

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1741

H.P. 1120

House of Representatives, April 20, 2023

**An Act to Promote Educational Opportunity Through the
Educational Choice Tax Credit Program, Eliminating Certain
Restrictions on Charter Schools and Virtual Public Charter Schools,
Allowing More Entities to Authorize Charter Schools and Clarifying
Educational Policy on Immunization Requirements**

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BAGSHAW of Windham.
Cosponsored by Senator KEIM of Oxford and
Representatives: ARATA of New Gloucester, FREDERICKS of Sanford, GRIFFIN of Levant,
JAVNER of Chester, PAUL of Winterport, PERKINS of Dover-Foxcroft, SMITH of Palermo,
Senator: STEWART of Aroostook.

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

2 **Sec. 1. 20-A MRSA §2, sub-§1**, as enacted by PL 1981, c. 693, §§5 and 8, is
3 amended to read:

4 **1. State responsibility for public education.** In accordance with the Constitution of
5 Maine, Article VIII, the Legislature shall enact the laws that are necessary to assure that all
6 school administrative units make suitable provisions for the support and maintenance of
7 the public schools and the education of every individual within the age limitations
8 prescribed by state statutes who resides in the school administrative unit. It is the intent of
9 the Legislature that every person within the age limitations prescribed by state statutes shall
10 be provided an opportunity to receive the benefits of a free public education.

11 **Sec. 2. 20-A MRSA §2404, sub-§4**, as enacted by PL 2019, c. 253, §1, is repealed.

12 **Sec. 3. 20-A MRSA §2405, sub-§1**, as amended by PL 2011, c. 570, §4, is further
13 amended to read:

14 **1. Eligible authorizers.** The following groups may become authorizers of public
15 charter schools:

16 A. A local school board with regard to creating a public charter school within the
17 boundaries of the school administrative unit governed by that local school board;

18 B. The commission under subsection 8; ~~and~~

19 C. A collaborative among local school boards that forms to set up a regional public
20 charter school to be located within the area managed and controlled by those local
21 school boards;

22 D. The University of Maine System; and

23 E. Educational or research-based nonprofit organizations.

24 **Sec. 4. 20-A MRSA §2405, sub-§10**, as enacted by PL 2019, c. 307, §2, is
25 repealed.

26 **Sec. 5. 20-A MRSA §2408, sub-§2**, as amended by PL 2019, c. 253, §2, is further
27 amended by repealing the 3rd blocked paragraph.

28 **Sec. 6. 20-A MRSA c. 220** is enacted to read:

29 **CHAPTER 220**

30 **EDUCATIONAL TAX CREDIT**

31 **§5901. Educational tax credit program**

32 **1. Definition.** As used in this chapter, unless the context otherwise indicates,
33 "program" means the educational choice tax credit program created under this section and
34 Title 36, section 5217-G.

35 **2. Program created.** The department shall create a program as provided by this section
36 to determine eligibility for tax credits under Title 36, section 5217-G for donations made
37 to scholarship organizations.

1 **3. Requirements for scholarship organizations.** In order to qualify for a tax credit
2 under the program, a taxpayer must make a donation to a scholarship organization that
3 provides scholarships to qualifying students attending qualifying schools and has notified
4 the department of its intention to participate in the program and comply with the program's
5 requirements. In order to qualify for participation in the program, a scholarship
6 organization must:

7 A. Demonstrate to the department that the scholarship organization has been granted
8 exemption from the federal income tax as an organization described in Section
9 501(c)(3) of the federal Internal Revenue Code of 1986;

10 B. Distribute periodic scholarship payments as checks made out to a student's parent;

11 C. Require a parent to submit receipts for all qualifying instruction-related expenses
12 paid for by the scholarship to the scholarship organization within 90 days of payment;

13 D. Provide a department-approved receipt to taxpayers for contributions made to the
14 scholarship organization;

15 E. Ensure that at least 90% of the scholarship organization's revenue from donations is
16 spent on educational scholarships and that all revenue from interest or investments is
17 spent on educational scholarships;

18 F. Each year, spend a portion of the scholarship organization's expenditures on
19 scholarships for low-income eligible students that is at minimum equal to the
20 percentage of low-income eligible students in the county where the scholarship
21 organization expends the majority of its scholarships;

22 G. Grant only single-year scholarships;

23 H. Carry forward no more than 25% of their revenue from donations from the state
24 fiscal year in which the donations were received to the following state fiscal year;

25 I. Cooperate with the department to conduct criminal background checks on all of the
26 scholarship organization's employees and board members and exclude from
27 employment or governance any individual that might reasonably pose a risk to the
28 appropriate use of donated funds;

29 J. Ensure that scholarships are portable during the school year and can be used at any
30 qualifying school to which the scholarship organization grants scholarships and that
31 accepts the qualified student according to a parent's wishes. If a student moves to a new
32 qualifying school during a school year, the scholarship organization may allow the
33 amount of the scholarship to be prorated;

34 K. Report to the department by June 1st of each year the following information
35 prepared by a certified public accountant regarding the scholarship organization's
36 grants in the previous calendar year:

37 (1) The name and address of the scholarship organization;

38 (2) The total number and total dollar amount of donations received;

39 (3) The total number and total dollar amount of scholarships awarded;

40 (4) The total number and total dollar amount of scholarships awarded to students
41 qualifying for free and reduced-price meals under the National School Lunch
42 Program under 7 Code of Federal Regulations, Part 210; and

1 (5) The percentage of first-time recipients of scholarships who were enrolled in a
2 public school;

3 L. Ensure scholarships are not provided for students to attend a school with paid staff
4 or board members or relatives of paid staff or board members in common with the
5 scholarship organization;

6 M. Annually submit to the department a financial information report for the scholarship
7 organization that complies with uniform financial accounting standards established by
8 the department, that is conducted by a certified public accountant and that an auditor
9 has certified is free of material misstatements;

10 N. Provide scholarships that cover all or part of the cost to educate a student, including,
11 but not limited to:

12 (1) Tuition and fees at a qualifying school;

13 (2) Instruction-related transportation expenses; and

14 (3) Instruction-related expenses other than transportation subject to the approval of
15 the department, including but not limited to online learning services, tutoring
16 services and instruction-related materials and equipment. Instruction-related
17 expenses may not include the cost of a parent's time expended in the
18 homeschooling of the parent's child; and

19 O. Provide that, once a qualifying student receives a scholarship under the program,
20 the student remains eligible regardless of household income until the student graduates
21 high school or reaches 21 years of age, whichever occurs first.

22 In order to be a qualifying student, a student must be a member of a household whose
23 total annual income the year before the student receives a scholarship from the
24 scholarship organization does not exceed an amount equal to 2 times the income
25 standard used to qualify for free or reduced-price meals under the National School
26 Lunch Program under 7 Code of Federal Regulations, Part 210 and reside in this State
27 while receiving the scholarship.

28 A qualifying school for purposes of this section means a public school other than the
29 public school in which a student seeking a scholarship resides or a private school that
30 has notified the department of an intention to participate in the program.

31 **4. Department duties and powers.** The department:

32 A. Shall:

33 (1) Provide a standardized format for a receipt to be issued by a scholarship
34 organization to a taxpayer to indicate the value of a donation received;

35 (2) Provide a standardized format for a scholarship organization to report the
36 information required in this section; and

37 (3) Notify affected scholarship students and the students' parents of this decision
38 as quickly as possible if the department decides to bar a scholarship organization
39 from the program; and

40 B. May:

1 (1) Conduct either a financial review or an audit of a scholarship organization if
2 the department has evidence of fraud; and

3 (2) Bar a scholarship organization from participating in the program if the
4 department establishes that the scholarship organization has intentionally and
5 substantially failed to comply with the requirements in this section.

6 **5. Rules.** The department may adopt rules to implement this section. Rules adopted
7 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
8 subchapter 2-A.

9 **Sec. 7. 20-A MRSA §6355, sub-§5** is enacted to read:

10 **5. Virtual public charter schools and private schools.** The student is enrolled in or
11 attends a virtual public charter school or a private school.

12 **Sec. 8. 36 MRSA §5217-G** is enacted to read:

13 **§5217-G. Educational tax credit and diversion of income tax withheld**

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

16 A. "Qualified taxpayer" means a taxpayer who files a state income tax return and is not
17 a dependent of another taxpayer.

18 B. "Scholarship organization" means an organization that meets the requirements of
19 Title 20-A, section 5901, subsection 3.

20 **2. Credit allowed.** For tax years beginning on or after January 1, 2023, a qualified
21 taxpayer is allowed a credit against the tax imposed by this Part in accordance with the
22 provisions of this section. The credit is created to implement the educational choice tax
23 credit program established under this section and Title 20-A, chapter 220.

24 A. A qualified taxpayer entitled to the credit for any taxable year may carry over and
25 apply to the tax liability for any one or more of the next succeeding 3 years the portion,
26 as reduced from year to year, of any unused credits.

27 B. In the first 5 years of the program, a qualified taxpayer may claim a credit based on
28 donations actually made to a scholarship organization under the program for
29 educational scholarships during the taxable year for which the credit is claimed.
30 Beginning in the 6th year of the program, the amount of the qualified taxpayer's
31 liability for taxes under this Part that is eligible for a credit decreases by 10 percentage
32 points each year until the 10th year of the program and beyond, when the tax credit
33 may be claimed for up to 50 percent of the qualified taxpayer's tax liability.

34 C. Except as provided in subsection 4, the credit under this section may not reduce the
35 tax otherwise due under this Part to less than zero.

36 **3. Receipt required.** A taxpayer shall provide a department-approved receipt for a
37 scholarship donation in order to qualify for the credit described in this section.

38 **4. State income tax withholding.** For tax years beginning on or after January 1, 2023,
39 a taxpayer may divert a prorated amount of state income tax withheld to a scholarship
40 organization up to the maximum credit allowed by law, including carry-over credits.

