

**2021 SENATE FINANCE AND TAXATION**

**SB 2288**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2288  
2/9/2021

A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an education scholarship tax credit; and to provide an effective date.

**Chair Bell** calls the meeting to order. Chair Bell, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. Vice Chair Kannianen absent. [10:01]

### Discussion Topics:

- Education scholarships credits, tracking and audit
- Scholarship granting organizations
- School choice
- Constitutionality
- Student achievement

**Betty Grande**, [10:06] CEO Roughrider Policy Center provides an overview of the bill in favor #6087

**Shane Goettle**, [10:23] Lobbyist, State Association of Nonpublic Schools in favor #6062.

**Shane Goettle**, [10:28] Lobbyist, EdChoice in favor #6064.

**Senator Dwyer** [10:33] introduces the bill in favor.

**Christopher Dodson**, [10:35] Executive Director, North Dakota Catholic Conference in favor #6002.

**Mark Jorritsma**, [10:41] Executive Director, Family Policy Alliance of North Dakota in favor #6063.

**Shane Goettle** [10:44] – introduces Martin Lueken, EdChoice.

**Martin Lueken**, [10:45] Director Fiscal Research and Education Center, EdChoice in favor #6065.

**Nick Archuleta**, [10:55] President, North Dakota United in opposition #6055

**Amy De Kok**, [11:01] Legal Counsel, North Dakota School Boards Association in opposition #6056.

**Joseph Becker** [11:16] ND Tax Department provides oral neutral information.

**Chair Bell** adjourns the meeting. [11:23]  
*Joel Crane, Committee Clerk*

*Complaining about a problem  
without proposing a solution  
is called whining.  
-Teddy Roosevelt*



**Bette B. Grande**  
*President & CEO*

Bette Grande, CEO, Roughrider Policy Center testimony in favor of SB 2288.

Chairman Bell and members of the Senate Finance and Taxation Committee,

This Tax-credit scholarship policy will empower parents to choose the learning environment that best meets the individual needs of their children. There are few greater roles for parents than the education of their children.

Events over the past year put enormous pressure on students, parents, teachers, and administrators. Parents, especially those with limited means, do not have the ability to choose the best academic environment for their children. This Bill empowers parents and meets the needs of students.

This Bill provides an incentive for taxpayers to make contributions to nonprofit scholarship granting organizations that provide the resources to families to make the best decisions for their children.

Today there are 24 tax-credit scholarship policies in 19 states because they are popular with parents and the public, and because they empower students to find the learning environment that fits them best.

These policies are also popular because they provide a net positive fiscal impact to state budgets. As you know, the Legislature faces serious budget issues for next biennium and this Bill provides significant savings to the state.

The Bill provides a tax credit to the taxpayer who makes a contribution to a non-profit scholarship granting organization. For each scholarship recipient who chooses to attend a private school that provides the education they seek, the state aid that would otherwise be earmarked and expended for that student is retained by the state to fund other priorities.

Furthermore, this should balance out some of the pressure on local school districts to build new facilities, reduce some classroom sizes, lessening the load on teachers. All while providing parents and students the freedom and resources to choose the educational environment the fits their needs Finally this can provide a better allocation of resources and a savings to property taxpayers.

This Bill is not prohibited by the ND Constitution nor does it undermine the State's obligation to provide a public school system as stated in our Constitution.

The U.S. Supreme Court ruled in 2020 (*Espinoza v Montana Department of Revenue*) that the "Blaine Amendment" provision in Montana's Constitution is unconstitutional under the U.S. Constitution. This case related to a tax credit scholarship policy, similar to SB 2288, that was enacted in 2015. This Supreme Court ruling applies to North Dakota as well, and the Blaine Amendment provision to our Constitution no longer prohibits this Bill.

#### Summary

We are just starting to realize the impact on students and our educational system from COVID-19. We should learn from this tragic experience and seek ways to better meet the needs of students. North Dakota has waited too long to offer Education choice to families and it is time to Empower parents in meeting the educational needs of their children all while benefiting the entire state.



**Senate Finance and Taxation Committee**  
**Chairman Jessica Bell**  
**February 9, 2021**

**Testimony of Shane Goettle**  
**Lobbyist for the State Association of Nonpublic Schools**  
[sgoettle@odney.com](mailto:sgoettle@odney.com)  
**701-426-0576**

**SB 2288**

Chairman Bell and members of the Senate Finance and Taxation Committee, my name is Shane Goettle and I am here today as a lobbyist for the State Association of Nonpublic Schools.

The nonpublic schools in North Dakota are a vital component to the education framework in our state. Very often, public and nonpublic schools work together very well. We have experienced that in many ways, such as through North Dakota high school activities and, more recently, in the distribution of CARES ACT dollars to meet the challenges both public and nonpublic school experienced from the threat posed by COVID-19.

When a family chooses a nonpublic school option for their child, it does generate public savings. In the 2019-20 school year, for example, with 6,770 students, the nonpublic schools saved North Dakota taxpayers in excess of \$160 million dollars\* per biennium. These dollars are then available for other public purposes.

With regard to SB 2288 which you have before you today, the State Association of Nonpublic Schools supports any effort to empower parental choice in education. In SB 2288, taxpayers would be allowed a credit against their state income tax liability for contributions to a scholarship granting organization or SGO. Scholarships would be granted to students who meet the SGO's own eligibility criteria.

On behalf of 6,770 students in nonpublic schools in North Dakota and their parents we ask for your support of HB SB 2288. Thank You.

*\*NDDPI School Finance Facts (Fall 2019) Non-Public enrollment of 6,770 students X average cost of education per pupil \$12,435 X 2 years.*

**Senate Finance and Taxation Committee**  
**Chairman Jessica Bell**  
**February 9, 2021**

**Testimony of Shane Goettle**  
**Lobbyist for EdChoice**  
[sgoettle@odney.com](mailto:sgoettle@odney.com)  
**701-426-0576**

**SB 2288**

Chairman Bell and members of the Senate Finance and Taxation Committee, my name is Shane Goettle and I am here today as a lobbyist for EdChoice.

EdChoice is a 501(c)(3) nonprofit, nonpartisan organization whose mission is to advance a K-12 system where all families, regardless of race, origin or family income, are free to choose a learning environment—public or private, near or far, religious or secular—that works best for their children.

SB 2288 represents a policy under which North Dakota taxpayers receive tax credits in return for contributions to registered, nonprofit scholarship granting organizations or SGOs.

SGOs are nonprofit organizations that grant scholarships to eligible students, and donors to the SGOs receive tax credits against certain state taxes. SGOs foster stronger communities by bringing together scholarship families, private schools, and individual and corporate donors to expand educational opportunity. SGOs often have to meet certain reporting requirements or undergo regular audits.

Most states respect the right of these nonprofit SGOs to define their own missions, so long as they grant scholarships to students eligible under the state law. Some SGOs have a religious mission; others support students attending schools with particular pedagogical approaches (e.g., Montessori) or schools in a particular network or region. Many SGOs support students attending any school their parents choose. The vast majority of SGOs prioritize scholarship awards based on the financial need of the applicants, even beyond what the state laws require. Donors have

the freedom to support SGOs whose missions align with their values. SGOs have a plurality of missions that reflect the diversity of our plural society.

In order to provide scholarships, scholarship granting organizations need funds to cover administrative costs such as staff salaries, marketing, printing, and website maintenance. Most states policies allow SGOs to keep up to 10 percent of the tax-credit eligible contributions they receive. You see that in this bill where it requires that at least 90 percent of the funds received by the SGO be delivered as scholarships.

These policies vary considerably in terms of eligibility, testing, and numerous other regulations.

There are currently 18 states that use tax credits similar to the way you see before you today supporting 24 programs. The tax credit values vary from 50 percent to 100 percent of the taxpayer's contribution to an SGO. About half (13) of the 24 programs provide 100% tax credits. Four programs have 75% credit rates. Three of these are Pennsylvania's, which also provides 90% credits to donors who commit to contributions for 2 consecutive years.

Lower credit values are intended to produce greater savings, but it comes at the cost of reducing the incentive to contribute to an SGO.

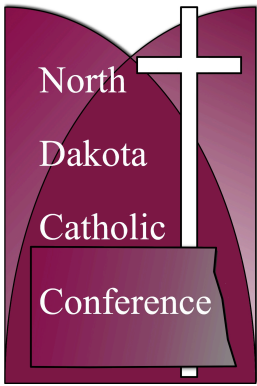
Since the purpose of the tax credit policies is to expand educational opportunity for as many children as possible, ideally the tax credit value will be as close to 100 percent as possible.

In order to help manage the fiscal impact of a tax credit, policymakers often place caps on the amount of tax credits an individual donor can receive or a cap on the total amount of tax credits available. You see that proposed in this bill as well.

Due to inflation, fixed caps have the effect of reducing the total available funds for scholarships over time. This bill address that issue by raising the fixed cap by 10% in the next tax cycle should the cap be hit. This "escalator clause" increases the total amount of tax credits over time in order to meet rising demand.

Chairman Bell, and members of the committee, I ask for your “do pass” recommendation on this bill.

I would be happy to answer any questions, but then I would also like to introduce Martin Lueken of EdChoice, who is available to testify virtually. Mr. Lueken is the director of the Fiscal Research and Education Center at EdChoice and he can address some of the fiscal aspects of SB 2288.



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**To:** Senate Finance and Taxation Committee  
**From:** Christopher Dodson, Executive Director  
**Subject:** SB 2288 - Education Scholarship Tax Credit  
**Date:** February 9, 2021

The North Dakota Catholic Conference supports Senate Bill 2288 as a way for North Dakota taxpayers to enhance a child's educational opportunities.

North Dakota already allows a tax credit for contributions to a nonpublic school or university. SB 2288 would provide an additional option for taxpayers who wish to help children through a scholarship granting organization (SGO).

Many states offer tax credits for contributions to an SGO. The SGOs, in turn, grants scholarships to the child's parents, usually focusing on children with special needs or from low-income families.

SB 2288 recognizes that every child is unique and that sometimes people want to contribute to a child's needs by focusing on the child, not the school.

Nonpublic schools strive to provide students in need with scholarships. Not all schools, however, can meet the demand or engage in the necessary fundraising. SGOs address this situation by focusing on the student, no matter where he or she may live or their situation.

SB 2288 could help families most in need, such as on our reservations. St. Anne's on the Turtle Mountain reservation was started because representatives of the tribe asked the Catholic church to open a school to address the needs of families in the community. A similar situation exists on the Standing Rock reservation. Children that attend the elementary Catholic school there have a much higher rate of high school graduation than other students. An SGO could help parents in those communities choose the best educational setting for their children.

The focus on the children is so fundamental that the North Dakota Catholic Conference would support SB 2288 even if there were no Catholic schools in North Dakota. SB 2288 is about the children, not the schools.

Please a **Do Pass** recommendation on SB 2288.



## Testimony in Support of Senate Bill 2288

**Mark Jorritsma, Executive Director  
Family Policy Alliance of North Dakota  
February 9, 2021**

Good morning Madam Chair Bell and honorable members of the Senate Finance and Taxation Committee. My name is Mark Jorritsma, Executive Director of Family Policy Alliance of North Dakota. I am testifying in support of Senate Bill 2288 and respectfully request that you recommend a “DO PASS” on this bill.

Under this bill, individual and/or corporate taxpayers would receive tax credits in return for contributions to registered, nonprofit scholarship granting organizations (SGO). There are currently 18 states with similar policies, so this is not a new or untested practice. These policies vary in terms of eligibility, testing, and other regulations.

The SGO described in this bill may be thought of as a type of clearinghouse – a place where taxpayers’ money is matched to eligible students. The powerful part is that this mechanism expands educational opportunity, which is particularly relevant for families that can least afford it. Ultimately, the purpose of SGOs is to help as many students as possible gain access to greater educational opportunity.

Family Policy Alliance of North Dakota strongly supports this method of providing educational opportunity. We believe that the best educational system is one that gives children a wide-open future and the tools to explore God’s calling in their lives, under the loving and protecting guidance of their parents. Parents know their children best and are in the best position to make decisions about their children’s education. We want to advance policies that empower parents to have decision-making power when it comes to their children’s classrooms. A future full of choices for children, needs a present full of options.

Please vote Senate Bill 2288 out of committee with a “DO PASS” recommendation. Thank you for the opportunity to testify, and I will stand for any questions you may have.

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UNLEASHING CITIZENSHIP

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#6065

**Testimony by Martin Lueken on North Dakota SB 2288**

February 9, 2021

My name is Marty Lueken, and I am the director of the Fiscal Research and Education Center at EdChoice. Thank you for inviting me to speak today on the potential fiscal impact of SB 2288.

In general terms, the fiscal impact of an education choice program is the difference between savings accrued from students who use the choice program to switch from a public school to a private school and the total cost of the program.

The cost of the Education Scholarship Tax Credit (ESTC) Program would be capped at \$3 million in scholarship tax credits available to taxpayers who make donations to scholarship granting organizations (SGOs).

A very common argument made by school choice critics is that these programs somehow “siphon” or “drain” resources from public schools. This is not the case under SB 2288 as the cost of the tax-credit scholarship program represents just 0.2% of the total funding for North Dakota’s public school system (\$3.9 billion). Based on the experiences of 24 operation tax-credit scholarship programs nationwide, I estimate that the average cost of tax credit disbursements would be around \$3,300, or just 23% of total spending per student for the public school system.

An important question is: Can we expect this program to have a negative fiscal impact on North Dakota school districts, and will students be harmed? The answer I believe, based on the long history of experiences of current school choice programs, and informed by the substantial body of rigorous research, is “no.”

First, funding of K-12 public schools in North Dakota is not completely based on students – when students leave a district, the district loses most state funds but still retains most federal funds plus about 15-20% of state funds for various grants because these funds are not enrollment-based.

Second, when students leave, it costs less to educate fewer students. Costs go down. Some costs are fixed, and some costs are variable. In the short run, districts have fixed costs such as building maintenance, debt service, and utilities. Variable costs are costs that can be reduced. Variable costs might include textbooks, software licenses, and personnel costs. In the long run, all costs are variable, meaning that over time districts can fully adjust operations to a change in enrollment.

Third, choice programs in states that already have them (including the oldest and largest programs) have not led to an exodus of students, and the public system still remains the dominant provider to this day. Overall, about 2% of K-12 students participate in education choice programs today. I estimate that the program under SB 2288 would provide scholarships for 900 students if the donation cap is met. This is less than 1% of all students enrolled in the state’s public school system.

And research demonstrates that students benefit from these programs, both those who participate and those who remain in public schools. There are 27 studies that examine the effects of education choice programs on the outcomes of students who remain in public schools. Of these, 25 found positive and modest improvements in learning gains by public school students, 1 documented a negative program



effect, and one could not detect any effect. In addition, a recent meta-analysis on the competitive effects of choice programs concluded:

*“In general, competition resulting from school-choice policies does have a small positive effect on student achievement. The lack of an overall negative impact on student outcomes might ease critics’ concerns that competition will hurt those students ‘left behind’ due to school-choice policies.”* (Jabbar et al., 2019, *Education Policy*)

Another study examined the effects of scaling up a choice program in Florida and found that not only did the program increase learning for students who remained in public schools in response to competitive pressure, but it also led to lower absenteeism and lower suspension rates.

These programs not only facilitate better matches between students and the education they receive, but they also result in arrangements that teachers and parents often care about, such as smaller class sizes.

I conducted a fiscal analysis of SB 2288 (appended to the present testimony). The tax-credit scholarship program under this bill could generate net savings for the state. Based on the experiences of states that currently have tax-credit scholarship programs, I estimated that about 900 scholarships would be awarded to students in the program’s first year. Of this group, about 770 students would enroll in the public school system without financial assistance from the program.

When students use a tax-credit scholarship to switch from public schools to private schools, the state experiences savings because it would no longer have to fund that child’s education in the public school system. Thus, these students would offset some or all of the costs of the program, depending on the proportion of scholarships given to this groups of students.

The cost to the state for tax credit disbursements would be completely offset by reduced state expenditures for students no longer in public schools, resulting in an estimated net fiscal benefit of \$1.9 million, or \$2,100 for each ESTC student.

It is possible that the program’s actual experience deviates from some of assumptions employed in the analysis. This is where the break-even switcher rate can provide additional information about the potential fiscal impact of the program. The program has a break-even switcher rate of up to 70%, meaning that if at least 70% of the students in the program switch from public schools to private schools, the program will generate a net savings for the state.

This 70% switcher rate is lower than switcher rates observed in education choice programs in other states. Therefore, if the switcher rate with the program under consideration is in line with switcher rates observed in programs in other states, then the program will save state taxpayers money.

The actual switcher rates of these out-of-state choice programs are observed because they have caps on the number of scholarships, many more students apply for the scholarships than the number available, and the scholarships are awarded by a random lottery. Researchers have collected data on families who apply for, but are not chosen in a random lottery, for a scholarship and recorded whether they enrolled their children in a public or private school after losing the lottery.

Researchers tend to find that around 90% of students who participate in educational choice programs switch from public schools. Therefore, the ESTC Program under SB 2288 will likely generate net fiscal savings for the state.

Thank you again for inviting me to be here today to testify to the data of SB 2288.

**EDCHOICE**  
**FISCAL IMPACT STATEMENT**

**Note Prepared:** February 2020

**Subject:** Education Scholarship Tax Credit

**Impact:** State & Local

**Effective Data:** TBD

**Prepared by:** Martin F. Lueken, Ph.D., Director of Fiscal Research and Education Center

**MEASURE'S PURPOSE:**

If enacted, this bill would create the Education Scholarship Tax Credit (ESTC) Program, a program to expand educational opportunities for North Dakota families of K-12 age children by providing scholarships to attend private school. Taxpayers may receive tax credits, worth 75% of the contribution amount, for contributions made to organizations that provide educational scholarships to eligible students.

To qualify for the program, a student must be a resident of the state who is age 5 or older by September 10 of the year the scholarship is disbursed, and under 19 years of age.

The amount of tax credit disbursements under the ESTC is limited to \$3 million during the first year. This limit may be increased by 10% in future years where the amount of allowable credits are claimed in a given year. Scholarship granting organizations (SGOs) must use at least 90% of contributions they receive for scholarship disbursements. Scholarship amounts cannot exceed 80% of the state's share of the per student payment made to a public school for the applicable year (equal to about \$6,000 on average).

**FISCAL SUMMARY**

**Summary of estimated fiscal impacts of North Dakota Education Scholarship Tax Credit (ESTC) Program**

|   |                    |
|---|--------------------|
| Total number of students in North Dakota eligible for an ESTC scholarship                               | 120,300            |
| Percent of all North Dakota K-12 students eligible  | 100%               |
| Total per-student expenditures for North Dakota public K-12 school system                               | \$14,330           |
| Average cost of ESTC Program (tax credit disbursements for each participating student)                  | \$3,330            |
| Avg. cost of ESTC Program per student as percentage of total per-student cost for public school system  | 23%                |
|   |                    |
| Number of scholarships funded   | 900                |
| Est. switcher rate  | 85%                |
| Est. number of ESTC students likely to have enrolled in public schools without a scholarship            | 770                |
|   |                    |
| Total State Expenditures for ESTC Program   | (\$3,000,000)      |
| Total K-12 expenditures for public school system  | \$1,624,670,800    |
| ESTC expenditures as % of total K-12 expenditures   | 0.2%               |
| State Savings from ESTC students likely to enroll in public schools                                     | \$4,926,000        |
| <b>Net State Impact</b>   | <b>\$1,930,000</b> |
| <b>Net State Impact Per Program Participant</b>   | <b>\$2,100</b>     |
| <b>Break-Even Switcher Rate for State</b>   | <b>44%</b>         |
|   |                    |
| Est. Reduction in State Aid Revenue to School Districts for ESTC Students Switching from Public Schools | (\$4,926,000)      |
| Average Variable Educational Cost per Student   | \$8,100            |
| Total Cost Burden Relief to School Districts for ESTC Students Switching from Public Schools            | \$6,230,000        |
| <b>Net Local School District Savings</b>  | <b>\$1,300,000</b> |
| <b>Net Local School District Savings Per Program Participant</b>  | <b>\$1,400</b>     |

Notes: ( ) denotes a decrease/negative value

Sources: North Dakota Department of Public Instruction; U.S. Census Bureau; National Center for Education Statistics, U.S. Dept. of Education

### **FISCAL EXPLANATION:**

Based on the experiences of other states that have private educational choice programs, an average award amount of \$4,000 would fund 900 scholarships for students.<sup>1</sup> Of this group, 770 students would be “switchers” from public schools.<sup>2</sup>

“Switchers” are students using a scholarship to enroll in a nonpublic school who, in the absence of the educational choice program, would have enrolled in a public school. These students will offset program costs for the state and reduce educational costs for public schools when they leave via the ESTC program. “Non-switchers” are students who, in the absence of the educational choice program, would have enrolled in a nonpublic school setting even without the program. The analysis assumes a non-switcher rate about twice the enrollment rate of K-12 students in nonpublic school settings, which implies that 85% of scholarship students would likely have been enrolled in public schools without the ESTC program in place.

This program, if enacted, is expected to have a positive estimated net fiscal impact of \$1.9 million on the state General Fund and a positive estimated net fiscal impact of \$1.3 million on school districts. There will likely be no impact on local property taxes.

*State impact:* The state’s cost to fund the ESTC Program would be \$3.0 million (0.2% of total K-12 expenditures). This cost would be completely offset by \$4.9 million in reduced state expenditures. After factoring this savings, we estimate a net fiscal benefit to the state of **\$1.9 (or \$2,100 per ESTC student)**.

*Impact on local property taxes:* Local property tax levies are determined by property value assessments and set independently of the number of students in a school district. Thus, students who use a scholarship and leave their public schools will not affect local property taxes unless they also residentially move out of a district.

*School district impact:* Local public school districts would experience \$4.9 million in reduced state aid revenue. This reduction would be completely offset by an estimated \$6.3 million in reduced variable costs for students who would have enrolled in district schools without the ESTC program in place.<sup>3</sup> Thus, there will be a net positive local impact of **\$1.3 million, or \$1,400 per ESCT student**.<sup>4</sup>

*Break-even switcher rate:* Switcher is defined as a student who would enroll in a district school if the EEA program is not in place as opposed to enrolling in private school, home school, or other non-public school settings. Switchers represent fiscal savings for the state and district schools. For the program to be fiscally neutral for the state, 44% of ESTC program participants would need to be switchers.

### **KEY ASSUMPTIONS AND CAVEATS**

- The analysis cautiously assumes a switcher rate of 85% (i.e., 85% of ESTC students would likely to enroll in public schools without the ESTC program). This assumption is likely cautious based on empirical research on school choice.<sup>5</sup>
- The analysis assumes that taxpayer contributions will be made to reach the \$3.0 million credit limit.
- It also assumes the average scholarship amount will be \$4,000.<sup>6</sup>
- The analysis assumes that SGOs will use 10% of contributions for administration costs.
- Although most state funding is determined by student enrollment, districts receive some state grants for certain educational areas (e.g., special education and transportation). These grants, which represent about 15% of total state general fund expenditures, are independent of student enrollment.<sup>7</sup> Therefore, districts will retain a portion of the state’s per-pupil funding when students leave, in addition to revenue from the federal government, which is largely based on factors other than student enrollment. These revenues do not change when enrollment changes. Therefore, a district’s per-student funding will increase when students leave for any reason. These fiscal benefits are not reflected in this fiscal note.
- North Dakota also has “hold harmless” provisions designed to protect school districts from significant drops in student enrollment. This funding is benchmarked to funding that districts received in 2012-13,

meaning that districts are guaranteed the same level of funding they received for that school year. Furthermore, because funding is determined by a district's student enrollment in the prior year, the district will have at least one year to adjust its operations to any changes to student enrollment.

**DATA SOURCES:** North Dakota Department of Public Instruction; U.S. Dept. of Education, National Center for Education Statistics; U.S. Census Bureau

**DISCLAIMER:** The contents of this fiscal note are intended to provide information and should not be construed as lobbying for any position related to any legislation. EdChoice is committed to research that adheres to high scientific standards, and matters of methodology and transparency are taken seriously at all levels of the organization. We are committed to providing high-quality information in a transparent and efficient manner. We welcome any and all questions related to methods and findings.

## **EDCHOICE**

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<sup>1</sup> Under the proposed program, \$3.0 million in tax credits would generate \$4.0 million in donations to scholarship organizations. If scholarship organizations keep the maximum amount allowed for administrative costs, then they will have \$3.6 million for awarding scholarships.

<sup>2</sup> This analysis assumes that 85 percent of participating scholarship students will be “switchers.” Because scholarship organizations are likely to prefer awarding scholarships to public school students than students already enrolled in private schools, our estimates are likely cautious (Lueken, 2018).  
Lueken, M. F. (2018). The fiscal effects of tax-credit scholarship programs in the United States. *Journal of School Choice*, 12(2), 181-215.

<sup>3</sup> The North Dakota Department of Public Instruction reports all expenditures annually to the U.S. Department of Education. The analysis uses these data to derive estimates for short-run variable costs and considers Instruction, Instruction Support Services, and Student Support Services as short-run variable costs. Based on these data, the analysis estimates that 57% of total costs for public schools are variable in the short run. All other costs are considered fixed in the short run. This rate is then applied to the most recent educational cost data available from North Dakota Department of Public Instruction to estimate average short-run variable costs per student. This approach is more cautious than what other economists employed to estimate short-run variable costs for public schools. For instance, Scafidi used data from the U.S. Department of Education and estimated that the average variable cost rate for ND public schools was 65.6%.

Benjamin Scafidi (2012), *The Fiscal Effects of School Choice Programs on Public School Districts*, Friedman Foundation for Educational Choice, retrieved from EdChoice website: <http://www.edchoice.org/wp-content/uploads/2015/07/The-Fiscal-Effects-of-School-Choice-Programs.pdf>.

North Dakota Department of Public Instruction, Office of School Finance, “2020 Finance Facts,” retrieved from <https://www.nd.gov/dpi/sites/www/files/documents/SFO/Downloadable%20Data%20File/Fnfct20%20hard%20code.d.xlsx>.

<sup>4</sup> To be clear, this \$1.3 million net fiscal benefit represents a \$6.2 million reduction in cumulative short run school variable costs, which outweighs the \$4.9 million cumulative net revenue reduction for 900 students who would enroll in district schools without the ESTC program in place. It is not a direct reduction in school expenditures. The public schools will still have to make decisions to cut costs as enrollment declines. However, they now have \$6.2 million in available cost burden relief from which to find at least \$4.9 million in spending reductions to match their net state revenue reduction.

While strategies for managing costs represent local determinations, numerous resources are available to help financial officials with cost management. The New Hampshire Department of Public Instruction provides strategies

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from some of these resources. For instance, please see pp. 8-10 in: New Hampshire Department of Education (2020). *Long-term Comprehensive Modeling Analysis: New Hampshire Charter School Grant*, February 13, retrieved from <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/long-term-comprehenisve-model-charter-school-grant.pdf>

<sup>5</sup> A body of empirical evidence on private school voucher programs based on random assignment provides information to help infer switcher rates. In these studies, researchers observed the percentage of families who lost a lottery after applying for a choice program and enrolled their children in public schools. Thus, these students would have attended a private school only if they had received a scholarship from a school choice program. Lueken (2020) summarized this body of research from six different school choice programs across the nation. He identified 27 estimates of switcher rates from this research and estimated lower bound and upper bound weighted average switcher rates – estimates that ranged from 84% to 90%.

Lueken, Martin F. (2020). The Fiscal Impact of K-12 Educational Choice: Using Random Assignment Studies of Private School Choice Programs to Infer Student Switcher Rates, *Journal of School Choice*, published online at <https://www.tandfonline.com/doi/abs/10.1080/15582159.2020.1735863>.

<sup>6</sup> This estimate is close to the average scholarship amount of \$3,852 for 24 operational tax-credit scholarship programs nationwide.

“School Choice in America Dashboard,” *EdChoice*, last modified February 4, 2020 <http://www.edchoice.org/school-choice/school-choice-in-america>.

<sup>7</sup> SB 2013 DPI Appropriation Bill, retrieved 1/21/2020 from <https://www.legis.nd.gov/assembly/66-2019/documents/19-0226-04000.pdf>



#6055

Great Public Schools

Great Public Service

**Testimony on SB 2288**  
**Senate Finance and Taxation Committee**  
**February 9, 2021**

Good morning, Chairwoman Bell, and members of the Committee. For the record, my name is Nick Archuleta, and I am the president of North Dakota United. ND United is a union of 11,500 professionals, including K-12 teachers, dedicated to public service. On behalf of our members, I rise today in opposition to SB 2288 and to urge a DO NOT PASS recommendation for this bill.

Chairwoman Bell, North Dakotans have long valued the principle of a high-quality public school system. In fact, our Founders so valued that principle that they embedded it in our State Constitution. Section 1 of Article VIII states:

*"A high degree of intelligence, patriotism, integrity, and morality on the part of every voter in a government by the people being necessary in order to ensure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota."*

Section 5 of Article VIII of our Constitution further states:

*"All colleges, universities, and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school."*

I cite these Constitutional touchstones not as a commentary on the constitutionality of SB 2288 but to merely emphasize that the framers of the ND State Constitution felt strongly that our state should not be in the business of funding private or parochial education.

Members of the Committee, North Dakota United has a long history of opposing voucher proposals that divert monies raised for public education to non-public entities. We also have a history of opposing tax credits that deprive our state of revenue that would otherwise go to providing vital public services, including public education. Unfortunately, SB 2288 is one such proposal.

Vouchers come in many forms, often hiding behind euphemisms such as, "Opportunity Scholarships," "Tax Credit Scholarships," "Education Savings Accounts," "Tuition Tax Credits," "Education Empowerment Programs," and, in this case, "Education Scholarship





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Tax Credits.” Regardless of the euphemistic titles, they all have the same effect of diverting public funds, intended for public schools and public purposes, to private schools, private entities, or those educating their children at home.

Chairwoman Bell and Members of the Committee, North Dakota’s public schools have the responsibility of educating every student that walks, runs, rolls, or is carried through our schoolhouse doors. To that list we must now add students who, due to the COVID-19 pandemic, are in hybrid or distance learning protocols. This is a responsibility unique to public schools and we embrace it whole heartedly because we agree with the principles enshrined in the North Dakota State Constitution.

Private schools, private tutors, and parochial schools do not share that responsibility. They do not have an obligation to educate every student. They alone determine who will and will not attend their schools or avail themselves of their services. An example of this is that most private schools do not accept students based on ability because the financial costs of educating students with cognitive impairments are quite high. As a result, and with great pride, public schools educate these students.

Furthermore, Mr. Chairman, diverting public funds to private schools undermines the principle of accountability. Dollars that are allocated to North Dakota’s public schools are managed by locally elected school boards which are held responsible for ensuring that the money is spent for the purposes for which they are intended. There is no public accountability for the money once it is diverted to a private school or to private tutors. These entities have nearly complete autonomy regarding how they operate, what they teach, and how they manage funds in their control. Around the country, we have seen many cases of waste, fraud, and abuse in voucher programs specifically because there is an absence of public accountability.

I want to clarify something: ND United has no problem with school choice and never has. We just believe, like the framers of the ND State Constitution believed, that the choice to educate one’s children in a non-public school or with a private tutor, should not be subsidized by the taxpayers of North Dakota. We further believe that North Dakotans should not be given tax credits for donating money to private or parochial schools, as this only serves to disadvantage our great North Dakota public schools.

Finally, Chairwoman Bell, the ND United member poll released three weeks ago revealed something quite interesting. Eighty three percent of teachers surveyed began their careers in education with the intention of retiring as a teacher. That number is now down to just 50%, largely due to stress and burnout. Legislation that weakens the profession or diverts





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public resources to non-public schools only adds to the stress teachers feel. Such legislation is bad for teachers, their students, and the communities they serve.

For those reasons, I strongly and respectfully urge a DO NOT PASS recommendation for SB 2288

My testimony is concluded, and I am happy to answer any questions you may have.



**NDSBA**  
NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION

P.O. Box 7128  
Bismarck ND 58507-7128  
1-800-932-8791 • (701)255-4127  
[www.ndsba.org](http://www.ndsba.org)

**SB 2288**  
**Testimony of Amy De Kok**  
**Senate Finance & Taxation Committee**  
**February 9, 2021**

Chair Bell and members of the committee, my name is Amy De Kok. I am in-house Legal Counsel for the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. NDSBA stands in opposition to SB 2288.

Article VIII, Section 2 of our state constitution very specifically states that the Legislative Assembly shall provide for a uniform system of free public schools throughout the state. The ND Constitution does not include any provision for the financial support of nonpublic school education. In fact, it explicitly states that no money raised for the support of public schools of the state shall be appropriated to or used for the support of any sectarian school. While this bill does not directly and explicitly divert state fund towards non-public education, it does ensure the state collects less in order to support non-public education.

Our public schools are legally obligated to educate each and every student that walks through their doors, regardless of ability or socioeconomic status. This responsibility is unique to public schools and they accept it proudly. Nonpublic schools do not share this responsibility. They are not obligated to educate every student that wants to attend their institutions. Continuously, public school districts, their administrators and their staff are asked to do more with less. Costs associated with behavioral health, safety, staff benefits, social services, etc. continue to rise. So much so that we spent another interim studying our state's education funding formula – trying to understand how we could better provide for our public-school system with the same amount of money. These challenges have become even greater over the past year during the pandemic.

One way I am certain we cannot achieve that goal is to ensure there are less dollars available to input into the formula. While a parent certainly has the right to chose where and how they want their children educated and a taxpayer may choose to donate funds in support of nonpublic education, those choices do not and should not entitle them to the dollars raised in part for public education.

For these reasons, NDSBA urges a Do Not Pass recommendation on SB 2288, and I would be happy to stand for any questions. Thank you for your time.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2288  
2/17/2021

A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an education scholarship tax credit; and to provide an effective date.

**Chair Bell** calls the meeting to order. Chair Bell, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. Vice Chair Kannianen absent. [10:01]

### Discussion Topics:

- Education scholarships credits
- Pass through Equity
- Tax credit escalator
- Low Income Eligible Student
- Compliance Process

**Senator J Roers** introduces amendment [LC 21.0995.01002] #6810, [10:02]

**Betty Grande** Roughrider Policy Center provides oral information, [10:03]

**Senator J. Roers** moved amendment [LC 21.0995.01002] [10:46]

**Senator Meyer** second

Motion carried by voice vote

**Senator J. Roers** moved DO PASS as Amended [10:48]

**Senator Meyer** Second

| Senators                 | Vote |
|--------------------------|------|
| Senator Jessica Bell     | Y    |
| Senator Jordan Kannianen | Y    |
| Senator Scott Meyer      | Y    |
| Senator Dale Patten      | Y    |
| Senator Merrill Piepkorn | N    |
| Senator Jim Roers        | Y    |
| Senator Mark Weber       | N    |

Motion Passed 5-2-0

**Senator J Roers** carries

**Chair Bell** adjourns the meeting. [10:55]

*Joel Crane, Committee Clerk*

February 16, 2021

5173  
2173  
1043

PROPOSED AMENDMENTS TO SENATE BILL NO. 2288

Page 1, line 19, after "3." insert "A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

4."

Page 1, line 19, replace "each" with "in"

Page 1, line 19, after "year" insert "2021"

Page 1, line 21, remove "any"

Page 1, line 21, after "year" insert "2021"

Page 1, line 21, after "of" insert "tax"

Page 1, line 21, remove "in the"

Page 1, line 22, remove "succeeding calendar year"

Page 1, line 22, after "percent" insert "for the succeeding tax years. If the aggregate limit is increased in any tax year, the tax commissioner shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregate limit is established under this subsection"

Page 2, remove lines 3 through 5

Page 2, line 6, after "5." insert "The tax commissioner shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on the tax department's website advising taxpayers when the aggregate limit is in effect. The tax commissioner may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution.

6."

Page 2, line 12, after "c." insert """Low-income eligible student" means a student who is a resident of this state, is a member of a household whose total income, the year before the student enters the program, did not exceed three hundred percent of the income standard for the federal poverty line, is or will be five years of age or older by September tenth of the year in which the educational scholarship will be disbursed, and is under nineteen years of age.

d."

Page 2, line 15, replace "d." with "e."

Page 2, line 16, replace "e." with "f."

Page 2, line 17, replace "f." with "g."

201

Page 2, line 23, replace "g." with "h."

Page 2, line 29, replace "6." with "7."

Page 3, line 4, after "c." insert "Award scholarships exclusively to low-income eligible students through June thirtieth of each year, after which time scholarships may be awarded to eligible students and low-income eligible students. If sufficient funding is available, once a student meets the initial income eligibility requirement, the student remains income eligible for three years, or if the student is entering high school, until the student graduates high school, regardless of household income. After the initial period of income eligibility, the student remains eligible if the student is a member of a household whose total annual income in the prior year did not exceed three hundred percent of the income standard for the federal poverty line;

d."

Page 3, line 8, replace "d." with "e."

Page 3, line 11, replace "e." with "f."

Page 3, line 11, replace "twenty-five" with "fifty"

Page 3, line 14, replace "f." with "g."

Page 3, line 15, replace "g." with "h."

Page 3, line 18, replace "h." with "i."

Page 3, line 22, replace "i." with "j."

Page 3, line 24, replace "j." with "k."

Page 3, line 29, replace "7." with "8."

Page 3, line 30, replace "Shall" with "May"

Page 3, line 30, after "rules" insert "and procedures"

Page 4, line 3, after the underscored semicolon insert "and"

Page 4, line 5, remove "and"

Page 4, remove lines 6 through 10

Page 4, line 11, remove "and the students' parents as soon as practicable"

Page 4, after line 11, insert:

"9. If a scholarship-granting organization is not in compliance with this section, the tax commissioner shall provide the organization written notice of the specific failures and the organization has thirty days from the date of the notice to correct the deficiencies. If the organization fails to correct all deficiencies within thirty days from the date of the notice, the tax commissioner shall provide a final written notice of the failure of the organization to correct the deficiencies. The organization may appeal the tax commissioner's determination of failure to comply within thirty days of the date of the final written notice. The provisions of chapter 28-32 apply to and govern the administrative hearing procedure, including appeals from any decision rendered by the tax commissioner.

- 304-
- a. If a scholarship-granting organization does not seek review of the tax commissioner's determination, or if the dispute is not resolved, the tax commissioner shall issue a final determination.
  - b. The final determination must provide that the scholarship-granting organization:
    - (1) Will be removed from the list of eligible scholarship-granting organizations and notified of the removal; and
    - (2) Shall within fifteen calendar days of the receipt of the notice provided under paragraph 1 cease all operations as a scholarship-granting organization and transfer all scholarship account funds to a properly operating scholarship-granting organization."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2288: Finance and Taxation Committee (Sen. Bell, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2288 was placed on the Sixth order on the calendar.

Page 1, line 19, after "3." insert "A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity."

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Page 2, line 6, after "5." insert "The tax commissioner shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on the tax department's website advising taxpayers when the aggregate limit is in effect. The tax commissioner may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution."

6."

Page 2, line 12, after "c." insert """Low-income eligible student" means a student who is a resident of this state, is a member of a household whose total income, the year before the student enters the program, did not exceed three hundred percent of the income standard for the federal poverty line, is or will be five years of age or older by September tenth of the year in which the educational scholarship will be disbursed, and is under nineteen years of age."

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Page 3, line 30, after "rules" insert "and procedures"

Page 4, line 3, after the underscored semicolon insert "and"

Page 4, line 5, remove "; and"

Page 4, remove lines 6 through 10

Page 4, line 11, remove "and the students' parents as soon as practicable"

Page 4, after line 11, insert:

"9. If a scholarship-granting organization is not in compliance with this section, the tax commissioner shall provide the organization written notice of the specific failures and the organization has thirty days from the date of the notice to correct the deficiencies. If the organization fails to correct all deficiencies within thirty days from the date of the notice, the tax commissioner shall provide a final written notice of the failure of the organization to correct the deficiencies. The organization may appeal the tax commissioner's determination of failure to comply within thirty days of the date of the final written notice. The provisions of chapter 28-32 apply to and govern the administrative hearing procedure, including appeals from any decision rendered by the tax commissioner.

a. If a scholarship-granting organization does not seek review of the tax commissioner's determination, or if the dispute is not resolved, the tax commissioner shall issue a final determination.

- b. The final determination must provide that the scholarship-granting organization:
  - (1) Will be removed from the list of eligible scholarship-granting organizations and notified of the removal; and
  - (2) Shall within fifteen calendar days of the receipt of the notice provided under paragraph 1 cease all operations as a scholarship-granting organization and transfer all scholarship account funds to a properly operating scholarship-granting organization."

Renumber accordingly

Sixty-seventh  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2288**

Introduced by

Senators Dwyer, Kannianen, J. Roers

Representatives Fisher, B. Koppelman, Steiner

1 A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to  
2 subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an education  
3 scholarship tax credit; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Education scholarship tax credit.**

- 8 1. A taxpayer is entitled to a credit against the income tax liability under section 57-38-30  
9 or 57-38-30.3 for contributions made to an organization that provides educational  
10 scholarships to eligible students. The credit is equal to seventy-five percent of the  
11 amount contributed by the taxpayer to a scholarship-granting organization for  
12 educational scholarships during the taxable year.
- 13 2. The credit must be claimed in the taxable year in which the charitable contribution is  
14 made to a scholarship-granting organization. The credit under this section may not  
15 exceed the taxpayer's liability as determined under this chapter for any taxable year. If  
16 the amount of the credit determined under this section exceeds the taxpayer's liability  
17 for tax under this chapter, the excess may be carried forward to each of the five  
18 succeeding taxable years.
- 19 3. A passthrough entity entitled to the credit under this section must be considered to be  
20 the taxpayer for purposes of calculating the credit. The amount of the allowable credit  
21 must be determined at the passthrough entity level. The total credit determined at the  
22 entity level must be passed through to the partners, shareholders, or members in  
23 proportion to their respective interests in the passthrough entity.

- 1 4. The aggregate amount of credits allowed ~~each~~ in calendar year 2021 under this section  
2 may not exceed three million dollars. However, if the maximum amount of allowable  
3 credits are claimed in ~~any~~ calendar year 2021, the aggregate amount of tax credits  
4 allowed ~~in the succeeding calendar year~~ must be increased by ten percent for the  
5 succeeding tax years. If the aggregate limit is increased in any tax year, the tax  
6 commissioner shall use the new limit as the base aggregate limit for succeeding tax  
7 years until a new aggregate limit is established under this subsection. By August first  
8 of each year after 2021, the tax commissioner shall determine whether the  
9 requirement for increasing the allowable credit limit under this subsection for the  
10 succeeding taxable year has been met.
- 11 ~~4. If the aggregate amount of credits claimed under this section exceeds the amount~~  
12 ~~available in a calendar year, the tax commissioner shall prorate the credits among the~~  
13 ~~claimants.~~
- 14 5. The tax commissioner shall approve the amount of tax credits for taxpayers on a  
15 first-come, first-served basis and post a notice on the tax department's website  
16 advising taxpayers when the aggregate limit is in effect. The tax commissioner may  
17 develop an internet-based registration system that provides donors with the  
18 opportunity to obtain preapproval for a tax credit before making a contribution.
- 19 6. For purposes of this section:
- 20 a. "Educational scholarship" means a grant to an eligible student to cover all or part  
21 of the cost of the student's tuition and fees at a qualifying school.
- 22 b. "Eligible student" means a student who is a resident of this state, is or will be five  
23 years of age or older by September tenth of the year in which the educational  
24 scholarship will be disbursed, and is under nineteen years of age.
- 25 c. "Low-income eligible student" means a student who is a resident of this state, is a  
26 member of a household whose total income, the year before the student enters  
27 the program, did not exceed three hundred percent of the income standard for  
28 the federal poverty line, is or will be five years of age or older by September tenth  
29 of the year in which the educational scholarship will be disbursed, and is under  
30 nineteen years of age.



- 1 d. "Parent" means a resident of this state who is a parent, conservator, legal  
2 guardian, custodian, or other individual with legal authority to act on behalf of a  
3 program participant.
- 4 d.e. "Program" means the program established under this section.  
5 e.f. "Program participant" means a child participating in the program.  
6 f.g. "Qualifying school" means a nonprofit, nonpublic elementary or secondary school  
7 located in this state; or a tribally controlled school on a federally recognized  
8 Indian reservation which operates within the boundaries of this state; which is  
9 accredited by the department of public instruction and has notified a scholarship  
10 granting organization of the school's intention to participate in the program and  
11 comply with the requirements of the program.
- 12 g.h. "Scholarship-granting organization" means a charitable organization that is  
13 exempt from federal income taxation under section 501(c)(3) of the United States  
14 Internal Revenue Code [26 U.S.C. 501(c)(3)], complies with the requirements of  
15 the program, and provides educational scholarships with an average value of not  
16 more than eighty percent of the state's share of the per student payment made to  
17 a public school for the applicable year.
- 18 6.7. Each scholarship granting organization shall:
- 19 a. Notify annually the tax commissioner of the organization's intent to provide  
20 educational scholarships;
- 21 b. Ensure at least ninety percent of contributions the organization received which  
22 qualify for a tax credit under this section are used to fund educational  
23 scholarships;
- 24 c. Award scholarships exclusively to low-income eligible students through June  
25 thirtieth of each year, after which time scholarships may be awarded to eligible  
26 students and low-income eligible students. If sufficient funding is available, once  
27 a student meets the initial income eligibility requirement, the student remains  
28 income eligible for three years, or if the student is entering high school, until the  
29 student graduates high school, regardless of household income. After the initial  
30 period of income eligibility, the student remains eligible if the student is a member

1 of a household whose total annual income in the prior year did not exceed three  
2 hundred percent of the income standard for the federal poverty line;

3 d. Disburse periodic scholarship payments from an educational scholarship fund  
4 account as checks payable to an eligible student's parent and mailed to the  
5 qualifying school at which the eligible student is enrolled. The parent shall  
6 endorse the check before the check is deposited;

7 d.e. Ensure scholarships are portable during the school year and, upon a parent's  
8 request, may be used at any qualifying school to which the scholarship-granting  
9 organization grants scholarships and in which the eligible student enrolls;

10 e.f. Carry forward no more than ~~twenty-five~~ fifty percent of the organization's revenue  
11 from contributions deposited in the educational scholarship fund account from the  
12 fiscal year in which the contributions were received into the next fiscal year;

13 f.g. Maintain separate accounts for scholarship funds and operating funds;

14 g.h. Provide a receipt approved by the tax commissioner to each taxpayer for  
15 contributions made by the taxpayer to the organization for educational  
16 scholarships;

17 h.i. Provide the tax commissioner the names and addresses of all members of the  
18 organization's board of directors or other governing body and documentation  
19 confirming criminal background checks have been conducted on all employees  
20 and members of the governing body;

21 i.j. Exclude from employment and governance positions any individual who  
22 reasonably may pose a risk to the appropriate use of contributions; and

23 j.k. Report to the tax commissioner by June first of each year a financial report  
24 prepared by a certified public accountant providing the total number and total  
25 dollar amount of contributions received in the preceding year and the total  
26 number and total dollar amount of educational scholarships awarded in the  
27 preceding year.

28 7.8. The tax commissioner:

29 a. ~~Shall~~May adopt rules and procedures as necessary to implement this section;

- 1           b. Shall develop and make available a standardized format for a receipt to be  
2           issued by a scholarship-granting organization to a taxpayer on which the amount  
3           of the taxpayer's contribution for educational scholarships may be recorded; and  
4           c. May conduct financial reviews or audits of a scholarship-granting organization if  
5           the commissioner has evidence the organization engaged in fraud; and  
6           ~~d. May exclude a scholarship-granting organization from participating in the~~  
7           ~~program if the commissioner determines the organization intentionally or~~  
8           ~~substantially failed to comply with this section. If the commissioner excludes a~~  
9           ~~scholarship-granting organization from participating in the program, the~~  
10           ~~commissioner shall notify students receiving scholarships from the organization~~  
11           ~~and the students' parents as soon as practicable.~~

12       9. If a scholarship-granting organization is not in compliance with this section, the tax  
13       commissioner shall provide the organization written notice of the specific failures and  
14       the organization has thirty days from the date of the notice to correct the deficiencies.  
15       If the organization fails to correct all deficiencies within thirty days from the date of the  
16       notice, the tax commissioner shall provide a final written notice of the failure of the  
17       organization to correct the deficiencies. The organization may appeal the tax  
18       commissioner's determination of failure to comply within thirty days of the date of the  
19       final written notice. The provisions of chapter 28-32 apply to and govern the  
20       administrative hearing procedure, including appeals from any decision rendered by the  
21       tax commissioner.

22       a. If a scholarship-granting organization does not seek review of the tax  
23       commissioner's determination, or if the dispute is not resolved, the tax  
24       commissioner shall issue a final determination.

25       b. The final determination must provide that the scholarship-granting organization:

26       (1) Will be removed from the list of eligible scholarship-granting organizations  
27       and notified of the removal; and

28       (2) Shall within fifteen calendar days of the receipt of the notice provided under  
29       paragraph 1 cease all operations as a scholarship-granting organization and  
30       transfer all scholarship account funds to a properly operating  
31       scholarship-granting organization.



- 1       **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota  
2 Century Code is created and enacted as follows:  
3               Education scholarship tax credit under section 1 of this Act.  
4       **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
5 December 31, 2020.