COMMITTEE REPORT

February 11, 2016

**H. 4537**

Introduced by Reps. Henderson, Atwater, Horne, Allison, Clary, Daning, Forrester, Collins, Hiott, Duckworth, Yow, Clemmons, Fry, Johnson, Rivers, Goldfinch, Hicks, Whitmire, Sandifer, Huggins, Toole, Newton, Hixon, Crosby, Southard, Hamilton, Simrill, Kennedy and Sottile

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Read the first time January 12, 2016.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 4537) to amend the Code of Laws of South Carolina, 1976, by adding Section 12‑6‑3685 so as to allow an income tax credit for contributions to a scholarship, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, SECTION 1, page 4, beginning on line 13, by striking Section 12‑6‑3685(B)(2) and inserting:

/ (2) An individual is entitled to a refundable 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, not exceeding ten thousand dollars for each child, the individual contributes as tuition for exceptional needs children within their custody or care and enrolled in eligible schools who qualify for these grants under the provisions of this section. The maximum total for credits authorized by this item may not exceed four million dollars for each tax year. However, if a child within the care and custody of an individual receives a tuition scholarship from a nonprofit scholarship funding organization, then the individual only may claim a credit equal to the difference of ten thousand dollars or the cost of tuition, whichever is lower, and the amount of the scholarship. /

Amend further SECTION 1, page 5, beginning on line 5, by striking Section 12‑6‑3685(D)(1)(a) and inserting:

/ (a) The tax credits authorized by subsection (B) may not exceed a total of twelve million dollars for contributions made on behalf of exceptional needs students for each tax year. If the department determines that the total of these credits claimed by all taxpayers exceeds either limit amount, it shall allow credits only up to those amounts on a first come, first served basis. /

Amend further SECTION 1, beginning on page 5 and line 32, by striking Section 12‑6‑3685(G)(1), and inserting:

/ (G)(1) By May first of each year, each independent school shall apply to the Education Oversight Committee to be considered an eligible institution for which it may receive contributions from a nonprofit scholarship funding organization for which the tax credit allowed by this section is allowed. The Education Oversight Committee, as established in Chapter 6, Title 59, is responsible for determining if an eligible school meets the criteria established by subsection (A)(1), and shall publish an approved list of the schools meeting the criteria. If an independent school does not apply to be an eligible school, the independent school may not be published as an approved school, and contributions to that school must not be allowed for purposes of the credit allowed by this section. The Education Oversight Committee must publish the approved list of schools on its website by September first of each year, and the list must include their names, addresses, telephone numbers, and, if available, website addresses. Also, the score reports and audits received by the Education Oversight Committee pursuant to items (2)(b) and (c) must be published with the list. The Education Oversight Committee shall summarize or redact the score reports if necessary to prevent the disclosure of personally identifiable information. For this purpose, it also shall promulgate regulations further enumerating the specifics of this criteria. In performing this function, the Education Oversight Committee shall establish an advisory committee made up of not more than nine members, including parents, and representatives of independent schools and independent school associations. The advisory committee shall provide recommendations to the Education Oversight Committee on the content of these regulations and any other matters requested by the Education Oversight Committee. /

Renumber sections to conform.

Amend title to conform.

W. BRIAN WHITE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill will have no expenditure impact on the general fund, federal funds, or other funds. The codification of the two exceptional needs child tax credits will have no additional general fund revenue impact on individual and corporate income and bank tax revenue since the Board of Economic Advisors initial forecast for FY 2016-17 included the revenue impact of these existing tax credits as part of the income tax base.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill requires the Department of Revenue (DOR) to continue to administer the two exceptional needs child tax credits. The Education Oversight Committee (EOC) is required to continue determining the eligibility of an independent school to receive contributions from a nonprofit scholarship funding organization. The DOR and EOC indicate that codifying the existing budget provision and continuing their administrative responsibilities will have no expenditure impact on the general fund, federal funds, or other funds.

**State Reve**n**ue**

This bill codifies the two existing exceptional needs child tax credits contained most recently in Act 92 of 2015, the supplemental appropriations bill. These tax credits, with amendments, have been included in the annual appropriation act or similar bills since FY 2013-14.

The first tax credit applies to individual and corporate income and bank taxes for contributions to a nonprofit scholarship funding organization. This credit is limited to 60% of the taxpayer’s total tax liability for that year and is not refundable. The second tax credit applies also to individual and corporate income and bank taxes for tuition payments for exceptional needs children within the taxpayer’s custody or care. This tax credit is refundable to the taxpayer. The bill states these two tax credits cumulatively may not exceed a total of $12 million. For this fiscal impact statement, we interpret that the $12 million limit is per year. Otherwise, a literal reading would suggest that no additional tax credits would be allowed since the cumulative $12 million limit has been reached through tax credits claimed in previous years.

We estimate that these tax credits will reduce general fund individual and corporate income and bank taxes by the $12 million limit in FY 2016-17 from the tax credit for contributions to nonprofit scholarship funding organizations and the refundable tax credit for tuition payments for exceptional needs children that are within the taxpayer’s custody or care. In November 2015 when the Board of Economic Advisors (BEA) set the initial forecast for FY 2016-17, the forecast included the revenue impact of these existing tax credits as part of the income tax base since an identical budget provision has been in effect since FY 2013-14. Therefore, the proposed addition of Section 12-6-3685 will have no further revenue impact on the general fund.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑6‑3685 SO AS TO ALLOW AN INCOME TAX CREDIT FOR CONTRIBUTIONS TO A SCHOLARSHIP FUNDING ORGANIZATION THAT PROVIDES GRANTS FOR STUDENTS TO ATTEND CERTAIN INDEPENDENT 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 DEPARTMENT OF REVENUE TO ENFORCE THE PROVISIONS OF THE CREDIT.

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

SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3685. (A) As used in this section:

(1) ‘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 and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

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

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, or the South Carolina Independent Schools Association.

(2) ‘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 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.

(3) ‘Independent school’ means a school, other than a public school, at which the compulsory attendance requirements of Section 59‑65‑10 may be met and that does not discriminate based on the grounds of race, color, religion, or national origin.

(4) ‘Nonprofit scholarship funding organization’ means a charitable organization that:

(a) 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 code;

(b) allocates, after its first year of operation, at least ninety‑seven percent of its annual contributions and gross revenue received during a particular year to provide grants for tuition to children enrolled in an eligible school meeting the criteria of this section, and incurs administrative expenses annually, after its first year of operation, of not more than three percent nor more than two hundred thousand dollars in the aggregate, whichever is less, of its annual contributions and revenue for a particular year to cover operational costs;

(c) allocates all of its funds used for grants on an annual basis to children who are exceptional needs students;

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

(e) does not have as a volunteer, contractor, consultant, fundraiser, or member of its governing board any parent, legal guardian, or member of their immediate family who has a child or ward who is currently receiving or has received a scholarship grant authorized by this section from the organization within one year of the date the parent, legal guardian, or member of their immediate family became a board member;

(f) 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;

(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 students receiving scholarships to limit the ability of the schools to enroll students accepting grants from other nonprofit scholarship funding organizations.

(5) ‘Parent’ means the natural or adoptive parent or legal guardian of a child.

(6) ‘Person’ means an individual, partnership, corporation, or other similar entity.

(7) ‘Qualifying student’ means a student who is an exceptional needs child, a South Carolina resident, and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later-year level for the applicable school year.

(8) ‘Resident public school district’ means the public school district in which a student resides.

(9) ‘Transportation’ means transportation to and from school only.

(10) ‘Tuition’ means the total amount of money charged for the cost of a qualifying student to attend an independent school including, but not limited to, fees for attending the school, textbook fees, and school‑related transportation.

(11) ‘Department’ means the Department of Revenue.

(B)(1) 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:

(a) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

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

(2) An individual is entitled to a refundable 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, not exceeding ten thousand dollars for each child, the individual contributes as tuition for exceptional needs children within their custody or care and enrolled in eligible schools who qualify for these grants under the provisions of this section. The cumulative maximum total for credits authorized by this item may not exceed four million dollars. However, if a child within the care and custody of an individual receives a tuition scholarship from a nonprofit scholarship funding organization, then the individual only may claim a credit equal to the difference of ten thousand dollars or the cost of tuition, whichever is lower, and the amount of the scholarship.

(C) Grants may be awarded by a scholarship funding organization in an amount not exceeding ten thousand dollars or the total cost of tuition, whichever is less, for qualifying students with exceptional needs to attend an independent school. Before awarding any grant, a scholarship funding organization must receive written documentation from the parent documenting that the qualifying student is an exceptional needs child. Upon approving the application, the scholarship funding organization shall issue a check to the eligible school in the name of the qualifying student. If the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school shall return a prorated amount of the grant to the scholarship funding organization based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student’s departure.

(D)(1)(a) The tax credits authorized by subsection (B) may not exceed cumulatively a total of twelve million dollars for contributions made on behalf of exceptional needs students. If the department determines that the total of these credits claimed by all taxpayers exceeds either limit amount, it shall allow credits only up to those amounts on a first come, first served basis.

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

(2) A taxpayer may not claim more than sixty percent of their total tax liability for the year in contribution toward the tax credit authorized by subsection (B)(1). This credit is not refundable.

(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 taxes.

(4) The department shall prescribe the form and manner of proof required to obtain the credit authorized by subsection (B). Also, the department shall develop a method of informing taxpayers if the credit limit is met at any time during the year.

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

(F) Except as otherwise provided, neither the Department of Education, the Department of Revenue, nor any other state agency may regulate the educational program of an independent school that accepts students receiving scholarship grants pursuant to this section.

(G)(1) By August first of each year, each independent school shall apply to the Education Oversight Committee to be considered an eligible institution for which it may receive contributions from a nonprofit scholarship funding organization for which the tax credit allowed by this section is allowed. The Education Oversight Committee, as established in Chapter 6, Title 59, is responsible for determining if an eligible school meets the criteria established by subsection (A)(1), and shall publish an approved list of the schools meeting the criteria. If an independent school does not apply to be an eligible school, the independent school may not be published as an approved school, and contributions to that school must not be allowed for purposes of the credit allowed by this section. The Education Oversight Committee must publish the approved list of schools on its website by September first of each year, and the list must include their names, addresses, telephone numbers, and, if available, website addresses. Also, the score reports and audits received by the Education Oversight Committee pursuant to items (2)(b) and (c) must be published with the list. The Education Oversight Committee shall summarize or redact the score reports if necessary to prevent the disclosure of personally identifiable information. For this purpose, it also shall promulgate regulations further enumerating the specifics of this criteria. In performing this function, the Education Oversight Committee shall establish an advisory committee made up of not more than nine members, including parents, and representatives of independent schools and independent school associations. The advisory committee shall provide recommendations to the Education Oversight Committee on the content of these regulations and any other matters requested by the Education Oversight Committee.

(2) An independent school’s application for consideration as an eligible institution must contain:

(a) the number and total amount of grants received from each nonprofit scholarship funding organization in the preceding fiscal year;

(b) student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by the school receiving or entitled to receive scholarship grants pursuant to this section in the previous fiscal year;

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

(d) a certification by the independent school that it meets the definition of an eligible school as that term is defined in subsection (A)(1) and that the report is true, accurate, and complete under penalty of perjury in accordance with Section 16‑9‑10.

(3) Any independent school not determined to be an eligible school pursuant to the provisions of this section may seek review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court’s rules of procedure.

(4) The Education Oversight Committee, after consultation with its nine‑member advisory committee, may exempt an independent school having students with exceptional needs who receive scholarship grants pursuant to this section from the curriculum requirements of subsection (A)(1)(d).

(H)(1) By August first of each year, each nonprofit scholarship funding organization shall apply to the department to be considered an eligible organization for which its contributors are allowed the tax credit allowed by this section. If a nonprofit scholarship funding organization does not apply, the organization may not be published as an approved organization, and contributions to that organization must not be allowed for purposes of the credit allowed by this section. A nonprofit scholarship funding organization’s application must contain:

(a) the number and total amount of grants issued to eligible schools in the preceding fiscal year;

(b) for each grant issued to an eligible school in the preceding fiscal year, the identity of the school and the amount of the grant;

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

(d) 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;

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

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

(g) a certification by the organization that it meets the definition of a nonprofit scholarship funding organization as that term is defined in subsection (A)(4) and that the report is true, accurate, and complete under penalty of perjury in accordance with Section 16‑9‑10.

(2) By receiving the application materials and approving the organization as an eligible organization pursuant to item (1), the department is not determining that the organization meets all of the requirements of a qualified nonprofit scholarship funding organization and the organization remains subject to examination as provided for pursuant to subsection (I).

(3) The department has authority to disclose the names of qualifying nonprofit scholarship funding organizations to the Education Oversight Committee. The department also may disclose to the Education Oversight Committee the names of organizations that applied but were not qualified by the department and those organizations whose eligibility has been revoked in accordance with subsection (I)(2), as well as the reason the application of the organization was not accepted or the reason its qualification was revoked.

(4) By September first of each year, the Education Oversight Committee shall publish on its website a list of all qualifying nonprofit scholarship funding organizations, provided by the department, to include their names, addresses, telephone numbers, and, if available, website addresses. Also, the results of the audit required by item (1)(e) must be published with the list.

(I)(1) The department has authority to oversee, audit, and examine 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 at any time during the year, the department has evidence, through audit or otherwise, 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 provision of this section, the department immediately may revoke the organization’s participation in the program and shall notify the organization and the Education Oversight Committee in writing of the revocation.

(b) Notice of revocation may be provided to the organization by personal delivery to the organization, by first class mail to the last known address of the organization, or by other means reasonably designed to provide notice to the organization.

(c) Any donations made following the date the notice of revocation is received by the organization or in the case of delivery by mail ten days after the notice of revocation was mailed, do not qualify for the credit and the donated funds must be returned to the donor by the organization. This section may not limit the department’s authority to deny any tax credit or other benefit provided by this section if the circumstances warrant.

(d)(i) Within thirty days after the day on which the organization is notified of the revocation, the organization may request a contested hearing before the Administrative Law Court. Within thirty 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 department has the burden of proof of showing that the revocation was reasonable under the circumstances. The revocation is ‘reasonable’ if the department has some credible evidence to believe 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 any other provision of this section. The decision made by the administrative law judge is final and conclusive and may not be reviewed by any court. 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 revocation was reasonable, the administrative law judge shall remand the case to the department to issue a department determination for permanent revocation within the time period determined by the judge. The organization may appeal this department determination in accordance with Section 12‑60‑460. At the contested case hearing on the department determination, the parties may raise new issues and arguments in addition to those issues and arguments previously presented at the 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 hereunder. The department may still issue a department determination in accordance with Section 12‑60‑450(E)(2).

(iv) If at any time during the process, the department believes the organization is in compliance, the department, in its sole discretion, may reinstate the organization and notify the Education Oversight Committee.

(v) Following the permanent revocation of a nonprofit scholarship funding organization, the Education Oversight Committee has the authority to oversee the transfer of donated funds of the revoked organization to other nonprofit scholarship funding organizations.

(J) A nonprofit scholarship funding organization may transfer funds to another nonprofit scholarship funding organization, especially if the organization cannot distribute the funds in a timely manner or if the organization ceases to exist. None of the funds that are transferred by one nonprofit scholarship funding organization to another may be considered by the former organization when calculating its administrative expenses.”

SECTION 2. This act takes effect upon approval of the Governor and applies to income tax years beginning after 2015.

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