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## REPORT OF THE GENERAL GOVERNMENT SUBCOMMITTEE

(Cobb-Hunter, Hayes, Bannister, Moss, & Willis - Staff Contact: Kenzie Riddle)

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### HOUSE BILL 3899

H. 3899 -- Reps. Elliott, G.R. Smith, Erickson, Herbkersman, Daning, Taylor, Hixon, Bennett, Willis, Bannister, Morgan, Stringer, Haddon, Burns, B. Cox and Huggins: A BILL TO AMEND SECTION 12-6-3790, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXCEPTIONAL NEEDS CHILD TAX CREDIT, SO AS TO PROVIDE HOW THE PROCEEDS OF THE FUND MUST BE ADMINISTERED, TO INCREASE THE AMOUNT THE PUBLIC CHARITY MAY EXPEND FOR ADMINISTRATION COSTS TO EIGHT PERCENT; TO APPROPRIATE TWELVE MILLION DOLLARS TO THE DEPARTMENT OF EDUCATION SO THE DEPARTMENT MAY MAKE A DONATION OF TWELVE MILLION DOLLARS TO EXCEPTIONAL SC; AND TO REMOVE A PROVISION THAT REQUIRES A SCHOOL TO PROVIDE CERTAIN INDIVIDUAL STUDENT TEST SCORES IN ITS APPLICATION.

***Received by Ways and Means:***

February 16, 2021

***Summary of Bill:***

This bill allows that the proceeds of the fund must be administered as a program by the public charity. The bill further removes the department from certain administrative duties, such as keeping of records, management of accounts, and disbursement of the grants. The bill raises the administrative allowance from two percent to eight percent.

The bill allows for the fund to carry forward up to \$5 million dollars of donations into the next year to provide credits in the next year. Also, changes 60% to 75% of the total tax liability for the year in contribution towards the tax credit and allows for any unused credit to be carried forward three years after the tax year.

Finally, the bill removes the language that a school should provide individual student test scores on national achievement or state standardized tests for any student in grades one through twelve who received a grant from the program during the prior school year.

***Estimated Revenue Impact:***

The combined impact of increasing allowable administrative costs and increasing the ability for taxpayers to claim the credit will result in a net increase in General Fund individual income tax revenue of approximately \$253,000 beginning in FY 2021-22.

***Subcommittee Recommendation:***

Favorable with Amendment

***Other Notes/Comments:***

The amendment reinstates the board and removes the department of revenue from certain administrative duties and allows for the public charity to continue to do these practices. The amendment also changes the administrative allowance from two percent to five percent.

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

ALLEN/HUTH  
MARCH 16, 2021

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CLERK OF THE HOUSE

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THE GENERAL GOVERNMENT SUBCOMMITTEE PROPOSES THE  
FOLLOWING AMENDMENT NO. TO H. 3899  
(COUNCIL\SA\3899C002.BH.SA21):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING SECTION 1 AND INSERTING:**

**/ SECTION 1. SECTION 12-6-3790(B) OF THE  
1976 CODE, AS ADDED BY ACT 247 OF 2018, IS  
AMENDED TO READ:**

**“(B)(1) THERE IS CREATED THE  
‘EDUCATIONAL CREDIT FOR EXCEPTIONAL  
NEEDS CHILDREN’S FUND’ THAT IS SEPARATE  
AND DISTINCT FROM THE STATE GENERAL FUND.**

**THE FUND MUST BE ORGANIZED AS A PUBLIC CHARITY AS DEFINED BY THE INTERNAL REVENUE CODE UNDER SECTION 509(A)(1) THROUGH (4) AND CONSIST ONLY OF CONTRIBUTIONS MADE TO THE FUND. THE FUND MAY NOT RECEIVE AN APPROPRIATION OF PUBLIC FUNDS. THE FUND MUST RECEIVE AND HOLD ALL CONTRIBUTIONS INTENDED FOR IT AS WELL AS ALL EARNINGS UNTIL DISBURSED AS PROVIDED IN THIS SECTION. MONIES RECEIVED IN THE FUND MUST BE USED TO PROVIDE SCHOLARSHIPS TO EXCEPTIONAL NEEDS CHILDREN ATTENDING ELIGIBLE SCHOOLS.**

**(2) THE AMOUNTS ON DEPOSIT IN THE FUND DO NOT CONSTITUTE PUBLIC FUNDS AND ARE NOT THE PROPERTY OF THE STATE. AMOUNTS ON DEPOSIT IN THE FUND MAY NOT BE COMMINGLED WITH PUBLIC FUNDS, AND THE STATE DOES NOT HAVE A CLAIM TO OR INTEREST IN THE AMOUNTS ON DEPOSIT. AGREEMENTS OR CONTRACTS ENTERED INTO BY OR ON BEHALF OF THE FUND DO NOT CONSTITUTE A DEBT OR OBLIGATION OF THE STATE.**

**(3) THE PUBLIC CHARITY DISBURSING CONTRIBUTIONS MADE TO THE FUND IS GOVERNED BY FIVE DIRECTORS, TWO APPOINTED BY THE CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE, TWO APPOINTED BY THE CHAIRMAN OF THE SENATE FINANCE COMMITTEE, AND ONE APPOINTED BY THE GOVERNOR. THE DIRECTORS OF THE PUBLIC CHARITY, ~~ALONG WITH THE DIRECTOR OF THE DEPARTMENT,~~ SHALL DESIGNATE AN EXECUTIVE DIRECTOR OF THE PUBLIC CHARITY.**

**(4) ~~IN CONCERT WITH THE PUBLIC CHARITY DIRECTORS, THE DEPARTMENT~~ SHALL ADMINISTER THE PUBLIC CHARITY INCLUDING, BUT NOT LIMITED TO, THE KEEPING OF RECORDS, THE MANAGEMENT OF ACCOUNTS, AND DISBURSEMENT OF THE GRANTS AWARDED PURSUANT TO THIS SECTION. THE PUBLIC CHARITY MAY EXPEND UP TO ~~TWO~~ FIVE PERCENT OF THE FUND FOR ADMINISTRATION AND RELATED COSTS. ~~THE DEPARTMENT AND THE PUBLIC CHARITY~~ MAY NOT EXPEND PUBLIC FUNDS TO ADMINISTER THE PROGRAM. INFORMATION CONTAINED IN OR PRODUCED FROM A TAX RETURN, DOCUMENT, OR MAGNETICALLY OR ELECTRONICALLY STORED DATA UTILIZED BY THE DEPARTMENT OF REVENUE OR THE PUBLIC CHARITY IN THE EXERCISE OF ITS DUTIES AS PROVIDED IN THIS SECTION MUST REMAIN CONFIDENTIAL AND IS EXEMPT FROM DISCLOSURE PURSUANT TO THE FREEDOM OF INFORMATION ACT. PERSONALLY IDENTIFIABLE INFORMATION, AS DESCRIBED IN THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT AND INDIVIDUAL HEALTH RECORDS, OR THE MEDICAL OR WELLNESS**

**NEEDS OF CHILDREN APPLYING FOR OR RECEIVING GRANTS MUST REMAIN CONFIDENTIAL AND IS NOT SUBJECT TO DISCLOSURE PURSUANT TO THE FREEDOM OF INFORMATION ACT.**

**(5) BY JANUARY FIFTEENTH OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE CHAIRMAN OF THE SENATE FINANCE COMMITTEE, THE CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE, AND THE GOVERNOR:**

**(A) THE NUMBER AND TOTAL AMOUNT OF GRANTS ISSUED TO ELIGIBLE SCHOOLS IN EACH YEAR;**

**(B) THE IDENTITY OF THE SCHOOL AND THE AMOUNT OF THE GRANT FOR EACH GRANT ISSUED TO AN ELIGIBLE SCHOOL IN EACH YEAR;**

**(C) AN ITEMIZED AND DETAILED EXPLANATION OF FEES OR OTHER REVENUES OBTAINED FROM OR ON BEHALF OF AN ELIGIBLE SCHOOL;**

**(D) A COPY OF A COMPILATION, REVIEW, OR AUDIT OF THE FUND'S FINANCIAL STATEMENTS, CONDUCTED BY A CERTIFIED PUBLIC ACCOUNTING FIRM; AND**

**(E) THE CRITERIA AND ELIGIBILITY REQUIREMENTS FOR SCHOLARSHIP AWARDS.” /**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO CONFORM.**



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
**(803)734-3780 • RFA.SC.GOV/IMPACTS**

*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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<b>Bill Number:</b>	H. 3899	Introduced on January 12, 2021
<b>Author:</b>	Elliott	
<b>Subject:</b>	Exceptional Needs Tax Credit	
<b>Requestor:</b>	House Ways and Means	
<b>RFA Analyst(s):</b>	Wren and Jolliff	
<b>Impact Date:</b>	March 12, 2021	

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### **Fiscal Impact Summary**

This bill makes changes to the Educational Credit for Exceptional Needs Children (ECENC) program. This bill will increase the amount of the ECENC fund that may be retained by Exceptional SC for administrative costs by approximately \$273,000 in FY 2021-22 for a total amount of \$364,000. Since donations recently have been less than the maximum amount of credits allowed, there will be no carryforward donations to future years at this time. Further, the increase in the administrative percentage will reduce the amount available for tax credits by approximately \$273,000 beginning in FY 2021-22 and, therefore, increase General Fund individual income tax revenue by a corresponding amount.

The bill does not change the aggregate credit amount allowed but does allow taxpayers to utilize more of the credit earned and to carry forward unused credits. In tax year 2019, 35 taxpayers earned \$74,833 in tax credits that they were not able to claim under the tax liability limitation. By increasing the limitation from 60 percent to 75 percent, those taxpayers will be able to use approximately \$20,000 in additional tax credits a year, leaving approximately \$55,000 in tax credits to be carried forward. Assuming a similar tax liability in future years, the carryforward would increase credits claimed by approximately \$20,000 for the succeeding three tax years allowed in the bill. This would decrease General Fund revenue by approximately \$20,000 beginning in FY 2021-22.

In summary the combined impact of increasing allowable administrative costs and increasing the ability for taxpayers to claim the credit will result in a net increase in General Fund individual income tax revenue of approximately \$253,000 beginning in FY 2021-22.

### **Explanation of Fiscal Impact**

**Introduced on January 12, 2021**

**State Expenditure**

N/A

**State Revenue**

This bill makes changes to the organizational structure of Exceptional SC, which is the public charity that manages the ECENC fund. The board of directors of the charity will no longer be

appointed by the Chairman of the House Ways and Means Committee, Chairman of the Senate Finance Committee, and the Governor. The bill also increases the amount of the fund that may be retained by the charity for administration and related costs from 2 percent to 8 percent. Further, the bill reduces the reporting requirements of independent schools. This bill allows the ECENC fund to carry forward up to five million dollars of donations into the next year to provide credits in the next year. This carryforward amount does not increase the cumulative tax credit amount set forth in this bill for any one year.

Exceptional SC reports that the ECENC fund received \$4,554,883 in donations in tax year 2019 and retained \$91,097, or 2 percent, for administrative costs. Based upon this information and assuming similar donations in future tax years, increasing the amount that may be retained to 8 percent will allow the charity to retain an additional \$273,292 in FY 2021-22 for a total amount of \$364,389 for administrative costs. Exceptional SC indicates that all donations, less the allowed percentage for administrative costs, have been awarded in prior years and have not met the credit cap in recent years. As such, this increase in administrative expenses will decrease the amount available for tax credits by approximately \$273,000 beginning in FY 2021-22, thereby increasing General Fund individual income tax revenue by a corresponding amount.

The bill also increases the amount of credit a taxpayer may claim in a year from 60 percent of the taxpayer's tax liability to 75 percent for the non-refundable tax credits authorized in Sections 12-6-3790(H)(1) or (I). Further, any used credit from these sections may be carried forward for three tax years after the tax year in which the qualified contribution is first eligible to be claimed. Currently, there is no carryforward provision.

The bill does not change the aggregate credit amount allowed but does allow taxpayers to utilize more of the credit earned and to carry forward unused credits. The latest available data from DOR reports only tax credit claims against individual income tax and no claims against corporate income tax or bank tax. Based upon tax year 2019, 353 individual income taxpayers claimed \$4,052,168 in non-refundable tax credits. Of those, 35 taxpayers earned \$74,833 in tax credits that they were not able to claim under the tax liability limitation. By increasing the limitation, those taxpayers will be able to use approximately \$20,000 in additional tax credits a year, leaving approximately \$55,000 in tax credits to be carried forward. Assuming a similar tax liability in future years, the carryforward would increase credits claimed by approximately \$20,000 for the succeeding three tax years, decreasing General Fund individual income tax revenue by approximately \$20,000 per year beginning in FY 2021-22.

In summary, the impact of increasing the allowable administrative costs and increasing the ability for taxpayers to claim the credit will result in a net increase in General Fund individual income tax revenue of \$253,292 beginning in FY 2021-22.

#### **Local Expenditure**

N/A

#### **Local Revenue**

N/A



Frank A. Rainwater, Executive Director

**South Carolina General Assembly**  
124th Session, 2021-2022

**H. 3899**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Elliott, G.R. Smith, Erickson, Herbkersman, Daning, Taylor, Hixon, Bennett, Willis, Bannister, Morgan, Stringer, Haddon, Burns, B. Cox and Huggins

Document Path: I:\council\bill\nbd\11169sa21.docx

Introduced in the House on February 16, 2021

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

Summary: Exceptional needs tax credit

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
2/16/2021	House	Introduced and read first time ( <u>House Journal-page 22</u> )
2/16/2021	House	Referred to Committee on <b>Ways and Means</b> ( <u>House Journal-page 22</u> )
3/2/2021	House	Member(s) request name added as sponsor: Huggins

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**VERSIONS OF THIS BILL**

2/16/2021



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**A BILL**

11 TO AMEND SECTION 12-6-3790, CODE OF LAWS OF SOUTH  
12 CAROLINA, 1976, RELATING TO THE EXCEPTIONAL  
13 NEEDS CHILD TAX CREDIT, SO AS TO PROVIDE HOW THE  
14 PROCEEDS OF THE FUND MUST BE ADMINISTERED, TO  
15 INCREASE THE AMOUNT THE PUBLIC CHARITY MAY  
16 EXPEND FOR ADMINISTRATION COSTS TO EIGHT  
17 PERCENT; TO APPROPRIATE TWELVE MILLION DOLLARS  
18 TO THE DEPARTMENT OF EDUCATION SO THE  
19 DEPARTMENT MAY MAKE A DONATION OF TWELVE  
20 MILLION DOLLARS TO EXCEPTIONAL SC; AND TO  
21 REMOVE A PROVISION THAT REQUIRES A SCHOOL TO  
22 PROVIDE CERTAIN INDIVIDUAL STUDENT TEST SCORES  
23 IN ITS APPLICATION.

24  
25 Be it enacted by the General Assembly of the State of South  
26 Carolina:

27  
28 SECTION 1. Section 12-6-3790(B) of the 1976 Code, as added by  
29 Act 247 of 2018, is amended to read:

30  
31 “(B)(1)There is created the ‘Educational Credit for Exceptional  
32 Needs Children’s Fund’ that is separate and distinct from the state  
33 general fund. ~~The fund must be organized as a public charity as~~  
34 ~~defined by the Internal Revenue Code under Section 509(a)(1)~~  
35 ~~through (4) The proceeds of the fund must be administered as a~~  
36 ~~program by the public charity incorporated to fulfill the~~  
37 ~~requirements of this section~~ and consist only of contributions made  
38 to the fund. The fund may not receive an appropriation of public  
39 funds. The fund must receive and hold all contributions intended for  
40 it as well as all earnings until disbursed as provided in this section.  
41 Monies received in the fund must be used to provide scholarships to  
42 exceptional needs children attending eligible schools.

1 (2) The amounts on deposit in the fund do not constitute  
2 public funds and are not the property of the State. Amounts on  
3 deposit in the fund may not be commingled with public funds, and  
4 the State does not have a claim to or interest in the amounts on  
5 deposit. Agreements or contracts entered into by or on behalf of the  
6 fund do not constitute a debt or obligation of the State.

7 ~~(3) The public charity disbursing contributions made to the~~  
8 ~~fund is governed by five directors, two appointed by the Chairman~~  
9 ~~of the House Ways and Means Committee, two appointed by the~~  
10 ~~Chairman of the Senate Finance Committee, and one appointed by~~  
11 ~~the Governor. The directors of the public charity, along with the~~  
12 ~~director of the department, shall designate an executive director of~~  
13 ~~the public charity.~~

14 (4) In concert with the public charity directors, the department  
15 shall administer the public charity including, but not limited to, the  
16 keeping of records, the management of accounts, and disbursement  
17 of the grants awarded pursuant to this section. The public charity  
18 may expend up to two eight percent of the fund for administration  
19 and related costs. The department and the public charity may not  
20 expend public funds to administer the program. Information  
21 contained in or produced from a tax return, document, or  
22 magnetically or electronically stored data utilized by the  
23 Department of Revenue or the public charity in the exercise of its  
24 duties as provided in this section must remain confidential and is  
25 exempt from disclosure pursuant to the Freedom of Information Act.  
26 Personally identifiable information, as described in the Family  
27 Educational Rights and Privacy Act and individual health records,  
28 or the medical or wellness needs of children applying for or  
29 receiving grants must remain confidential and is not subject to  
30 disclosure pursuant to the Freedom of Information Act.

31 ~~(5)~~(4) By January fifteenth of each year, the department shall  
32 report to the Chairman of the Senate Finance Committee, the  
33 Chairman of the House Ways and Means Committee, and the  
34 Governor:

35 (a) the number and total amount of grants issued to eligible  
36 schools in each year;

37 (b) the identity of the school and the amount of the grant  
38 for each grant issued to an eligible school in each year;

39 (c) an itemized and detailed explanation of fees or other  
40 revenues obtained from or on behalf of an eligible school;

41 (d) a copy of a compilation, review, or audit of the fund's  
42 financial statements, conducted by a certified public accounting  
43 firm; and

1 (e) the criteria and eligibility requirements for scholarship  
2 awards.”

3  
4 SECTION 2. A. Section 12-6-3790(D)(1)(a) of the 1976 Code is  
5 amended to read:

6  
7 “(a) Tax credits authorized by subsection (H)(1) and subsection  
8 (I) annually may not exceed cumulatively a total of twelve million  
9 dollars for contributions to the Educational Credit for Exceptional  
10 Needs Children’s Fund, unless an increased limit is authorized in  
11 the annual general appropriations act. However, the fund may carry  
12 forward up to five million dollars of donations into the next year to  
13 provide credits in the next year. This carryforward amount does not  
14 in any way increase the cumulative tax credit amount set forth in  
15 this item for any one year.”

16  
17 B. Section 12-6-3790(D)(2)(b) of the 1976 Code is amended to read:

18  
19 “(b) A taxpayer may not claim more than sixty seventy-five  
20 percent of his total tax liability for the year in contribution toward  
21 the tax credit authorized by subsection (H)(1) or subsection (I). This  
22 credit is nonrefundable. Any unused credit may be carried forward  
23 three tax years after the tax year in which the qualified contribution  
24 is first eligible to be claimed.”

25  
26 SECTION 3. Section 12-6-3790(E)(1)(b) of the 1976 Code, as  
27 added by Act 247 of 2018, is amended to read:

28  
29 “(b) student test scores, by category, on national achievement or  
30 state standardized tests, or both, for all grades tested and  
31 administered by the school receiving or entitled to receive  
32 scholarship grants pursuant to this section in the previous school  
33 year. ~~The school also shall provide individual student test scores on~~  
34 ~~national achievement or state standardized tests, or both, for any~~  
35 ~~student in grades one through twelve who received a grant from the~~  
36 ~~program during the prior school year. The information must be used~~  
37 ~~to provide program level reports to determine whether students~~  
38 ~~participating in the program have experienced measurable~~  
39 ~~improvement. Students with disabilities for whom standardized~~  
40 ~~testing is not appropriate are exempt from this requirement;”~~

41  
42 SECTION 4. This act takes effect upon approval by the Governor.

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