma Legislature shall be included in any calculation of per-
8 pupil expenditure as defined in Section 1-124 of Title 70 of the
9 Oklahoma Statutes.

10 SECTION 7. The provisions of this act shall be contingent upon
11 the enactment of Enrolled House Bill No. 2775 of the 1st Session of
12 the 59th Oklahoma Legislature.

13 SECTION 8. This act shall become effective July 1, 2023.

14 SECTION 9. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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