



ARIZONA STATE SENATE
Fifty-Fifth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1657

ESAs; STOs; student empowerment fund

Purpose

Expands Empowerment Scholarship Account (ESA) eligibility and permissible expenditures as outlined and entitles a child with an ESA to Classroom Site Fund (CSF) monies. Establishes the Student Empowerment Fund (Empowerment Fund) to fund the ESAs of specified qualified students, consisting of a portion of the additional 0.6 percent transaction privilege tax and use tax for education (0.6 percent TPT and use tax) revenues. Repeals the individual Credit for Contributions to Certified Student Tuition Organizations (STOs) and modifies caps relating to remaining STO tax credits.

Background

A student with an ESA account may use ESA monies for permissible expenses, including: 1) qualifying tuition or fees; 2) textbooks, curricula and supplementary materials; and 3) outlined goods and services. A *qualified student* for an ESA account includes a: 1) child with a disability; 2) student attending a D or F school or school district; 3) previous ESA and Arizona Scholarships for Pupils with Disabilities Program recipient; 4) child of a parent in the U.S. Armed Forces who is on active duty or was killed in the line of duty; 5) child who is or was a ward of the court with a permanent guardian or prospective permanent guardian; 6) sibling of a current or previous ESA recipient; 7) resident of an Indian reservation in Arizona; and 8) child of a parent who is legally blind, deaf or hard of hearing. An ESA is funded at 90 percent of the Base Support Level and additional assistance that a student would have been allocated if the student was attending a school district or charter school (A.R.S. §§ [15-2401](#) and [15-2402](#)).

An STO is a nonprofit organization exempt from federal taxation that allocates at least 90 percent of its revenue for educational scholarships or tuition grants to attend nongovernmental elementary or secondary schools. Subject to specified limitations, there are four credits a corporation, insurer or individual may receive against income tax liability for contributions made to an STO: 1) the corporate and insurer Credit for Contributions to STOs; 2) the corporate and insurer Credit for Contributions to School Tuition Organizations for Displaced or Disabled Students; 3) the individual Credit for Contributions to STOs; and 4) the individual Credit for Contributions to Certified STOs (A.R.S. §§ [43-1089](#); [43-1089.03](#); [43-1183](#); [43-1184](#); [43-1505](#); and [43-1603](#)).

If expanding eligibility for the ESA Program results in a change in ESA funding obligations or the removal and increase of certain STO tax credit caps results in a change to income tax revenues, there may be a fiscal impact to the state General Fund.

Provisions

ESA Eligibility

1. Expands the definition of a *qualified student* for an ESA to include a child:
 - a) who is identified as having a disability by a public school system in another state;
 - b) whose parent is a veteran of the U.S. Armed Forces or a first responder;
 - c) whose parent is a full-time health professional who provides direct patient care;
 - d) who meets the federal free and reduced-price lunch income eligibility requirements under the National School Lunch and Child Nutrition Acts;
 - e) whose household receives Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families or Section 8 Public Housing Assistance benefits;
 - f) who receives federal Title I services for low-income students under the federal Every Student Succeeds Act (ESSA);
 - g) who resides within the attendance boundary of a school that qualifies for schoolwide Title I Program funding under the ESSA;
 - h) who participates in, or previously participated in, the executive Education Recovery Benefit Program, the Open for Learning Recovery Benefit Program or any successor state grant program providing educational services to students attending a school district that ceases in-person instruction during a school year or implements a student mandate in violation of state law; and
 - i) who resides within the attendance boundary of a school district whose governing board submitted a plan to the School Facilities Oversight Board, within the previous two years, requesting new construction or school addition monies due to enrollment projections exceeding existing capacity according to building adequacy standards.
2. Deems, as eligible for an ESA, a child who meets one of the qualifying categories and, in lieu of meeting outlined attendance requirements, attended a nonpublic school for pupils with disabilities in the prior year, if placement was approved by ADE and contracted for by a public school district.
3. Reduces the logged instructional hours a qualifying student in Arizona online instruction must have received in the current or prior fiscal year to meet school attendance eligibility criteria:
 - a) from 200 to 100, for kindergarten students;
 - b) from 400 to 200, for student in grades 1 through 3;
 - c) from 500 to 250, for students in grades 4 through 6;
 - d) from 550 to 275, for students in grades 7 and 8; and
 - e) from 500 to 250, for high school students.
4. Deems a child *eligible to enroll in a kindergarten program* for the purposes of meeting school attendance eligibility criteria, if the child:
 - a) is at least five years of age on January 1 of the current school year and under seven years of age;
 - b) has not already completed a kindergarten program; and
 - c) is not enrolled in grade 1 of a school in the current year.

5. Determines that the ESA enrollment parent agreement to not enroll a qualified student in a school district or charter school does not:
 - a) require a qualified student to withdraw from a public school before enrolling for an ESA if the student withdraws before receiving any ESA monies; or
 - b) prevent a qualified student from applying in advance for an ESA to be funded beginning the following school year.
6. Defines *first responder* and *health professional*.

ESA Expenditures and Administration

7. Adds, to permissible ESA expenditures:
 - a) public transportation services in Arizona, including a computer pass or transportation network services between the qualified student's residence and school; and
 - b) computer hardware or technological devices primarily used for an educational purpose, including calculators, personal computers, laptops, tablet devices, microscopes, telescopes and printers.
8. Removes, from the specified list of prohibited ESA expenditures, consumable educational supplies, including paper, pens or markers.
9. Authorizes, during any period beginning January 1, 2023, in which ADE fails to ensure that a contract with an independent third party for determining whether qualifying students with disabilities are eligible to expend ESA monies for outlined educational therapies or services:
 - a) a county school superintendent to approve a list of independent third parties in the county whose evaluation may be used to make the determination; and
 - b) if the county school superintendent does not provide the list within 90 days of ADE not having a contract in effect, the parent to obtain an independent educational evaluation from a qualified examiner to make the determination.
10. Requires the school district in which the student resides and that serves the student's grade level to provide the expense for an independent educational evaluation from a qualified examiner obtained by a parent.
11. Excludes, from permissible *computer hardware or technological devices*, entertainment and other primarily noneducational devices and home theatre and audio equipment.
12. Defines *qualified examiner* as a licensed physician, psychiatrist or psychologist.

ESA Funding

13. Entitles a child participating in the ESA Program to an equitable share of funding from the CSF that would otherwise be allocated for that child to a charter school or school district.
14. Requires ADE to annually transfer, from the CSF to the State Treasurer for deposit in each ESA, an amount equal to the CSF per-pupil amount multiplied by the student's weighted count that would be calculated if the student were attending the prior, or expected, school district or charter school.

15. Includes, in the estimated statewide weighted student count used to calculate the CSF per-pupil amount, a child participating in an ESA for as long as the student participates.
16. Requires ADE to deposit, into a CSF Subaccount (Subaccount), a portion of CSF revenues sufficient to provide for the transfer of CSF per-pupil amounts to ESAs.
17. Determines that the CSF per-pupil amount transferred to each ESA counts toward the total amount ADE must allocate to each ESA and specifies that monies may be used for any permissible ESA expenditure.
18. Allows Subaccount monies to be used to fund the transfer of CSF monies for school districts, charter schools or ESAs.
19. Directs, retroactive to March 29, 2022, the Joint Legislative Budget Committee (JLBC) to revise the CSF per-pupil amount calculation for FY 2023 to include children participating in the ESA Program within 10 days of the effective date.

Empowerment Fund

20. Establishes the Empowerment Fund to provide an ESA to a student who resides in a school district that:
 - a) receives more in annual per-pupil funding than the amount charged per-student for tuition and fees at a public Arizona university; or
 - b) spends local revenues in excess of the constitutionally established, statutorily-determined school district expenditure limitation.
21. Directs, to the Empowerment Fund beginning FY 2023, \$25 million of the 0.6 percent TPT and use tax revenues remaining after all required distributions, except for the distribution to the CSF.
22. Deems, to be a *qualified student* for an ESA, a student who:
 - a) resides in a qualifying school district; and
 - b) is eligible to attend a kindergarten program or has attended, for 45 days of the current or prior year, a school district school in any of grades 1 through 12 and has not graduated.
23. Specifies that a student who receives an ESA by qualifying based on district revenues or expenditures remains eligible for an ESA through grade 12 as long as the student:
 - a) remains in good standing;
 - b) does not enroll in a school district or charter school; and
 - c) is not removed from ESA eligibility for failure to comply with contract requirements or ESA regulations.
24. Reserves Empowerment Fund monies for students who qualify based on district revenues or expenditures and do not meet other ESA eligibility criteria.
25. Directs ADE to annually accept ESA applications, for students qualifying based on school district revenues or expenditures, on a first-come, first-served basis until the cumulative contracted award amounts exhaust Empowerment Fund monies.

26. Requires the ESA of a student qualifying based on school district revenues or expenditures to be funded in the first year exclusively by monies from the Empowerment Fund and the CSF in an amount equivalent to the amount statutorily-determined for other ESAs.
27. Specifies that the Empowerment Fund consists of monies transferred from the 0.6 percent TPT and use tax and any legislatively-determined transfer or appropriation.
28. Specifies that Empowerment Fund monies are continuously appropriated and exempt from lapsing.
29. Defines *amount charged for tuition and fees per student at a university under the jurisdiction of the Arizona Board of Regents, annual funding per pupil, local revenues and school district expenditure limitation.*

ESA Administration

30. Extends, from 10 days to 15 days, the time frame after notification of an ESA suspension within which a parent or qualified student must respond or take corrective action before ADE may remove the student from ESA eligibility.
31. Allows a parent to represent themselves or designate a representative who is not necessarily an attorney before an appeals hearing to the State Board of Education of any ADE administrative decision relating to ESAs.
32. Prohibits, from charging for services related to an ESA appeals hearing, a designated representative who is not an attorney.
33. Specifies that a representative participating in the hearing or assisting the ESA holder is not grounds for reversing an administrative decision order, if the supporting evidence is substantial, reliable and probative.

STOs

34. Repeals the individual Credit for Contributions to Certified STOs.
35. Directs the Arizona Department of Revenue, beginning January 1, 2023, to annually adjust the cap on the individual Credit for Contributions to STOs by the following amounts, if the amounts are greater than the average annual change in the metropolitan Phoenix Consumer Price Index (CPI) published by the U.S. Department of Labor, Bureau of Labor Statistics:
 - a) \$250 for a single individual or head of household; and
 - b) \$500 for a married couple filing jointly.
36. Increases, from \$6 million to \$10 million, the FY 2023 aggregate cap for the corporate and insurer Credit for Contributions to STOs for Displaced or Disabled Students.
37. Requires, beginning FY 2024, the aggregate cap for the corporate and insurer Credit for Contributions to STOs for Displaced or Disabled Students to be annually increased by the greater of:
 - a) two percent; or
 - b) the annual percentage increase in the CPI.

38. Removes the following caps on an STO educational scholarship or tuition grant for a qualifying low-income student for the purposes of the corporate and insurer Credit for Contributions to STOs:
- a) \$5,600, for students in a qualifying preschool program, a kindergarten program or grades 1 through 8; and
 - b) \$7,500, for students in grades 9 through 12.
39. Includes, in the definition of a *qualified student* for the purposes of the corporate Credit for Contributions to STOs for Displaced or Disabled Students, a child who is identified as having a disability by:
- a) a public school system in another state; or
 - b) through an independent education evaluation by a third party approved by a county school superintendent or any licensed physician, psychiatrist or psychologist.

Miscellaneous

40. Designates this legislation as the *Arizona Equal Opportunity Education Act*.
41. Contains a severability clause.
42. Makes technical and conforming changes.
43. Becomes effective on the general effective date.

Prepared by Senate Research

February 4, 2022

LB/slp