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S.P. 401

In Senate, March 24, 2011

An Act To Create a Scholarship Granting Organization Tax Credit

Reference to the Committee on Taxation suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator SHERMAN of Aroostook.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA §5815** is enacted to read:

3 **§5815. Scholarship granting organization**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Educational scholarship" means a grant to an eligible student to pay for part or
7 all of the tuition and fees at a qualified school, including transportation to a qualified
8 school outside of the school district in which that eligible student resides.

9 B. "Eligible student" means a student who:

10 (1) Is a dependent in a household in which the annual household income the year
11 immediately prior to receiving an educational scholarship is no more than 250%
12 of the income guidelines developed annually and used to qualify for a free or
13 reduced price lunch under the federal free and reduced price lunch program
14 pursuant to 42 United States Code, Section 1758(b);

15 (2) Is enrolled in a qualified school, was eligible to attend a public school the
16 preceding semester or is starting school for the first time in this State; and

17 (3) Is a resident of this State while receiving an educational scholarship.

18 A student who meets the requirements of subparagraph (1) and who receives an
19 educational scholarship remains an eligible student regardless of household income
20 until the student is graduated from secondary school or attains 21 years of age,
21 whichever occurs first. For purposes of this paragraph, "household income" has the
22 same meaning as in Title 36, section 6201, subsection 7.

23 C. "Low-income eligible student" means an eligible student who is a dependent in a
24 household in which, based on the annual household income, the eligible student
25 would qualify for a free or reduced price lunch under the federal free and reduced
26 price lunch program pursuant to 42 United States Code, Section 1758(b).

27 D. "Private school" means an academy, seminary, institute or other private
28 corporation or body formed for educational purposes covering kindergarten to grade
29 12 or any portion thereof that:

30 (1) Is located in this State; and

31 (2) Satisfies the requirements prescribed by the laws of this State for private
32 schools.

33 E. "Qualified school" means a private school or a public school.

34 F. "Scholarship granting organization" means a charitable organization in this State
35 pursuant to the United States Internal Revenue Code, Section 501(c)(3) that provides
36 educational scholarships to eligible students using voluntary contributions, a portion
37 of which are eligible for the tax credit under Title 36, section 5219-FF.

1 **2. Duties of scholarship granting organization.** A scholarship granting
2 organization, in addition to the requirements of subsections 3 and 4, shall:

3 A. Allocate at least 90% of its annual revenue from contributions for educational
4 scholarships and 100% of its income from interest on or investments of that revenue
5 for educational scholarships;

6 B. Provide educational scholarships to a percentage of low-income eligible students
7 equal to or greater than the percentage of low-income eligible students in the county
8 in which the scholarship granting organization expends the majority of its revenue on
9 educational scholarships;

10 C. Ensure that at least 50% of first-time recipients of educational scholarships were
11 not continuously enrolled in a private school during the year prior to receiving the
12 educational scholarship;

13 D. Provide educational scholarships to eligible students without limiting availability
14 of those scholarships to students of a specific qualified school;

15 E. Demonstrate its financial accountability to the Department of Administrative and
16 Financial Services, Bureau of Revenue Services by submitting an annual financial
17 information report for the scholarship granting organization that complies with
18 uniform financial accounting standards established by the bureau. The annual
19 financial information report must be completed by a certified public accountant and
20 certified by the State Tax Assessor as free of material misstatements; and

21 F. Demonstrate its financial viability, if the scholarship granting organization expects
22 to receive donations of \$50,000 or more during the usual school year, by filing with
23 the department prior to the start of the usual school year:

24 (1) A surety bond payable to the State in an amount equal to the aggregate
25 amount of contributions expected to be received during the usual school year; or

26 (2) Financial information that demonstrates the financial viability of the
27 scholarship granting organization.

28 **3. Reporting to department.** A scholarship granting organization using voluntary
29 cash contributions eligible for the tax credit provided pursuant to Title 36, section
30 5219-FF shall report annually by August 1st to the department, in a form prescribed by
31 the department:

32 A. The name, address and contact name of the scholarship granting organization;

33 B. The total number of contributions received during the previous calendar year;

34 C. The total dollar amount of contributions received during the previous calendar
35 year;

36 D. The total number of students awarded educational scholarships during the
37 previous calendar year;

38 E. The total dollar amount of educational scholarships awarded during the previous
39 calendar year, the total number and dollar amount of educational scholarships
40 awarded during the previous school year to students qualifying for the federal free

1 and reduced price lunch program pursuant to 42 United States Code, Section 1758(b)
2 and the percentage of educational scholarship recipients who are first-time
3 educational scholarship recipients and were enrolled in a public school during the
4 previous school year; and

5 F. For each school attended by students receiving educational scholarships during the
6 previous calendar year:

7 (1) The name and address of the school;

8 (2) The number of educational scholarships awarded during the previous
9 calendar year; and

10 (3) The total dollar amount of educational scholarships awarded during the
11 previous calendar year.

12 **4. Reporting to contributors.** A scholarship granting organization using voluntary
13 cash contributions provided pursuant to Title 36, section 5219-FF shall provide to
14 contributors annually by January 31st the amount of voluntary contributions made by the
15 contributor that are eligible for the credit provided pursuant to Title 36, section 5219-FF.

16 **5. Certification by department.** The department shall annually certify to the
17 Department of Administrative and Financial Services, Bureau of Revenue Services those
18 organizations that qualify as scholarship granting organizations pursuant to this section.

19 **6. Rulemaking.** The department shall adopt routine technical rules, as defined in
20 Title 5, chapter 375, subchapter 2-A, to implement the provisions of this section.

21 **Sec. 2. 36 MRSA §5219-FF** is enacted to read:

22 **§5219-FF. Scholarship granting organization credit**

23 **1. Credit allowed.** A taxpayer is allowed a credit in the amount of voluntary cash
24 contributions made by the taxpayer during the taxable year to a scholarship granting
25 organization, as certified by the Department of Education pursuant to Title 20-A, section
26 5815, subsection 5, up to a maximum amount of 50% of the tax otherwise due under this
27 Part.

28 **2. Conditions.** The credit allowed under subsection 1 is subject to the following
29 conditions.

30 **A.** Any part of a voluntary cash contribution that is used to reduce the taxpayer's
31 Maine income tax liability except as provided in this section is ineligible for the
32 credit provided pursuant to this section.

33 **B.** The tax credit is not allowed for an educational scholarship provided to an eligible
34 student for tuition or expenses paid to a school that employs as a staff or board
35 member of that school a member of or immediate family member of a member of the
36 scholarship granting organization.

37 For purposes of this paragraph, "immediate family member" means a person's spouse,
38 parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent,
39 stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law,

1 brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian
2 or domestic partner.

3 **3. Limitation; carry-forward.** The credit under this section may not reduce the tax
4 otherwise due under this Part to less than 50% of that tax, after the allowance for all other
5 credits. A taxpayer entitled to a credit under this section for any taxable year may carry
6 over and apply to the tax liability for any one or more of the next succeeding 3 taxable
7 years the portion, as reduced from year to year, of any unused credits.

8 **4. Review or audit by bureau; penalties.** If the bureau has a reasonable belief that
9 a scholarship granting organization has failed to comply with the requirements of Title
10 20-A, section 5815, the bureau may conduct a financial review or an audit of that
11 scholarship granting organization. If the bureau determines that the scholarship granting
12 organization has intentionally and substantially failed to comply with the requirements of
13 section 5815, the bureau may bar the scholarship granting organization from participating
14 in the credit. Upon taking such action, the bureau shall notify the Department of
15 Education, which shall notify affected students as soon as practicable.

16 **5. Rulemaking.** The bureau shall adopt routine technical rules pursuant to Title 5,
17 chapter 375, subchapter 2-A to implement the provisions of this section, including:

18 A. A method to monitor payments by scholarship granting organizations to qualified
19 schools and eligible students; and

20 B. A standardized receipt for use by a scholarship granting organization to provide
21 proof of contribution by a taxpayer for use by that taxpayer in claiming the credit
22 under this section.

23 **Sec. 3. Application.** This Act applies to tax years beginning on or after January 1,
24 2011.

25 SUMMARY

26 This bill establishes a scholarship granting organization credit to provide a Maine
27 income tax credit to individuals and corporations who donate to scholarship granting
28 organizations. Scholarship granting organizations are defined as organizations that
29 provide educational scholarships to public or private school students in kindergarten to
30 grade 12 who are from households in which the household incomes are no more than
31 250% of the income guidelines used to qualify for the federal free and reduced price
32 lunch program.

33 The amount of the credit is the amount of voluntary cash contributions made to a
34 scholarship granting organization, up to a maximum of 50% of the tax owed. Scholarship
35 granting organizations that receive such contributions are subject to reporting
36 requirements. The credit is not available for an educational scholarship provided to a
37 student who attends a school that employs a paid staff or board member, or that person's
38 immediate family member, who is a member or an immediate family member of a
39 member of the scholarship granting organization.