



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fifth Legislature
Second Regular Session

SB 1657: ESAs; STOs; student empowerment fund

Sponsor: Senator Boyer, LD 20

Committee on Ways & Means

Overview

Expands eligibility for Arizona Empowerment Scholarship Accounts (ESA) and approved ESA expenditures. Entitles Classroom Site Fund (CSF) money to ESA recipients and establishes the Student Empowerment Fund (fund). Repeals the individual credit for contributions to a certified School Tuition Organizations (STO) and changes maximum credit amounts for other STO credits.

History

The Arizona ESA program was created for the purpose of providing educational options for students in Arizona. ESA recipients receive 90% of the Base Support Level and additional assistance that the student would have received if they were attending their previous school district or charter school. Money is appropriated by the legislature to the Department of Education (ADE) and State Treasurer ESA funds, from which the money is allocated to the student accounts for the purchase of educational materials, resources or tuition. Currently a *qualified student* for an ESA includes a:

- 1) Child with a disability;
- 2) Student attending a D or F rated school or school district;
- 3) Students previously in the ESA or another specified state distributed scholarship program;
- 4) Child of a parent in the U.S. armed forces who is on active duty or was killed in the line of duty;
- 5) Child who is or was a ward of the juvenile court who is with a prospective permanent placement or achieved a permanent placement;
- 6) Child who is the sibling of a current or previous ESA recipient;
- 7) Child within the boundaries of an Indian reservation; or
- 8) Child of a parent who is legally blind or deaf or hard of hearing ([A.R.S. § 15-2401, 2402](#)).

An STO is a nonprofit organization in this state that is exempt from federal taxation. An STO must allocate at least 90% of monies from contributions for educational scholarships or tuition grants. A credit is allowed against taxes for contributions by a taxpayer, insurer or corporation to an STO ([A.R.S. 42-1089, 1089.03, 1183, 1184, 1502, 1505](#)).

Provisions

ESA Eligibility

1. Expands the definition of *qualified student* to include a child:
 - a) Who is identified as having a disability by a public school system in another state;
 - b) Who is the child of a parent who is a veteran of the armed forces of the U.S.;
 - c) That meets the income eligibility requirements under the National School Lunch and Child Nutrition acts or an equivalent free or reduced-price lunch program;
 - d) Whose household receives benefits under the Supplemental Nutrition Assistance Program;

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- e) That receives targeted assistance services or who resides within the attendance boundary of a school that qualifies for schoolwide Title I program funding for low-income students;
 - f) Who participated in, or previously participated in:
 - i. The Educational Recovery Benefit Program;
 - ii. The Open for Learning Recovery Program; or
 - iii. Any successor grant program established by the state that provides educational services to students of a school district that ceases to provide in-person instruction during a school year.
 - g) Who resides within the attendance boundary of a school district whose governing board submitted a plan within the last two years to the school facilities oversight board requesting monies for new construction or an addition to an existing school due to enrollment projections exceeding existing capacity;
 - h) Who is the child of a first-responder;
 - i) Who is the child of a health professional that is employed full-time and who provides direct patient care. (Sec. 1)
2. Defines *first responder* and *health professional*. (Sec. 1)
 3. Reduces the required amount of logged instructional hours that a qualifying student in Arizona online instruction must have received in the prior fiscal year to meet eligibility requirements:
 - a) From 200 to 100, for kindergarten students;
 - b) From 400 to 200, for students in grade 1-3;
 - c) From 500 to 250, for students in grade 4-6;
 - d) From 550 to 275, for students in grades 7-8; or
 - e) From 500 to 250, for high school students. (Sec. 1)
 4. Establishes that a student who attended a non-public school for pupils with disabilities within the prior year, with approval from ADE and contracted for by a public school district, is considered a *qualified student*. (Sec. 1)
 5. Establishes that, for the purpose of meeting school attendance eligibility requirements, a child is eligible to enroll in a kindergarten program if the child:
 - a) Is at least five years old on January 1 of the current school year;
 - b) Under seven years of age;
 - c) Has not already completed a kindergarten program; and
 - d) Is not enrolled in grade one of a private or governmental school in the current year. (Sec. 1)
 6. Establishes that statute does not:
 - a) Require a qualified student to withdraw from a school district or charter school before enrolling for an ESA if the qualified student withdraws from the school district or charter school before receiving any money in the student's ESA; or
 - b) Prevent a qualified student from applying for an ESA in advance to be funded by the beginning of the following school year. (Sec. 2)

ESA Funding and Administration

7. Establishes the following as approved ESA expenditures:
 - a) Public transportation services, including a commuter pass; and
 - b) Computer hardware or technological devices primarily used for educational purposes. (Sec. 2)
8. Removes consumable educational supplies, including paper, pens or markers from the list of prohibited ESA expenditures. (Sec. 2)

9. Establishes that a child who is participating in the ESA program is entitled to an equitable share of funding from the CSF. (Sec. 2)
10. States that a child who is participating in an ESA must be included in the estimated statewide weighted student count for the purposes of calculating the per pupil amount from the CSF. (Sec. 2)
11. Requires ADE to transfer from the CSF to the treasurer for deposit in each ESA an amount that is equivalent to per pupil amount multiplied by the student's weighted count that would be calculated if the student were attending their prior school. (Sec. 2)
12. Requires JLBC staff to revise its calculations of the per pupil amount from the CSF within 10 days after the effective date of this act. (Sec. 20)
13. Establishes that ADE must deposit into a CSF subaccount a portion of CSF funds sufficient for the transfer of CSF per-pupil amounts to ESAs, which may be used for transfers to school districts and charter schools. (Sec. 2)
14. Changes the amount of time that a parent or qualified student has to take corrective action in the event that their ESA is being suspended from 10 days to 15 days. (Sec. 3)
15. States that a parent may represent themselves or designate a representative, who unless they are an attorney, may not charge for any services, before any appeals hearing held related to ESAs. (Sec. 3)
16. Establishes that if during any period on or after January 1, 2023, ADE fails to ensure that a contract with an independent third party is in effect for the purposes of determining whether a qualified student is eligible to receive educational therapies or services, during that period:
 - a) The county school superintendent of each county may approve a list of independent third parties within the county whose evaluation may be used to determine whether a student is eligible to receive educational therapies or services; and
 - b) If the school superintendent of a county does not provide a list of approved independent third parties within 90 days of ADE not having a contract, the parent of a qualified student has the right to obtain an independent educational evaluation by a qualified examiner, provided for financially by the school district where the student resides and serves the grade level of the student. (Sec. 3)

Empowerment Fund

17. Establishes the student empowerment fund for the purpose of providing ESAs to students who reside within the boundaries of any school district that either:
 - a) Receives more in annual funding per pupil than the amount charged for tuition and fees per student at a university under the jurisdiction of the Arizona Board of Regents (ABOR); or
 - b) Spends local revenues in excess of the school district expenditure limitation. (Sec. 4)
18. Establishes that a student is considered a qualified student, for the purposes of granting an ESA if the student meets the following requirements:
 - a) Resides within a qualifying school district; and
 - b) Is eligible to attend a kindergarten program or has attended a school within a school district in any of grades 1-12 for 45 days of the current or prior school year and has not yet graduated from high school. (Sec. 4)
19. Establishes that ESAs, granted on the basis of school district revenues or expenditures, will be granted to applicants on a first-come, first-serve basis until the money in the fund is exhausted each year. (Sec. 4)

20. Establishes that the ESA of a student who qualified due to school district revenues must be funded exclusively by the fund and CSF equal to the prescribed amount for other ESAs. (Sec. 4)
21. States that a student who receives an ESA due to school district revenues or expenditures remains a qualified student so long as the student:
 - a) Remains in good standing;
 - b) Does not enroll in a school district or charter school; and
 - c) Has not been removed from eligibility for failure to comply with contractual obligations. (Sec. 4)
22. Reserves monies within the fund for students who qualify for an ESA through school district revenues or expenditures, and who do not meet other eligibility criteria. (Sec. 4)
23. Defines *amount charged for tuition and fees per student at a university under jurisdiction of the ABOR, annual funding per pupil, local revenues and school district expenditure limitation*. (Sec. 4)
24. Establishes a \$25 million annual appropriation to the fund, transferred after all other required distributions, excluding the distribution to the CSF. (Sec. 5)

STOs

25. Raises the amount allowed for the credit to an STO from:
 - a) \$500 to \$1,243, for a single or head of head of household; and
 - b) \$1,000 to \$2,483, for a married couple filing a joint return.
26. Instructs the Arizona Department of Revenue, beginning on January 1, 2023, to adjust the dollar amounts for the credit for contributions to an STO according to the greater of either:
 - a) The average annual change in metropolitan Phoenix consumer price index (CPI), as rated by the U.S. Department of Labor bureau of labor statistics, except that the dollar amounts must not be lower than the amounts from the previous taxable year; or
 - b) \$250 for a single individual or head of household and \$500 for a married couple filing jointly. (Sec. 8)
27. Repeals the individual credit for contributions to certified school tuition organization. (Sec. 9)
28. States that the aggregate amount of all corporate and insurer Credits for Contributions to STO for Displaced or Disabled Students must not exceed:
 - a) \$6 million in FY 2022; and
 - b) \$10 million in FY 2023. (Sec. 10)
29. Establishes that beginning in FY 2024 the aggregate dollar amount of the tax credit cap from the previous fiscal year shall be increased by the greater of either:
 - a) The percentage of the annual increase in the metropolitan Phoenix CPI published by the U.S. bureau of labor statistics; or
 - b) 2%. (Sec. 10)
30. Changes the definition of a *qualified school*, including a non-discriminating preschool program located in the state, for preschool students with disabilities. (Sec. 11)
31. Removes the action of STOs colluding with another STO to circumvent statutory limits from:
 - a) Warranting a notice from ADE; and
 - b) Eligibility requirements for certification. (Sec 13)
32. Removes, for the purposes of the corporate and insurer Credit for contributions to an STO, educational scholarship and tuition grant limits for an eligible low-income student in a preschool program, kindergarten program or grades 1-12. (Sec. 14)

33. Defines *qualified examiner*. (Sec. 15)
34. Adds to the definition of *qualified student*, for the purposes of the corporate credit to STOs for Displaced and Disabled students, children identified as having a disability by another state or through an independent education evaluation by a qualified examiner. (Sec. 15)
35. Removes the requirement that to qualify as an STO, at least 90% of the organization's contributions must go to specified eligible students. (Sec. 18)

Miscellaneous

36. States that this act is retroactive to March 30, 2022. (Sec. 20)
37. Contains a severability clause. (Sec. 21)
38. Designates this act as the *Arizona Equal Opportunity Education Act*. (Sec. 22)
39. Makes Technical and conforming changes. (Sec 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19)