ENROLLED

Regular Session, 2012

ACT No. 25

HOUSE BILL NO. 969

BY REPRESENTATIVE TALBOT

AN ACT

To enact Chapter 3 of Subtitle VII of Title 47 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 47:6301, relative to rebates; to authorize a rebate for certain donations to certain school tuition organizations; to provide for definitions, requirements, and limitations; to provide for the amount, approval, and issuance of rebates; to authorize the Department of Education to conduct audits; to authorize the promulgation of rules and regulations; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 3 of Subtitle VII of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:6301, is hereby enacted to read as follows:

CHAPTER 3. REBATES FOR DONATIONS TO SCHOOL TUITION ORGANIZATIONS

§6301. Rebates; donations to school tuition organizations

A.(1) There shall be allowed a rebate for donations a taxpayer makes during a taxable year to a school tuition organization which provides scholarships to qualified students to attend a qualified school. Upon making his donation, the donor shall indicate the duration of time which the school tuition organization may retain and carryforward his donation. The time may be indicated as being in perpetuity or for a stated period of time coinciding with a fiscal year of the state of Louisiana, the minimum of which shall not be less than twelve months or one fiscal year, whichever occurs later. In order to qualify for the rebate, the donation shall be made by a taxpayer who files a Louisiana income tax return. The amount of the rebate shall be equal to the actual amount of the taxpayer's donation used by a school tuition

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organization to fund a scholarship to a qualified student, which shall not include administrative costs.

(2) The rebate may be paid only after the conclusion of the school year and only when all of the following requirements have been satisfied:

(a) The school tuition organization certifies to the Department of Education that the donation made by the taxpayer has funded a scholarship for a qualified student.

(b) The Department of Education has verified that the student was not enrolled in a public school in Louisiana on October first or February first of that school year pursuant to the definition of the student membership established by the State Board of Elementary and Secondary Education for the purposes of the Minimum Foundation Program formula, and the Department of Education has certified the student count.

(c) If the qualified student is enrolled in public school on February first of that school year pursuant to the definition of the student membership established by the State Board of Elementary and Secondary Education, the amount of the rebate shall be equal to the actual amount expended by the school tuition organization on scholarships, which shall not include administrative costs and shall be prorated as applicable.

(3) In order for a donation from a taxpayer to qualify for the rebate, the donation shall be used by the school tuition organization to provide scholarships for tuition and fees for students to attend a qualified school in accordance with the provisions of this Section. No more than five percent of a donation shall be used by the school tuition organization for administrative or promotional costs. No scholarship shall be designated, referred to, or in any way named after a private entity nor shall any donation be earmarked by a donor to provide a scholarship for a particular qualified student or a particular qualified school. However this Paragraph shall not prohibit a donation being earmarked for a student with a disability. A student shall be considered to have a disability if such student is evaluated according to state and federal regulation or policy and is deemed to have

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a mental disability, hearing impairment (including deafness), multiple disabilities, deaf-blindness, speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, traumatic brain injury, dyslexia and related disorders, or autism, and as a result requires special education and related services.

B.(1)(a) For purposes of this Section, the term "school tuition organization" shall mean a tax exempt organization organized under Section 501(c)(3) of the Internal Revenue Code which adheres to the requirements of this Section. The amount of scholarships awarded by a school tuition organization shall equal the amount of donations the organization receives from taxpayers, minus allowable administrative or promotional costs. No less than ninety-five percent of the monies received by the school tuition organization from taxpayer donations for scholarships shall be used to provide scholarships to students for attendance at a qualified nonpublic school of their parent's choice. A school tuition organization shall carryforward all funds in accordance with the duration of time indicated by the donor pursuant to Paragraph (A)(1) of this Section. If, at the end of the fiscal year, a donor requests a refund of unexpended funds from his donation, the school tuition organization shall reimburse the donor the full amount of unexpended funds otherwise available to be used on scholarships, exclusive of funds available for administrative costs. If the donor does not elect to receive a refund, the school tuition organization may retain and carryforward the funds indefinitely or for a shorter period of time if so indicated by the donor. In addition, a school tuition organization shall provide educational scholarships to students without limiting available scholarships to students of only one qualified school.

(b) The maximum amount for a scholarship provided by the school tuition organization to a qualified student in kindergarten through eighth grade shall not exceed actual tuition and mandatory fees or eighty percent of the state average Minimum Foundation Program per pupil funding amount for the previous year, whichever is less, and the maximum amount for a scholarship for a qualified student in ninth through twelfth grades shall not exceed ninety percent of the state average

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Minimum Foundation Program per pupil funding amount for the previous year, whichever is less.

(c) A school tuition organization which provides scholarships to qualified students shall do all of the following:

(i) Notify the Department of Education of its intent to provide educational scholarships to qualified students attending qualified schools.

(ii) Provide documentary evidence to the Department of Education that it has been granted an exemption from federal income tax and is established as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(iii) Document the eligibility of each qualified student for each year that a qualified student receives a scholarship.

(iv) Provide scholarships to qualified students on a first-come, first-served basis, with priority given to students who received a scholarship in the previous year.

(v) Distribute scholarship payments in September, December, February, and May of each year as checks made out to a parent of a qualified student which are mailed to the qualifying school where the student is enrolled. The parent shall restrictively endorse the check for deposit into the account of the school. The parent shall not designate any entity or individual associated with the school as the parent's attorney to endorse a scholarship check. Any parent who receives payments in accordance with the provisions of this Section shall not be allowed to claim the amount received as any other credit, deduction, exemption, or rebate under Title 47 of the Louisiana Revised Statutes of 1950. If a student who has received a scholarship ceases to be enrolled in a qualified school, the school shall immediately notify the respective student tuition organization and the Department of Education that the student is no longer enrolled. Upon receipt of such notification, the student tuition organization shall cease making payments to the school for that student.

(vi) Provide certification to the Department of Education that scholarships have been issued within thirty days of issuing the scholarships. This certification shall include a list of the taxpayers whose donations to the school tuition organization funded the scholarships, the amount of each taxpayer's donation used

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to fund a scholarship, as well as all other documentation required by the Department of Education, as established in rules and regulations.

(vii) Perform criminal background checks on all of its employees and board members according to the provisions of R.S. 15:587.1. A person who has been convicted of or has entered a plea of nolo contendere to a crime listed in R.S. 15:587.1 may not be employed by, or be a board member of, a school tuition organization. The Department of Education may bar a school tuition organization from participating in the rebate authorized under this Section if the school tuition organization fails to comply with the requirements of this Item.

(viii) Ensure that scholarships granted to qualified students are portable during the school year and can be used at any qualifying school that accepts a qualified student. If the parent of a qualified student who is receiving a scholarship desires the student to move to a new qualified school during a school year, the scholarship amount may be prorated.

(ix) Provide a public report to the Department of Education which contains information regarding all scholarships awarded or granted in the previous fiscal year. The report shall be prepared by a certified public accountant and shall be submitted to the department no later than the first day of January each year. The report shall contain the name and address of the school tuition organization, the total number and total dollar amount of donations received during the previous fiscal year, the total number and total dollar amount of educational scholarships awarded to qualified students, the total amount expended on administrative costs, and the percentage breakdown of donations expended on scholarship and administrative costs during the previous fiscal year. The report shall include the actual tuition and fee amounts published by the qualifying schools which enrolled a student with a scholarship from that school tuition organization. The report shall also contain the total amount of contributions received by the school tuition organization, the total amount of contributions made by each contributor during the previous calendar year, and the social security number or Louisiana taxpayer identification number of each contributor. An electronic format of this report shall be furnished to the Department

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of Revenue by the Department of Education on or by the first day of February of each year.

(x) Annually demonstrate its financial accountability through a financial information report that complies with uniform financial accounting standards. The report shall be prepared by a certified public accountant and shall be submitted to the Department of Education. The report shall contain a certification from an auditor that the report is free of material misstatements.

(xi) The school tuition organization shall adequately advertise the availability of scholarships to the public, with an emphasis on notifying parents of students in public schools that received a letter grade of "F" or "D", in the manner provided for in rules and regulations which shall be promulgated by the Department of Education in accordance with the Administrative Procedure Act.

(2)(a) For purposes of this Section, a "qualified school" shall mean a nonpublic elementary or secondary school in this state which is approved, provisionally approved, or probationally approved by the Board of Elementary and Secondary Education and which complies with the criteria set forth in *Brumfield, et al. v. Dodd, et al., 425 F. Supp 528*. A qualified school shall do all of the following:

(i) Conduct criminal background checks on its employees and exclude from employment any person not permitted by state law to work in a nonpublic school. The Department of Education may bar an otherwise qualified school from participating in the rebate authorized under this Section if the otherwise qualified school fails to comply with the requirements of this Item.

(ii) Using funds retained for administrative costs by the school tuition organization, annually administer the state test associated with the school and district accountability system to measure learning gains in math and language arts to all participating students in grades that require testing under the state's accountability testing laws for public schools; however, the Department of Education shall not incur any expense for the administration of the state tests to students applying for tuition scholarships from a school tuition organization. The qualified school shall provide

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the parents of each student who was tested with a copy of the student's test results on an annual basis, beginning with the first year the student is tested.

(iii) If more first-time qualified students who are otherwise eligible apply than there are seats available, conduct a random selection process that ensures all qualified and otherwise eligible students an equal chance for admission; however, the qualified school may give preference for the following:

(aa) Siblings of students already enrolled in the qualified school.

(bb) Qualifying students who had previously enrolled at a different qualified school and who are otherwise eligible.

(iv) Admit qualified students for enrollment based on the letter grade of the public school for which the qualified student was attending or would have attended. Qualified students from public schools that received a letter grade "F" or "D" or any variation thereof shall be given the first priority.

(v) Not charge a higher total tuition and fee amount to a qualified student than is charged to all students enrolled at the school.

(vi) Annually provide to each school tuition organization who has provided a scholarship to a student enrolled in that school the actual tuition and fee amounts charged to all students.

(b) Any qualified school that receives more than fifty thousand dollars in scholarship donations from a school tuition organization shall demonstrate its financial viability by filing, prior to the start of a school year, a surety bond payable to the school tuition organization in an amount equal to the aggregate amount of donations expected to be received during the school year or by filing, prior to the start of a school year, financial information with the qualified school tuition organization demonstrating its financial viability; however, a qualified school which has been in business for more than five years shall not be required to post a surety bond.

(c) Enrollment of scholarship recipients in a qualified school under the provisions of this Section and under the provisions of the Student Scholarships for Educational Excellence Program that has been approved, provisionally approved, or

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probationally approved for less than two years shall not exceed twenty percent of such school's total student enrollment.

(3) For purposes of this Section, a "qualified student" shall mean a child who is a member of a family that resides in Louisiana with a total household income that does not exceed an amount equal to two hundred fifty percent of the federal poverty level based on the federal poverty guidelines established by the federal office of management and budget. A qualified student shall also be a student who is entering kindergarten for the first time, a student who attended a public school the previous year, or a student who received a scholarship from a school tuition organization for the previous school year. Any qualified student receiving a scholarship from a school tuition organization pursuant to the provisions of this Section shall be prohibited from receiving any other publicly funded scholarship, voucher, or other form of financial assistance specific to that student for purposes of attending a nonpublic school; however, a qualified student may receive scholarships from multiple school tuition organizations not to exceed the lesser of eighty percent of the state average Minimum Foundation Program per pupil funding amount for the previous year in the case of a qualified student enrolled in kindergarten through eighth grade, or ninety percent of the state average Minimum Foundation Program per pupil funding amount for the previous year in the case of a qualified student enrolled in ninth through twelfth grade.

(4) For purposes of this Section, a "parent" shall mean a guardian, custodian, or other person with authority to act on behalf of the child.

C.(1)(a) The Department of Education shall promulgate rules and regulations in accordance with the provisions of the Administrative Procedure Act, as are necessary to implement the provisions of this Section.

(b) The Department of Education shall approve the application used by a school tuition organization in awarding scholarships to qualified students.

(c) The Department of Education shall certify and issue a receipt to a taxpayer indicating the actual amount of the taxpayer's donation to a school tuition

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organization which was used to fund a scholarship after all of the requirements of Paragraph (A)(2) of this Section have been satisfied.

(d) The Department of Education shall verify that each qualified student has received scholarships not to exceed the lesser of actual tuition and fees at the qualified school or eighty percent of the state average Minimum Foundation Program per pupil funding amount for the previous year in the case of a qualified student enrolled in kindergarten through eighth grade, or ninety percent of the state average Minimum Foundation Program per pupil funding amount for the previous year in the case of a qualified student enrolled in ninth through twelfth grade. If the total amount of scholarships received by a qualified student has exceeded one of these amounts, as applicable, the school tuition organization that had awarded the scholarship that caused the student's total scholarship amount to exceed this amount shall refund the state the difference.

(e) The Department of Education may conduct either a financial review or audit of a school tuition organization as deemed necessary by the department. The Department of Education shall bar a school tuition organization from participating in the rebate authorized under this Section if the school tuition organization intentionally and substantially fails to comply with the requirements of this Section.

(f) The Department of Education shall compile a public report which shall be made available no later than March first of each year on the department's website which lists the name of all qualified schools receiving scholarship recipients pursuant to the provisions of this Section, the number of scholarship recipients attending each qualified school, and the results of the state's accountability testing laws for students in public school for scholarship recipients in each grade. The Department of Education shall not include the name or any other identifying information for individual students.

(2)(a) The Department of Revenue shall provide a standardized format for a receipt to be issued by the Department of Education to a school tuition organization. The Department of Revenue shall require a taxpayer to provide a copy of the receipt when claiming the rebate authorized by this Section.

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(b) The Department of Education shall ensure that the public of the state is aware of the availability of scholarships, with an emphasis on notifying parents of students in public schools that received a letter grade of "F" or "D", and shall provide for requirements for school tuition organizations to adequately advertise the availability of scholarships to the public, all as provided for in rules and regulations which shall be promulgated by the Department of Education in accordance with the Administrative Procedure Act.

D. Notwithstanding any provision of law to the contrary, the secretary of the Department of Revenue shall make the rebate authorized pursuant to the provisions of this Section from the current collections of the taxes imposed by Title 47 of the Louisiana Revised Statutes of 1950, as amended.

Section 2. The provisions of this Act shall become effective beginning on January 1, 2013, and shall be applicable to donations made to a school tuition organization which provides scholarships to qualified students to attend a qualified school for the 2013-2014 school year and thereafter.

_____
SPEAKER OF THE HOUSE OF REPRESENTATIVES

_____
PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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