**South Carolina General Assembly**

125th Session, 2023-2024

**S. 285**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Davis, Rice, Grooms, Goldfinch, Climer and Gustafson

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Introduced in the Senate on January 10, 2023

Introduced in the House on March 28, 2023

Last Amended on March 15, 2023

Currently residing in the House Committee on **Ways and Means**

Summary: Providing Academic Choice in Education (PACE)

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/7/2022 Senate Prefiled

12/7/2022 Senate Referred to Committee on **Finance**

1/10/2023 Senate Introduced and read first time ([Senate Journal‑page 178](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Finance** ([Senate Journal‑page 178](h:\sj\20230110.docx))

2/9/2023 Scrivener's error corrected

2/22/2023 Senate Committee report: Favorable with amendment **Finance** ([Senate Journal‑page 15](h:\sj\20230222.docx))

2/27/2023 Scrivener's error corrected

3/7/2023 Senate Special order, set for March 7, 2023 ([Senate Journal‑page 11](h:\sj\20230307.docx))

3/7/2023 Senate Roll call Ayes-28 Nays-13 ([Senate Journal‑page 11](h:\sj\20230307.docx))

3/15/2023 Senate Committee Amendment Adopted ([Senate Journal‑page 31](h:\sj\20230315.docx))

3/15/2023 Senate Amended ([Senate Journal‑page 31](h:\sj\20230315.docx))

3/15/2023 Senate Read second time ([Senate Journal‑page 31](h:\sj\20230315.docx))

3/15/2023 Senate Roll call Ayes-28 Nays-9 ([Senate Journal‑page 31](h:\sj\20230315.docx))

3/16/2023 Senate Read third time and sent to House ([Senate Journal‑page 25](h:\sj\20230316.docx))

3/16/2023 Scrivener's error corrected

3/28/2023 House Introduced and read first time ([House Journal‑page 36](h:\hj\20230328.docx))

3/28/2023 House Referred to Committee on **Ways and Means** ([House Journal‑page 36](h:\hj\20230328.docx))

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**VERSIONS OF THIS BILL**

[12/07/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/285_20221207.docx)

[02/09/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/285_20230209.docx)

[02/22/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/285_20230222.docx)

[02/27/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/285_20230227.docx)

[03/15/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/285_20230315.docx)

[03/16/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/285_20230316.docx)

Indicates Matter Stricken

Indicates New Matter

committee amendment adopted and amended

March 15, 2023

S. 285

Introduced by Senators Davis, Rice, Grooms, Goldfinch, Climer and Gustafson

S. Printed 03/15/23--S. [SEC 3/16/2023 4:30 PM]

Read the first time January 10, 2023

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A bill

to amend the South Carolina Code of Laws by adding Section 12‑6‑3791 so as to ALLOW AN INCOME TAX CREDIT FOR CONTRIBUTIONS TO A SCHOLARSHIP-FUNDING ORGANIZATION THAT PROVIDES GRANTS FOR STUDENTS TO ATTEND CERTAIN INDEPENDENT AND HOME SCHOOLS, TO SPECIFY THE MANNER IN WHICH THE CREDIT IS CLAIMED, TO SPECIFY THE PROCESS BY WHICH CERTAIN ORGANIZATIONS AND SCHOOLS BECOME ELIGIBLE, TO SPECIFY CERTAIN INFORMATION WHICH MUST BE MADE PUBLIC, AND TO ALLOW THE STATE TREASURER AND DEPARTMENT OF REVENUE TO ENFORCE THE PROVISIONS OF THE CREDIT; and TO REPEAL SECTION 12‑6‑3790 RELATING TO THE EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN’S FUND.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 6, Title 12 of the S.C. Code is amended by adding:

Article 26

Academic Choice in Education (ACE)

Section 12-6-3850. For purposes of this article:

(1) “Academic Choice in Education fund” or “ACE” means education funding provided on behalf of eligible students by nonprofit scholarship funding organizations for qualifying expenses as outlined in this article.

(2) “Department” means the South Carolina Department of Revenue.

(3) “Disadvantaged child” means a child or his family who meets the qualifications for federal Medicaid benefits, or whose family has an annual adjusted gross income of two hundred percent or less of the federal poverty guidelines as promulgated annually by the United States Department of Health and Human Services.

(4) “Eligible school” means an independent school, including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met, that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state’s diploma requirements;

(e) has school facilities that are subject to applicable federal, state, and local laws; and

(f) is a member in good standing of the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, the Palmetto Association of Independent Schools, the American Montessori Society, the International Montessori Council, or the National Association of Private Schools, or alternatively accredited by Cognia or the National Council for Private School Accreditation.

(5) “Eligible student” means a student who:

(a) meets the definition of “general child”;

(b) meets the definition of “disadvantaged child”;

(c) meets the definition of “exceptional needs child”; or

(d) meets the definition of “home school child”; and

(e) is not a recipient of an Education Scholarship Trust Fund.

(6) “Exceptional needs child” means a child:

(a)(i) who has been evaluated in accordance with this state’s evaluation criteria, as set forth in S.C. Code Ann. Regs. 43 243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with the requirements of Section 300.8 of the Individuals with Disabilities Education Act; or

(ii) who has been diagnosed as either permanently or within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student’s ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child’s unique needs; and

(b) the child’s parents or legal guardian believes that the services provided by the school district of legal residence do not sufficiently meet the needs of the child.

(7) “General child” means a child whose family has an adjusted gross income of four hundred percent or less of the federal poverty guidelines and who is a South Carolina resident who, immediately before receiving a scholarship under this article and enrolling in an eligible school or program, was enrolled in a South Carolina secondary or primary public school or who is eligible to enroll in a qualified first grade, kindergarten, or a three or four year old prekindergarten program or received a scholarship pursuant to this article for the previous school year; provided, however, that if a student is considered to be an eligible student pursuant to this item, he shall continue to qualify as such until he graduates, reaches the age of twenty, or returns to a public school, whichever occurs first.

(8) “Home school” means a home, residence, or location where a parent or legal guardian teaches one or more children as authorized pursuant to Section 59-65-40, Section 59- 65-45, or Section 59-65-47.

(9) “Home school child” means any child attending an eligible home school.

(10) “Nonprofit scholarship funding organization” or “scholarship funding organization” means a charitable organization that:

(a) is registered and in good standing with the South Carolina Secretary of State;

(b) is exempt from federal tax pursuant to Section 501(a) of the Internal Revenue Code by being listed as an exempt organization in Section 501(c)(3) of the tax code; and

(c) is approved annually by the Treasurer and listed on the Treasurer’s approved list, which must be published on the Treasurer’s website.

(11) “Parent” means a resident of this State who is the natural or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student.

(12) “Person” means an individual, partnership, corporation, or other similar entity.

(13) “Program” means the ACE scholarship program created by this article.

(14) “Public School” means a school operated by publicly elected or appointed school officials in which the program and activities are under the control of these officials and which is supported by public funds.

(15) “Qualifying expense” means:

(a) the total amount of money charged for the cost of an eligible student to attend an eligible school including, but not limited to, fees for attending the school, textbook fees, tutoring, parental engagement programs involving a three or four year old prekindergarten student, and/or transportation to and from school that is provided by the school. These costs may not be in excess of what is currently provided; and

(b) in the case of an eligible home school student, the total amount of money charged for instruction-related expenditures to attend an eligible home school provider including, but not limited to, curriculum packages, textbooks, digital education, tutoring, and testing materials.

(16) “Resident school district” means the public school district in which the student is domiciled.

(17) “Scholarship” means education funding allocated from an account established on a student’s behalf pursuant to this article.

(18) “Treasurer” means the Office of the State Treasurer.

Section 12-6-3855. (A) A person is entitled to a tax credit against income taxes imposed pursuant to this chapter, or bank taxes imposed pursuant to Chapter 11 of this title, for the amount of cash and the monetary value of any publicly traded securities the person contributes to a nonprofit scholarship funding organization up to the limits of this section if:

(1) the contribution is used to provide scholarships for qualifying expenses to an eligible student enrolled in an eligible school; and

(2) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(B)(1) Scholarships may be awarded by a scholarship funding organization to an eligible student qualifying and defined under Section 12-6-3850(5)(a) [General child] for a school year in an amount not exceeding the actual state-allocated revenue for each pupil as calculated by the Revenue and Fiscal Affairs Office and required to be published by the annual appropriations act or the total amount of qualifying expenses, whichever is less.

(2) Scholarships may be awarded by a scholarship funding organization to an eligible student qualifying and defined under Section 12-6-3850(5)(b) and (c) [Disadvantaged Child & Exceptional Needs Child] for a school year in an amount not exceeding one hundred forty percent of the amount of subsection (B)(1) above or the total amount of qualifying expenses, whichever is less.

(3) Scholarships may be awarded by a scholarship funding organization to an eligible student qualifying and defined under Section 12-6-3850(5)(d) [Home School Child] for a school year in an amount not exceeding twenty percent of the amount of subsection (B)(1) above or the total cost of qualifying expenses, whichever is less. A scholarship funding organization may reimburse a parent directly for expenditures actually paid for qualifying expenses or pay vendors directly for qualifying expenses at the direction of the parent and on behalf of the home school child.

(4) Once an eligible student receives a scholarship, he must receive priority status for future scholarships; provided, however, that the eligible student is in good standing with the school.

(C) Except as otherwise provided, the Department of Education, the Department of Revenue, the Treasurer, or any other state agency may not regulate the educational programs of a school that accepts eligible students receiving scholarships pursuant to this article.

Section 12-6-3860. (A) The Treasurer shall create a standard application process and establish the timeline for parents to establish the eligibility of their student for the ACE scholarship. The application window established shall last at least forty-five days, opening no earlier than January fifteenth, and closing no later than March fifteenth of each calendar year.

(B) Pursuant to the timeline established pursuant to this section, the Treasurer shall:

(1) process applications in the order in which they are received; and

(2) enroll and issue eligibility certificates within thirty days of the deadline for receipt of completed applications and all required documentation. The eligibility certificate must list the names and contact information of the eligible scholarship-granting organizations.

(C) Before awarding an eligibility certificate, the Treasurer shall obtain evidence of the student’s eligibility criteria set forth in this article.

(D) The Treasurer shall approve an application for scholarship if:

(1) the parent submits an annual application for a scholarship in accordance with the application and procedures established by the Treasurer;

(2) the student on whose behalf the parent is applying is an eligible student;

(3) the parent signs an annual agreement with the Treasurer:

(a) to provide, at a minimum, a program of academic instruction for the eligible student in at least the subjects of English and language arts to include writing, mathematics, social studies, and science;

(b) to acknowledge and agree to comply with the eligible schools prescribed curriculum, dress code and other requirements of enrolled students; and

(c) to use program funds for qualifying expenses only for an eligible school to educate the scholarship student, subject to penalty.

(E) Receipt of an eligibility certificate does not guarantee a scholarship award from a scholarship granting organization.

Section 12-6-3865. (A) The Treasurer shall prescribe the form and manner to be an approved nonprofit scholarship funding organization, the annual application must at a minimum include:

(1) the number and total amount of scholarships issued to schools that accept eligible students in the preceding school year;

(2) the identity of the school and the amount of the scholarship issued to each eligible student in the preceding school year;

(3) an itemization and detailed explanation of any fees or other revenues obtained from or on behalf of any schools that accepted eligible students;

(4) a copy of the organization’s Form 990 or other comparable federal submission that indicates the provisions of the Internal Revenue Code under which the organization has been granted exempt status for purposes of federal taxation;

(5) a copy of a compilation, review, or audit of the organization’s financial statements, conducted by a certified public accounting firm;

(6) the criteria and eligibility requirements for scholarship awards; and

(7) a certification by the organization of the following:

(a) it meets the definition of a nonprofit scholarship funding organization and that the report is true, accurate, and complete under penalty of perjury in accordance with Section 16-9-10;

(b) it allocates at least ninety-five percent of its annual contributions received during a particular year to provide scholarships to schools on behalf of eligible enrolled children and incurs administrative expenses annually of no more than five percent of its annual contributions for a particular year to cover operational costs;

(c) it allocates all of its funds used for scholarships on an annual basis to eligible students;

(d) it does not provide scholarships on behalf of eligible students only for the benefit of one school, and if the Treasurer determines that the nonprofit scholarship funding organization is providing scholarships to one particular school, the tax credit allowed by this section may be disallowed;

(e) it does not have as a volunteer, contractor, consultant, fundraiser, or member of its governing board, any parent, legal guardian, or member of his immediate family who has a child or ward who is currently receiving or has received a scholarship authorized by this article from the organization within one year of the date the parent, legal guardian, or member of his immediate family became a board member. A person serving on the governing board of a nonprofit scholarship funding organization shall have a fiduciary duty to the donors and eligible students at schools served by the organization and shall resign if any conflicts of interest develop with the organization and those it serves;

(f) it does not have as a member of its governing board or an employee, volunteer, contractor, consultant, or fundraiser who has been convicted of a felony or other financial crime, been disciplined by a professional, self-regulatory body, had a professional license or designation suspended, revoked, or otherwise restricted in use, or is otherwise prevented from engaging in a profession as part of a court order, court settlement, or arbitration ruling. This item also must apply to immediate family members residing in the same household;

(g) does not release personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain; and

(h) does not place conditions on schools enrolling eligible students receiving scholarship to limit the ability of the schools to enroll eligible students accepting scholarships from other nonprofit scholarship funding organizations.

(B) The application deadline under this section is August first of each year.

Section 12-6-3870. (A) The parent shall provide the eligibility certificate to the scholarship funding organization. Upon awarding of a scholarship by the scholarship funding organization and at the direction of the parent, the scholarship funding organization shall issue a check payable to the eligible school on behalf of the student and deliver it to the school within thirty days upon approval of the application or thirty days of the start of the school’s semester. If the eligible student leaves or withdraws from the school for any reason before the end of the semester or school year and does not re-enroll within thirty days, then the school shall return a prorated amount of the scholarship to the scholarship funding organization based on the number of days the eligible student was enrolled in the school during the semester or school year within sixty days of the student’s departure.

(B) Before the issuance of a check, a parent shall certify that the eligible student has not received a scholarship from any other scholarship-granting organizations in the current academic year.

(C) Before the issuance of a check to an eligible school, the school must provide documentation to the scholarship funding organization that it meets the criteria established in Section 12-6-3850(4).

(D)(1) The tax credits authorized for an eligible student qualified and defined under Section 12-6-3850(5)(a) [General Child], (b) [Disadvantaged Child], and (c) [Exceptional Needs Child] may not exceed cumulatively a total of fifteen million dollars in each qualifying category, each calendar year.

(2) The tax credits authorized for an eligible student qualified and defined under Section 12-6-3850 (5)(d) [Home School Child] may not exceed cumulatively a total of ten million dollars each calendar year.

(3) If the South Carolina Department of Revenue determines that the total of the credits claimed in this section by all taxpayers exceeds the limit amount, it shall allow credits only up to those amounts on a first-come, first-served basis. Within the first forty-five days that the credits are available, persons as defined in 12-6-3850(12) are only allowed to claim a total amount of ten thousand dollars in tax credits per person. After the forty fifth day, any remaining tax credits are available to all persons.

(4) The tax credits authorized pursuant to this section remain the same unless an increased or decreased limit is authorized in the annual general appropriations act.

(E) The department shall establish an application process to determine the amount of credit available to be claimed. The receipt of the application by the department shall determine priority for the credit.

(1) The tax credit must be claimed on the return for the tax year that the contribution is made.

(2) A taxpayer may not claim more than one hundred percent of his total tax liability for the tax year in contributions toward the tax credits authorized by this section. This credit is not refundable. If the credit exceeds the taxpayer’s tax liability for the taxable year, the excess amount may be carried forward for credit against the next ten succeeding taxable years.

(3) If a taxpayer deducts the amount of the contribution on the taxpayer’s federal return and claims the credit allowed by this section, then the taxpayer shall add back the amount of the deduction for purposes of South Carolina income or bank taxes.

(F) The department shall prescribe the form and manner of proof required to obtain the credits authorized by this article. Also the department shall develop a method of informing taxpayers and scholarship-funding organizations if the credit limit is met at any time during the year.

(1) A corporation or entity entitled to a credit under this section may not convey, assign, or transfer the credit authorized by this section to another entity unless all assets of the entity are conveyed, assigned, or transferred in the same transaction.

(2) Notwithstanding the maximum credit limits set forth in this article, if one of the eligible student-qualifying categories listed in subsection (D) reaches its limits but another eligible student-qualifying category has not reached its limit by October first of each tax year, then the department may transfer the unused credits to the eligible student qualifying category that has reached its limit. However, the credit only may be transferred and may not cumulatively allow more than the authorized annual cumulative total provided in this section. In considering a credit transfer under this item, those eligible student qualifying categories listed in subsection 12-6-3850(5)(b) [Disadvantaged Child], (c) [Exceptional Needs Child], (d) [Home School Child], and (a) [General Child] must have priority order when transferring credits.

Section 12-6-3875. (A) By September first of each year, the Treasurer shall publish on its website a list of all qualifying nonprofit scholarship-funding organizations for the succeeding calendar year, to include their names, addresses, telephone numbers, and, if available, website addresses and applicable audits.

(B) By January fifteenth of each year, the Treasurer shall report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor:

(1) the number and total amount of scholarships issued by the scholarship-funding organizations to schools on behalf of eligible students that attended in the prior school year;

(2) the identity of the school that accepts eligible students and the amount of each scholarship issued to the school in the prior school year by each scholarship funding organization;

(3) an itemization and detailed explanation of fees or other revenues obtained from or on behalf of eligible students to a school by any scholarship-funding organization;

(4) a copy of each scholarship-funding organization’s Form 990 or other comparable federal submission that indicates the provisions of the Internal Revenue Code under which the organization has been granted exempt status for purposes of federal taxation;

(5) a copy of a compilation, review, or audit of each scholarship-funding organization conducted by a certified public accounting firm as provided to the Treasurer by each scholarship-funding organization in their application to participate in the program;

(6) the criteria and eligibility requirements for scholarship awards of each scholarship-funding organization as provided to the Treasurer by each scholarship-funding organization in their application to participate in the program; and

(7) any report required by this section may not specifically include the name, amount, or any other personally identifiable information of scholarship recipients.

Section 12-6-3880. (A)(1) The Treasurer and the department have authority to examine and audit the nonprofit scholarship-funding organizations, including determining whether the nonprofit scholarship-funding organization is being operated in a manner consistent with the requirements for an IRC Section 501(c)(3) organization or is in compliance with any other provision of this section.

(2)(a) If an audit by the Treasurer or department produces evidence that a nonprofit scholarship-funding organization is not being operated in a manner consistent with the requirements for operating an IRC Section 501(c)(3) organization or is not in compliance with any other substantial provision of this section, the Treasurer or the department immediately may revoke the organization’s participation in the program and shall notify the organization in writing of the revocation.

(b) Actual notice of revocation may be provided to the organization by personal delivery to the organization, by certified return receipt mail to the last known address of the organization, or by other means reasonably designed to provide actual notice to the organization.

(c) Any donations made following the date the actual notice of revocation are received by the organization do not qualify for the credit and the donated funds must be returned to the donor by the organization.

(d)(i) Within thirty days after the day on which the organization is provided actual notice of the revocation, the organization may request a contested hearing before the Administrative Law Court. Within seven days after a request for a contested case hearing is received by the Administrative Law Court, an administrative law judge shall hold the contested case hearing and determine whether the revocation was reasonable under the circumstances. The Treasurer or the department has the burden of proof of showing that the revocation was reasonable under the circumstances. The revocation is reasonable if the Treasurer or the department has substantial credible evidence that the organization is not being operated in a manner consistent with the requirements for operating an IRC Section 501(c)(3) organization or is not in compliance with other substantial provisions of this article. If the organization does not request a contested case hearing within thirty days of the immediate revocation, the revocation is permanent.

(ii) If the administrative law judge determines that the immediate revocation was reasonable, the administrative law judge shall remand the case to the Treasurer or the department to issue a Treasurer or department determination for permanent revocation within the time period determined by the judge. The organization may appeal this Treasurer or department determination in accordance with Section 12-60-460. At the contested case hearing on the Treasurer or department determination, the parties may raise new issues and arguments in addition to those issues and arguments previously presented at the immediate revocation hearing.

(iii) If the administrative law judge determines that immediate revocation is not reasonable, the revocation must be lifted, and the organization may resume accepting donations and award scholarships. The Treasurer or department may still issue a Treasurer or department determination in accordance with Section 12-60-450(E)(2).

(e) If at any time during the process, the Treasurer and department believes the organization is in compliance, the Treasurer may reinstate the organization.

(f) Following the permanent revocation of a nonprofit scholarship-funding organization, the Treasurer has the authority to oversee the transfer of donated funds of the revoked organization to other nonprofit scholarship-funding organizations.

(g) A scholarship-funding organization may transfer funds to another scholarship-funding organization if the organization ceases to exist. The funds that are transferred by one scholarship funding organization to another only may be considered by one organization when calculating its administrative expenses. The scholarship-funding organizations transferring and receiving the funds shall notify the Treasurer in writing within three days of the transfer. The notification may be made via electronic methodology.

SECTION 2.A. Section 12-6-3790 of the S.C. Code is repealed.

B. This SECTION takes effect upon the full implementation of this act as provided in SECTION 4.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor, provided that upon approval of this act by the Governor, the Treasurer shall begin undertaking and executing responsibilities incidental to the implementation of this act so that the provisions of this act may be fully implemented at the beginning of the 2024-2025 School Year.

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