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Sam Brownback, Governor

March 19, 2013

CORRECTED

The Honorable Kasha Kelley, Chairperson
House Committee on Education
Statehouse, Room 151-S
Topeka, Kansas 66612

Dear Representative Kelley:

SUBJECT: Corrected Fiscal Note for HB 2400 by House Committee on Taxation

In accordance with KSA 75-3715a, the following corrected fiscal note concerning HB 2400 is respectfully submitted to your committee.

HB 2400 would create the Corporate Education Tax Credit Scholarship Program, which would provide eligible students with an opportunity to attend schools of their parents' choice, as well as a tax credit for certain Kansas business that would choose to make a donation to a scholarship granting organization (SGO).

An eligible student would be defined as a student who: (1) is a member of a household whose total annual income during the year prior to receiving an educational scholarship does not exceed 185.0 percent of the most recent federal poverty income guidelines; (2) has an individualized education program and is considered a child with a disability; or (3) has received an educational scholarship under this program and has not graduated from high school or reached 21 years of age; and (4) resides in Kansas; (5) was enrolled in any public school in the previous year; or (6) is eligible to be enrolled in any public school in the school year in which an educational scholarship is first sought for the child and the child is under the age of six years.

An educational scholarship would be defined as an amount not to exceed $8,000 to cover all or a portion of the costs of tuition, fees and expenses of a qualified school and the costs of transportation to a qualified school. A qualified school would be defined as any nonpublic school that provides education to elementary and secondary students, and has notified the State Board of Education of the intention to participate and comply with requirements of the program. An SGO would be defined as an organization that complies with the requirements of this program and provides educational scholarships to students attending qualified schools of their parents' choice.

Prior to awarding an educational scholarship, the SGO would be required to receive written verification from the State Board of Education that the student is eligible. Upon receipt of the eligibility verification, the Board would inform the SGO if the student has already been designated to receive an educational scholarship by another SGO in the relevant school year; a student could not receive more than one educational scholarship under this program. An eligible student's participation by receiving an educational scholarship would constitute a waiver to special education services provided by a school district unless the district agrees to provide services to the qualified nonpublic school.

An SGO would be required to: (1) notify the Secretary of Revenue and the State Board of Education of its intent to provide educational scholarships; (2) report to the Board all educational scholarships granted; (3) provide verification to the Secretary of Revenue that the SGO is exempt from federal income taxation pursuant to the Federal IRS Code of 1986; and (4) file with the Board a surety bond payable to the state or financial information demonstrating the SGO's ability to pay an aggregate amount equal to the amount of expected contributions if they receive contributions in an aggregate amount or value in excess of $50,000 during a school year. An SGO would be required to have its accounts examined and audited by a certified public accountant each calendar year and file a copy of the audit with the Board.

If an SGO decides to limit the number or type of qualified schools that will receive educational scholarships, the SGO must provide in writing the name or names of the schools to any contributor and the Board. An SGO would be prohibited from awarding an educational scholarship for any eligible student to attend any qualified school with paid staff or paid board members, or relatives in common with the SGO.

By June 1 of each year, an SGO would be required to submit a report to the Board for all educational scholarships provided in the immediately preceding 12 months in a form and manner prescribed by the Board. The report would be required to contain: (1) the name and address of the SGO; (2) the name and address of each student receiving an educational scholarship; (3) the total number and total dollar amount of contributions received during the 12-month reporting period; and (4) the total number and total dollar amount of educational scholarships awarded during the 12-month reporting period. In addition, the bill would require the Board to prepare and submit a report to the Legislature on the program on or before the first day of the 2014 legislative session and each successive year.

The bill would allow a tax credit to a taxpayer equal to 70.0 percent of the amount contributed to an SGO for the following taxes: corporate income tax, financial institution privilege tax, and insurance premium tax. The credit would be claimed and deducted from the taxpayer's liability during the tax year that immediately follows the tax year that the contribution was made. The bill would limit the aggregate tax credit in any one year to $10.0 million for the program. If the tax credit claimed by a taxpayer would exceed the tax liability, the excess may be carried over for deduction in the next succeeding year until the credit has been exhausted. To qualify for the tax credit allowed, an SGO would be required to apply each tax year to the Board for certification that the SGO is in substantial compliance with the program based on information received in the annual audit and yearly report filed by the SGO to the Board.

According to the Department of Revenue, HB 2400 would limit the aggregate tax credit in any one year to $10.0 million for the program. The tax credit would affect tax years one year after the program begins, as outlined in the bill, or beginning with tax year 2014 or state fiscal year 2015. If the program would experience a 50.0 percent utilization rate for the tax credit, approximately $7,142,857 would be generated for scholarships, with 893 students receiving scholarships ($7,142,857 / $8,000 maximum scholarship = 893 students). If all 893 students were previously attending public schools and would be attending non-public schools with the scholarship program, local school districts would experience a reduction of FTE students to be counted in the school finance formula. However, this reduction would not occur for approximately three years after the program begins, or the 2015-2016 school year, as school districts are allowed to utilize the higher of the actual FTE student count, or a three-year average, whichever is greater. Using the current base state aid per pupil (BSAPP) funding of $3,838 for the 2012-2013 school year, along with the at-risk weighting of 0.456, this would amount to a reduction of state aid totaling at least $4,990,084 ($3,838 BSAPP X 1.456 weighting X 893 students = $4,990,084). The actual reduction of state funding may be higher, as each student who would receive a scholarship under this program may qualify for additional weightings under the current school finance formula.

If the program would have a 70.0 percent utilization rate, approximately $10,000,000 would be generated for scholarships, with 1,250 students receiving scholarships ($10,000,000 / $8,000 maximum scholarship = 1,250 students). This scenario would eventually reduce state aid to school districts by at least $6,985,160 ($3,838 BSAPP X 1.456 weighting X 1,250 students). If the program would have a 30.0 percent utilization rate, approximately $4,285,714 would be generated for scholarships, with 536 students receiving scholarships ($4,285,714 / $8,000 maximum scholarship = 536 students). This scenario would eventually reduce state aid to school districts by at least $2,995,168 ($3,838 BSAPP X 1.456 weighting X 536 students = $2,995,168). Under each of these scenarios, the amount of tax credit claimed by corporations would be eventually offset by a lower enrollment of students in public schools. The prior revised fiscal note underestimated the total scholarship amounts and the number of students who would be eligible for scholarships under this program by not reflecting the at-risk weighting in the calculation.

The Department of Revenue estimates that enactment of the bill would require expenditures totaling $190,953, all from the State General Fund, including 1.00 FTE Customer Service Representative Specialist. Of the total amount, $59,077 would be for salaries and wages, $5,216 would be for other operating expenditures, including rent and office equipment, and $126,660 would be for 4,222 hours at $30 per hour to update the agency's computer systems. The Department notes that the new FTE position would be needed to handle the returns filed with the new credit, as well as additional telephone calls generated with the new program.

According to the Kansas Department of Education, enactment of the bill would require additional expenditures totaling $68,631, all from the State General Fund, as well as 1.00 FTE Accountant III position to process the paperwork required by HB 2400. Of the total amount, $60,723 would be for salary and fringe benefits, $2,500 would be for travel and subsistence expenditures, and $5,408 would be for other operating expenditures, including rent, office equipment and supplies. Any fiscal effect associated with HB 2400 is not reflected in *The FY 2014 Governor's Budget Report*.

Sincerely,

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Dale Dennis, Education
Steve Neske, Revenue