

HOUSE BILL No. 2400

By Committee on Taxation

3-12

Proposed Amendments for HB 2400
For Committee on Education
March 20, 2013
Re: Decreasing enrollment
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Office of Revisor of Statutes

72-6407 and

1 AN ACT concerning schools; enacting the corporate education tax credit
2 scholarship program act; providing for educational scholarships;
3 authorizing a tax credit; amending K.S.A. 2012 Supp. 79-32,138 and
4 repealing the existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. The provisions of sections 1 through 7, and
8 amendments thereto, shall be known and may be cited as the corporate
9 education tax credit scholarship program act.

10 New Sec. 2. As used in the corporate education tax credit scholarship
11 program act:

12 (a) "Contributions" means monetary gifts or donations and in-kind
13 contributions, gifts or donations that have an established market value;

14 (b) "department" means the Kansas department of revenue;

15 (c) "educational scholarship" means an amount not to exceed \$8,000
16 provided to eligible students to cover all or a portion of the costs of tuition,
17 fees and expenses of a qualified school and, if applicable, the costs of
18 transportation to a qualified school if provided by such qualified school;

19 (d) "eligible student" means a child who:

20 (1) (A) Is a member of a household whose total annual income during
21 the year prior to receiving an educational scholarship under this program
22 does not exceed 185% of the most recent federal poverty income
23 guidelines published in the calendar year by the United States department
24 of health and human services;

25 (B) has an individualized education program and is considered a child
26 with a disability, as defined by K.S.A. 72-962(z), and amendments thereto;
27 or

28 (C) has received an educational scholarship under this program and
29 has not graduated from high school or reached 21 years of age;

30 (2) resides in Kansas while receiving an educational scholarship; and

31 (3) (A) was enrolled in any public school in the previous school year;
32 or

33 (B) is eligible to be enrolled in any public school in the school year in
34 which an educational scholarship is first sought for the child and the child
35 is under the age of six years;

36 (e) "individualized education program" shall have the meaning

- 1 ascribed thereto in K.S.A. 72-962, and amendments thereto;
- 2 (f) "parent" includes a guardian, custodian or other person with
- 3 authority to act on behalf of the child;
- 4 (g) "program" means the corporate education tax credit scholarship
- 5 program established in sections 1 through 7, and amendments thereto;
- 6 (h) "public school" means a school operated by a school district;
- 7 (i) "qualified school" means any nonpublic school that provides
- 8 education to elementary and secondary students, has notified the state
- 9 board of their intention to participate in the program and complies with the
- 10 requirements of the program;
- 11 (j) "scholarship granting organization" means an organization that
- 12 complies with the requirements of this program and provides educational
- 13 scholarships to students attending qualified schools of their parents'
- 14 choice;
- 15 (k) "school district" or "district" means any unified school district
- 16 organized and operating under the laws of this state;
- 17 (l) "school year" shall have the meaning ascribed thereto in K.S.A.
- 18 72-6408, and amendments thereto;
- 19 (m) "secretary" means the secretary of revenue; and
- 20 (n) "state board" means the state board of education.
- 21 New Sec. 3. (a) There is hereby established the corporate education
- 22 tax credit scholarship program. The program shall provide eligible students
- 23 with an opportunity to attend schools of their parents' choice.
- 24 (b) Each scholarship granting organization shall issue a receipt, in a
- 25 form prescribed by the secretary, to each contributing taxpayer indicating
- 26 the value of the contribution received. Each taxpayer shall provide a copy
- 27 of such receipt when claiming the tax credit established in section 7, and
- 28 amendments thereto.
- 29 (c) Prior to awarding an educational scholarship to an eligible
- 30 student, unless such student is under the age of six years, the scholarship
- 31 granting organization shall receive written verification from the state board
- 32 that such student is an eligible student under this program, provided the
- 33 state board and the board of education of the school district in which the
- 34 eligible student was enrolled the previous school year have received
- 35 written consent from such eligible student's parent authorizing the release
- 36 of such information.
- 37 (d) Upon receipt of information in accordance with subsection (a)(2)
- 38 of section 4, and amendments thereto, the state board shall inform the
- 39 scholarship granting organization if such student has already been
- 40 designated to receive an educational scholarship by another scholarship
- 41 granting organization.
- 42 (e) In each school year, each eligible student under this program shall
- 43 not receive more than one educational scholarship under this program.

1 considered a donation and shall be paid to the school district of such public
2 school in accordance with K.S.A. 72-8210, and amendments thereto, to
3 provide for the education of such eligible student.

4 (f) By June 1 of each year, a scholarship granting organization shall
5 submit a report to the state board for the educational scholarships provided
6 in the immediately preceding 12 months. Such report shall be in a form
7 and manner as prescribed by the state board, approved and signed by a
8 certified public accountant, and shall contain the following information:

9 (1) The name and address of the scholarship granting organization;
10 (2) the name and address of each eligible student receiving an
11 educational scholarship by the scholarship granting organization;

12 (3) the total number and total dollar amount of contributions received
13 during the 12-month reporting period; and

14 (4) the total number and total dollar amount of educational
15 scholarships awarded during the 12-month reporting period, the total
16 number and total dollar amount of educational scholarships awarded
17 during the 12-month reporting period to eligible students who qualified
18 under subsection (d)(1)(A) of section 2, and amendments thereto, and total
19 number and total dollar amount of educational scholarships awarded
20 during the 12-month reporting period to eligible students who qualified
21 under subsection (d)(1)(B) of section 2, and amendments thereto.

22 (g) No scholarship granting organization shall:

23 (1) Provide an eligible student with an educational scholarship
24 established by funding from any contributions made by any relative of
25 such eligible student; or

26 (2) accept a contribution from any source with the express or implied
27 condition that such contribution be directed toward an educational
28 scholarship for a particular eligible student.

29 New Sec. 5. On or before the first day of the legislative session in
30 2014, and each year thereafter, the state board shall prepare and submit a
31 report to the legislature on the program. Annual reports shall include
32 information reported to the state board under subsection (f) of section 4,
33 and amendments thereto, and a summary of such information.

34 New Sec. 6. (a) (1) To qualify for the tax credit allowed by this act,
35 the scholarship granting organization shall apply each tax year to the state
36 board for a certification that the scholarship granting organization is in
37 substantial compliance with the program based on information received in
38 the annual audit and yearly report filed by the scholarship granting
39 organization with the state board.

40 (2) The state board shall prescribe the form of the application, which
41 shall include, but not be limited to, the information set forth in subsection
42 (a)(1).

43 (b) If the state board determines that the requirements under this

1 section were met by the scholarship granting organization, the state board
2 shall issue a certificate of compliance to the director of taxation.

3 (c) The state board shall adopt rules and regulations to implement the
4 provisions of this section.

5 New Sec. 7. (a) There shall be allowed a credit against the corporate
6 income tax liability imposed upon a taxpayer pursuant to the Kansas
7 income tax act, the privilege tax liability imposed upon a taxpayer
8 pursuant to the privilege tax imposed upon any national banking
9 association, state bank, trust company or savings and loan association
10 pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and
11 amendments thereto, and the premium tax liability imposed upon a
12 taxpayer pursuant to the premiums tax and privilege fees imposed upon an
13 insurance company pursuant to K.S.A. 40-252, and amendments thereto,
14 for tax years commencing after December 31, ~~2012~~, an amount equal to
15 70% of the amount contributed to a scholarship granting organization
16 authorized pursuant to section 1 et seq., and amendments thereto.

17 (b) The credit shall be claimed and deducted from the taxpayer's tax
18 liability during the tax year which immediately follows the tax year in
19 which the contribution was made to any such scholarship granting
20 organization.

21 (c) For each tax year, in no event shall the total amount of credits
22 allowed under this section exceed \$10,000,000 for any one tax year.

23 (d) If the amount of any such tax credit claimed by a taxpayer
24 exceeds the taxpayer's income, privilege or premium tax liability, such
25 excess amount may be carried over for deduction from the taxpayer's
26 income, privilege or premium tax liability in the next succeeding year or
27 years until the total amount of the credit has been deducted from tax
28 liability.

29 (e) The secretary shall adopt rules and regulations regarding filing of
30 documents that support the amount of credit claimed pursuant to this
31 section.

32 ¶ Sec. 8. K.S.A. 2012 Supp. 79-32,138 is hereby amended to read as
33 follows: 79-32,138. (a) Kansas taxable income of a corporation taxable
34 under this act shall be the corporation's federal taxable income for the
35 taxable year with the modifications specified in this section.

36 (b) There shall be added to federal taxable income: (i) The same
37 modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and
38 amendments thereto, with respect to resident individuals, except
39 subsections (b)(xix), (b)(xx), (b)(xxi), (b)(xxii) and (b)(xxiii).

40 (ii) The amount of all depreciation deductions claimed for any
41 property upon which the deduction allowed by K.S.A. 2012 Supp. 79-
42 32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-
43 32,255 or 79-32,256, and amendments thereto, is claimed.

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Insert Sec. 8 (see Appendix) and by renumbering the remaining sections.

1 (iii) The amount of any charitable contribution deduction claimed for
2 any contribution or gift to or for the use of any racially segregated
3 educational institution.

4 (iv) *The amount of any charitable contribution deduction claimed for*
5 *any contribution or gift made to a scholarship granting organization to the*
6 *extent the same is claimed as the basis for the credit allowed pursuant to*
7 *section 7, and amendments thereto.*

8 (c) There shall be subtracted from federal taxable income: (i) The
9 same modifications as are set forth in subsection (c) of K.S.A. 79-32,117,
10 and amendments thereto, with respect to resident individuals, except
11 subsection (c)(xx).

12 (ii) The federal income tax liability for any taxable year commencing
13 prior to December 31, 1971, for which a Kansas return was filed after
14 reduction for all credits thereon, except credits for payments on estimates
15 of federal income tax, credits for gasoline and lubricating oil tax, and for
16 foreign tax credits if, on the Kansas income tax return for such prior year,
17 the federal income tax deduction was computed on the basis of the federal
18 income tax paid in such prior year, rather than as accrued. Notwithstanding
19 the foregoing, the deduction for federal income tax liability for any year
20 shall not exceed that portion of the total federal income tax liability for
21 such year which bears the same ratio to the total federal income tax
22 liability for such year as the Kansas taxable income, as computed before
23 any deductions for federal income taxes and after application of
24 subsections (d) and (e) of this section as existing for such year, bears to the
25 federal taxable income for the same year.

26 (iii) An amount for the amortization deduction allowed pursuant to
27 K.S.A. 2012 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-
28 32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

29 (iv) For all taxable years commencing after December 31, 1987, the
30 amount included in federal taxable income pursuant to the provisions of
31 section 78 of the internal revenue code.

32 (v) For all taxable years commencing after December 31, 1987, 80%
33 of dividends from corporations incorporated outside of the United States
34 or the District of Columbia which are included in federal taxable income.

35 (d) If any corporation derives all of its income from sources within
36 Kansas in any taxable year commencing after December 31, 1979, its
37 Kansas taxable income shall be the sum resulting after application of
38 subsections (a) through (c) hereof. Otherwise, such corporation's Kansas
39 taxable income in any such taxable year, after excluding any refunds of
40 federal income tax and before the deduction of federal income taxes
41 provided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-
42 3271 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any
43 refund of federal income tax as determined under paragraph (iv) of

1 subsection (b) of K.S.A. 79-32,117, and amendments thereto, and minus
2 the deduction for federal income taxes as provided by subsection (c)(ii)
3 shall be such corporation's Kansas taxable income.

4 (e) A corporation may make an election with respect to its first
5 taxable year commencing after December 31, 1982, whereby no addition
6 modifications as provided for in subsection (b)(ii) of K.S.A. 79-32,138,
7 and amendments thereto, and subtraction modifications as provided for in
8 subsection (c)(iii) of K.S.A. 79-32,138, and amendments thereto, as those
9 subsections existed prior to their amendment by this act, shall be required
10 to be made for such taxable year.

11 Sec. 9. K.S.A. 2012 Supp. 79-32,138 is hereby repealed

12 Sec. 10. This act shall take effect and be in force from and after its
13 publication in the statute book.

72-6407 and

**Appendix
(sec. 8)**

2012 Kansas Statutes

72-6407. Definitions. (a) (1) "Pupil" means any person who is regularly enrolled in a district and attending kindergarten or any of the grades one through 12 maintained by the district or who is regularly enrolled in a district and attending kindergarten or any of the grades one through 12 in another district in accordance with an agreement entered into under authority of K.S.A. 72-8233, and amendments thereto, or who is regularly enrolled in a district and attending special education services provided for preschool-aged exceptional children by the district.

(2) Except as otherwise provided in paragraph (3) of this subsection, a pupil in attendance full time shall be counted as one pupil. A pupil in attendance part time shall be counted as that proportion of one pupil (to the nearest 1/10) that the pupil's attendance bears to full-time attendance. A pupil attending kindergarten shall be counted as 1/2 pupil. A pupil enrolled in and attending an institution of postsecondary education which is authorized under the laws of this state to award academic degrees shall be counted as one pupil if the pupil's postsecondary education enrollment and attendance together with the pupil's attendance in either of the grades 11 or 12 is at least 5/6 time, otherwise the pupil shall be counted as that proportion of one pupil (to the nearest 1/10) that the total time of the pupil's postsecondary education attendance and attendance in grade 11 or 12, as applicable, bears to full-time attendance. A pupil enrolled in and attending an area vocational school, area vocational-technical school or approved vocational education program shall be counted as one pupil if the pupil's vocational education enrollment and attendance together with the pupil's attendance in any of grades nine through 12 is at least 5/6 time, otherwise the pupil shall be counted as that proportion of one pupil (to the nearest 1/10) that the total time of the pupil's vocational education attendance and attendance in any of grades nine through 12 bears to full-time attendance. A pupil enrolled in a district and attending special education and related services, provided for by the district shall be counted as one pupil. A pupil enrolled in a district and attending special education and related services provided for by the district and also attending a virtual school shall be counted as that proportion of one pupil (to the nearest 1/10) that the pupil's attendance at the non-virtual school bears to full-time attendance. Except as provided by this section for preschool-aged exceptional children and virtual school pupils, a pupil enrolled in a district and attending special education and related services for preschool-aged exceptional children provided for by the district shall be counted as 1/2 pupil. A preschool-aged at-risk pupil enrolled in a district and receiving services under an approved at-risk pupil assistance plan maintained by the district shall be counted as 1/2 pupil. A pupil in the custody of the secretary of social and rehabilitation services or in the custody of the commissioner of juvenile justice and enrolled in unified school district No. 259, Sedgwick county, Kansas, but housed, maintained, and receiving educational services at the Judge James V. Riddell Boys Ranch, shall be counted as two pupils. Except as provided in section 1 of chapter 76 of the 2009 Session Laws of the state of Kansas, and amendments thereto, a pupil in the custody of the secretary of social and rehabilitation services or in the custody of the commissioner of juvenile justice and enrolled in unified school district No. 409, Atchison, Kansas, but housed, maintained and receiving educational services at the youth residential center located on the grounds of the former Atchison juvenile correctional facility, shall be counted as two pupils.

(3) A pupil residing at the Flint Hills job corps center shall not be counted. A pupil confined in and receiving educational services provided for by a district at a juvenile detention facility shall not be counted. A pupil enrolled in a district but housed, maintained, and receiving educational services at a state institution or a psychiatric residential treatment facility shall not be counted.

(b) "Preschool-aged exceptional children" means exceptional children, except gifted children, who have attained the age of three years but are under the age of eligibility for attendance at kindergarten.

(c) "At-risk pupils" means pupils who are eligible for free meals under the national school lunch act and who are enrolled in a district which maintains an approved at-risk pupil assistance plan.

(d) "Preschool-aged at-risk pupil" means an at-risk pupil who has attained the age of four years, is under the age of eligibility for attendance at kindergarten, and has been selected by the state board in accordance with guidelines consonant with guidelines governing the selection of pupils for participation in head start programs.

(e) "Enrollment" means: (1) (A) Subject to the provisions of paragraph (1)(B), for districts scheduling the school days or school hours of the school term on a trimestral or quarterly basis, the number of pupils regularly enrolled in the district on September 20 plus the number of pupils regularly enrolled in the district on February 20 less the number of pupils regularly enrolled on February 20 who were counted in the enrollment of the district on September 20; and for districts not specified in this paragraph (1), the number of pupils regularly enrolled in the district on September 20; (B) a pupil who is a foreign exchange student shall not be counted unless such student is maintained by the district on September 20 and attending kindergarten or any of the grades one through 12 regularly enrolled in the district on September 20 and attending kindergarten or any of the grades one through 12 maintained by the district for at least one semester or two quarters or the equivalent thereof;

(2) If enrollment in a district in any school year means whichever is the greater of (A) enrollment in the preceding school year minus enrollment in such school year or (B) the sum of (i) enrollment in the current school year minus enrollment in the preceding school year minus enrollment in such school year of preschool-aged at-risk pupils, if any such pupils are enrolled, or (ii) the sum of enrollment in the current school year of preschool-aged at-risk pupils, if any such pupils are enrolled and the average (mean) of the sum of (i) enrollment of the district in the current school year minus enrollment in such school year of preschool-aged at-risk pupils, if any such pupils are enrolled and (ii) enrollment in the preceding school year minus enrollment in such school year of preschool-aged at-risk pupils, if any such pupils are enrolled and (iii) enrollment in the school year next preceding the preceding school year minus enrollment in such school year of preschool-aged at-risk pupils, if any such pupils were enrolled; or

(3) the number of pupils as determined under K.S.A. 72-6447 or K.S.A. 2012 Supp. 72-6448, and amendments thereto.

(f) "Adjusted enrollment" means: (1) Enrollment adjusted by adding at-risk pupil weighting, program weighting, low enrollment weighting, if any, high density at-risk pupil weighting, if any, medium density at-risk pupil weighting, if any, nonproficient pupil weighting, if any, high enrollment weighting, if any, declining enrollment weighting, if any, school facilities weighting, if any, ancillary school facilities weighting, if any, cost of living weighting, if any, special education and related services weighting, and transportation weighting to enrollment; or (2) adjusted enrollment as determined under K.S.A. 2012 Supp. 72-6457 or 72-6458, and amendments thereto.

(g) "At-risk pupil weighting" means an addend component assigned to enrollment of districts on the basis of enrollment of at-risk pupils.

, (B) if any pupil enrolled in the preceding school year of such school district is participating in the corporate education tax credit scholarship program pursuant to section 1, et seq., and amendments thereto, during the current school year, adjusted enrollment in the preceding school year of the pupils who were enrolled in such school year plus the enrollment in such school year of preschool-aged at-risk pupils, if any such pupils were enrolled, or (C)

- (h) "Program weighting" means an addend component assigned to enrollment of districts on the basis of pupil attendance in educational programs which differ in cost from regular educational programs.
- (i) "Low enrollment weighting" means an addend component assigned to enrollment of districts pursuant to K.S.A. 72-6412, and amendments thereto, on the basis of costs attributable to maintenance of educational programs by such districts in comparison with costs attributable to maintenance of educational programs by districts having to which high enrollment weighting is assigned pursuant to K.S.A. 2012 Supp. 72-6442b, and amendments thereto.
- (j) "School facilities weighting" means an addend component assigned to enrollment of districts on the basis of costs attributable to commencing operation of new school facilities.
- (k) "Transportation weighting" means an addend component assigned to enrollment of districts on the basis of costs attributable to the provision of transportation.
- (l) "Cost of living weighting" means an addend component assigned to enrollment of districts to which the provisions of K.S.A. 2012 Supp. 72-6449, and amendments thereto, apply on the basis of costs attributable to the cost of living in the district.
- (m) "Ancillary school facilities weighting" means an addend component assigned to enrollment of districts to which the provisions of K.S.A. 72-6441, and amendments thereto, apply on the basis of costs attributable to commencing operation of new school facilities. Ancillary school facilities weighting may be assigned to enrollment of a district only if the district has levied a tax under authority of K.S.A. 72-6441, and amendments thereto, and remitted the proceeds from such tax to the state treasurer. Ancillary school facilities weighting is in addition to assignment of school facilities weighting to enrollment of any district eligible for such weighting.
- (n) "Juvenile detention facility" has the meaning ascribed thereto by 72-8187, and amendments thereto.
- (o) "Special education and related services weighting" means an addend component assigned to enrollment of districts on the basis of costs attributable to provision of special education and related services for pupils determined to be exceptional children.
- (p) "Virtual school" means any school or educational program that: (1) is offered for credit; (2) uses distance-learning technologies which predominately use internet-based methods to deliver instruction; (3) involves instruction that occurs asynchronously with the teacher and pupil in separate locations; (4) requires the pupil to make academic progress toward the next grade level and matriculation from kindergarten through high school graduation; (5) requires the pupil to demonstrate competence in subject matter for each class or subject in which the pupil is enrolled as part of the virtual school; and (6) requires age-appropriate pupils to complete state assessment tests.
- (q) "Declining enrollment weighting" means an addend component assigned to enrollment of districts to which the provisions of K.S.A. 2012 Supp. 72-6451, and amendments thereto, apply on the basis of reduced revenues attributable to the declining enrollment of the district.
- (r) "High enrollment weighting" means an addend component assigned to enrollment of districts pursuant to K.S.A. 2012 Supp. 72-6442b, and amendments thereto, on the basis of costs attributable to maintenance of educational programs by such districts as a correlate to low enrollment weighting assigned to enrollment of districts pursuant to K.S.A. 72-6412, and amendments thereto.
- (s) "High density at-risk pupil weighting" means an addend component assigned to enrollment of districts to which the provisions of K.S.A. 2012 Supp. 72-6455, and amendments thereto, apply.
- (t) "Nonproficient pupil" means a pupil who is not eligible for free meals under the national school lunch act and who has scored less than proficient on the mathematics or reading state assessment during the preceding school year and who is enrolled in a district which maintains an approved proficiency assistance plan.
- (u) "Nonproficient pupil weighting" means an addend component assigned to enrollment of districts on the basis of enrollment of nonproficient pupils pursuant to K.S.A. 2012 Supp. 72-6454, and amendments thereto.
- (v) "Psychiatric residential treatment facility" has the meaning ascribed thereto by K.S.A. 72-8187, and amendments thereto.
- (w) "Medium density at-risk pupil weighting" means an addend component assigned to enrollment of districts to which the provisions of K.S.A. 2012 Supp. 72-6459, and amendments thereto, apply.

History: L. 1992, ch. 280, § 3; L. 1993, ch. 264, § 8; L. 1994, ch. 307, § 12; L. 1995, ch. 160, § 1; L. 1997, ch. 41, § 1; L. 1998, ch. 118, § 1; L. 1999, ch. 165, § 1; L. 2000, ch. 95, § 1; L. 2001, ch. 215, § 1; L. 2001, ch. 215, § 4; L. 2002, ch. 193, § 1; L. 2003, ch. 104, § 7; L. 2004, ch. 124, § 4; L. 2005, ch. 194, § 16; L. 2005, ch. 2, § 10 (Special Session); L. 2006, ch. 197, § 9; L. 2007, ch. 185, § 1; L. 2008, ch. 172, § 2; L. 2009, ch. 76, § 2; A.D.R. 23.

Revisor's Note:

Section was also amended by L. 2005, ch. 4, § 1, and L. 2005, ch. 152, § 12, but those versions were repealed by L. 2005, ch. 194, § 27. Section was also amended by L. 2007, ch. 76, § 1, but that version was repealed by L. 2007, ch. 185, § 6. Section was also amended by L. 2008, ch. 147, § 9, but that version was repealed by L. 2008, ch. 172, § 12.