

REPORT OF THE LEGISLATIVE SUBCOMMITTEE

(Stavrinakis, GR Smith, Hayes, & Ballentine - Staff Contact: Kenzie Riddle)

HOUSE BILL 4077

H. 4077 -- Reps. G.R. Smith: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3790 SO AS TO PROVIDE DEFINITIONS, TO CREATE THE "EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND", TO PROVIDE FOR GOVERNANCE AND ADMINISTRATION OF THE FUND, TO PROVIDE FOR THE MANNER IN WHICH GRANTS ARE AWARDED, TO PROVIDE THAT THE EDUCATION OVERSIGHT COMMITTEE IS RESPONSIBLE FOR DETERMINING WHICH SCHOOLS ARE ELIGIBLE, TO ALLOW FOR AN INCOME TAX CREDIT FOR CONTRIBUTIONS TO THE EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND AND FOR TUITION PAYMENTS MADE TO AN ELIGIBLE SCHOOL FOR AN EXCEPTIONAL NEEDS CHILD WITHIN THE TAXPAYER'S CUSTODY OR CARE, TO PROVIDE FOR ANNUAL LIMITS ON INCOME TAX CREDITS AVAILABLE, AND TO SPECIFY THE MANNER IN WHICH THE CREDIT IS CLAIMED.

Summary of Bill:

This bill allows the creation of the Educational Credit for Exceptional Needs Children Fund and provides for scholarship funding organizations and individual tax credits for the amount a person contributes for an exceptional needs child within specific parameters.

Estimated Revenue Impact:

This bill has no expenditure impact on the 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 2018-19 included the revenue impact of these existing tax credits as part of the income tax base.

Subcommittee Recommendation:

Favorable with amendment

Other Notes/Comments:

The adopted amendment is a strike and insert of the bill and codifies the existing language in proviso 109.10 currently in FY 17/18 Appropriations Act.



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: H. 4077 Introduced on March 30, 2017
Author: G.R. Smith
Subject: Income Tax Credit
Requestor: House Ways and Means
RFA Analyst(s): Shuford
Impact Date: February 5, 2018

Estimate of Fiscal Impact

	FY 2018-19	FY 2019-20
State Expenditure		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Local Expenditure	\$0	\$0
Local Revenue	\$0	\$0

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 2018-19 included the revenue impact of these existing tax credits as part of the income tax base.

Explanation of Fiscal Impact

Introduced on March 30, 2017

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 Revenue

This bill codifies the two existing exceptional needs child tax credits contained most recently in Proviso 109.11 of the FY 2017-18 appropriations act. 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 2018-19 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 2017 when the Board of Economic Advisors (BEA) set the initial forecast for FY 2018-19, 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 codification will have no further revenue impact on the General Fund.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

ALLEN/DOWNEY
FEBRUARY 5, 2018

CLERK OF THE HOUSE

Education
Subcommittee PROPOSES THE FOLLOWING AMENDMENT No. TO
H. 4077 (COUNCIL\SA\4077C002.NBD.SA18):

REFERENCE IS TO PRINTER'S DATE 3/30/17.

**AMEND THE BILL, AS AND IF AMENDED, BY
STRIKING ALL AFTER THE ENACTING WORDS AND
INSERTING:**

**/ SECTION 1. ARTICLE 25, CHAPTER 6, TITLE
12 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 12-6-3790. (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, GRADUATION CERTIFICATE REQUIREMENTS FOR SPECIAL NEEDS CHILDREN, 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;

(F) IS A MEMBER IN GOOD STANDING OF THE SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS, THE SOUTH CAROLINA ASSOCIATION OF CHRISTIAN SCHOOLS, THE SOUTH CAROLINA INDEPENDENT SCHOOLS ASSOCIATION, OR PALMETTO ASSOCIATION OF INDEPENDENT SCHOOLS; AND

(G) PROVIDES A SPECIALLY DESIGNED PROGRAM OR LEARNING RESOURCE CENTER TO PROVIDE NEEDED ACCOMMODATIONS BASED ON THE NEEDS OF EXCEPTIONAL NEEDS STUDENTS OR PROVIDES ONSITE EDUCATIONAL SERVICES OR SUPPORTS TO MEET THE NEEDS OF EXCEPTIONAL NEEDS STUDENTS, OR IS A SCHOOL SPECIFICALLY EXISTING TO MEET THE NEEDS OF ONLY EXCEPTIONAL⁴ NEEDS STUDENTS WITH DOCUMENTED DISABILITIES.

(2) 'EXCEPTIONAL NEEDS CHILD' MEANS A CHILD:

(A) 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 FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT; OR

(B) 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.

(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) 'PARENT' MEANS THE NATURAL OR ADOPTIVE PARENT OR LEGAL GUARDIAN OF A CHILD.

(5) '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.

(6) 'RESIDENT PUBLIC SCHOOL DISTRICT' MEANS THE PUBLIC SCHOOL DISTRICT IN WHICH A STUDENT RESIDES, OR IN THE CASE OF DEPENDENTS OF ACTIVE MILITARY PERSONNEL, THE PUBLIC SCHOOL DISTRICT WHICH THE STUDENT MAY ATTEND.

(7) 'TRANSPORTATION' MEANS TRANSPORTATION TO AND FROM SCHOOL ONLY.

(8) '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.

(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 BY THE DEPARTMENT 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 IS GOVERNED BY FIVE DIRECTORS, TWO APPOINTED BY THE CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE, ONE OF WHICH IS BASED UPON THE RECOMMENDATION OF THE SOUTH CAROLINA ASSOCIATION OF CHRISTIAN SCHOOLS AND ONE WHICH IS BASED UPON THE RECOMMENDATION OF THE DIOCESE OF CHARLESTON, TWO APPOINTED BY THE CHAIRMAN OF THE SENATE FINANCE COMMITTEE BASED UPON THE RECOMMENDATIONS OF THE SOUTH CAROLINA INDEPENDENT SCHOOLS ASSOCIATION, AND ONE APPOINTED BY THE GOVERNOR BASED UPON THE RECOMMENDATION OF

THE PALMETTO ASSOCIATION OF INDEPENDENT SCHOOLS. 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 PERCENT OF THE FUND FOR ADMINISTRATION AND RELATED COSTS. THE DEPARTMENT AND THE PUBLIC CHARITY MAY NOT EXPEND PUBLIC FUNDS TO ADMINISTER THE PROGRAM.

(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.

(C)(1) GRANTS MAY BE AWARDED IN AN AMOUNT NOT EXCEEDING ELEVEN THOUSAND DOLLARS OR THE TOTAL ANNUAL COST OF TUITION,

WHICHEVER IS LESS, TO A QUALIFYING STUDENT AT AN ELIGIBLE SCHOOL.

(2) BEFORE AWARDING A GRANT, THE PUBLIC CHARITY SHALL RECEIVE WRITTEN DOCUMENTATION FROM THE QUALIFYING STUDENT'S PARENT OR GUARDIAN DOCUMENTING THAT THE QUALIFYING STUDENT IS AN EXCEPTIONAL NEEDS CHILD. UPON APPROVING THE APPLICATION, THE PUBLIC CHARITY SHALL ISSUE A CHECK TO THE ELIGIBLE SCHOOL IN THE NAME OF THE QUALIFYING STUDENT WITHIN EITHER THIRTY DAYS UPON APPROVAL OF THE APPLICATION OR THIRTY DAYS OF THE START OF THE SCHOOL'S SEMESTER.

(3) IF A 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 PUBLIC CHARITY 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.

(4) THE PUBLIC CHARITY MAY NOT AWARD GRANTS ONLY FOR THE BENEFIT OF ONE SCHOOL.

(5) THE DEPARTMENT OR THE PUBLIC CHARITY MAY NOT RELEASE PERSONALLY IDENTIFIABLE INFORMATION PERTAINING TO STUDENTS OR DONORS OR USE INFORMATION COLLECTED ABOUT DONORS, STUDENTS, OR SCHOOLS FOR FINANCIAL GAIN.

(6) THE PUBLIC CHARITY SHALL DEVELOP A PROCESS TO PRIORITIZE THE AWARDING OF GRANTS TO ELIGIBLE INCUMBENT GRANT RECIPIENTS AT ELIGIBLE SCHOOLS.

(D)(1)(A) TAX CREDITS AUTHORIZED BY SUBSECTION (H)(1) AND SUBSECTION (I) ANNUALLY MAY NOT EXCEED CUMULATIVELY A TOTAL OF ELEVEN MILLION DOLLARS FOR CONTRIBUTIONS TO THE EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND.

(B) TAX CREDITS AUTHORIZED PURSUANT TO SUBSECTION (H)(2) ANNUALLY MAY NOT EXCEED CUMULATIVELY A TOTAL OF TWO MILLION DOLLARS FOR TUITION PAYMENTS MADE ON BEHALF OF QUALIFYING STUDENTS.

(C) IF THE DEPARTMENT DETERMINES THAT THE TOTAL OF THE CREDITS CLAIMED BY ALL TAXPAYERS EXCEEDS EITHER LIMIT AMOUNT AS CONTAINED IN SUBITEMS (A) OR (B), IT SHALL ALLOW CREDITS ONLY UP TO THOSE AMOUNTS ON A FIRST COME, FIRST-SERVED BASIS.

(2)(A) 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 DETERMINES PRIORITY FOR THE CREDIT. THE CREDIT MUST BE CLAIMED ON THE RETURN FOR THE TAX YEAR THAT THE CONTRIBUTION IS MADE.

(B) A TAXPAYER MAY NOT CLAIM MORE THAN SIXTY PERCENT OF HIS TOTAL TAX LIABILITY FOR THE YEAR IN CONTRIBUTION TOWARD THE TAX CREDIT AUTHORIZED BY SUBSECTION (H)(1) OR SUBSECTION (I). THIS CREDIT IS NONREFUNDABLE.

(C) IF A TAXPAYER DEDUCTS THE AMOUNT OF THE CONTRIBUTION ON HIS FEDERAL RETURN AND CLAIMS THE CREDIT ALLOWED BY SUBSECTION (H)(1) OR SUBSECTION (I), THEN HE MUST ADD BACK THE AMOUNT OF THE DEDUCTION FOR PURPOSES OF SOUTH CAROLINA INCOME TAXES.

(D) THE DEPARTMENT SHALL PRESCRIBE THE FORM AND MANNER OF PROOF REQUIRED TO OBTAIN THE CREDIT AUTHORIZED BY SUBSECTION (H)(1) OR SUBSECTION (I). THE DEPARTMENT ALSO SHALL DEVELOP A METHOD OF INFORMING TAXPAYERS IF THE CREDIT LIMIT IS MET ANY TIME DURING THE TAX YEAR.

(E) A TAXPAYER ONLY MAY CLAIM A CREDIT PURSUANT TO SUBSECTION (H)(1) AND SUBSECTION (I) FOR CONTRIBUTIONS MADE DURING THE TAX YEAR.

(3) A CORPORATION OR ENTITY ENTITLED TO A CREDIT UNDER SUBSECTION (H)(1) AND SUBSECTION (I) 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.

(E)(1) BY AUGUST FIRST OF EACH YEAR, AN INDEPENDENT SCHOOL WHO PARTICIPATED IN THE PROGRAM IN THE PREVIOUS YEAR AND WHO DESIRES TO PARTICIPATE IN THE PROGRAM IN THE CURRENT YEAR SHALL REAPPLY TO THE EDUCATION OVERSIGHT COMMITTEE. THE INDEPENDENT SCHOOL SHALL CERTIFY TO THE EDUCATION OVERSIGHT COMMITTEE THAT IT CONTINUES TO MEET ALL PROGRAM REQUIREMENTS AND SHALL PROVIDE TO THE COMMITTEE STUDENT TEST SCORE DATA FROM THE PREVIOUS SCHOOL YEAR BY DECEMBER THIRTY-FIRST. IF STUDENT TEST SCORE DATA IS NOT SUBMITTED BY DECEMBER THIRTY-FIRST, THEN THE EDUCATION OVERSIGHT COMMITTEE SHALL REMOVE THE SCHOOL FROM THE PROGRAM. THE EDUCATION OVERSIGHT COMMITTEE SHALL CONSULT WITH THE SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS, THE SOUTH CAROLINA ASSOCIATION OF CHRISTIAN SCHOOLS, THE SOUTH CAROLINA INDEPENDENT SCHOOLS ASSOCIATION, THE PALMETTO ASSOCIATION OF INDEPENDENT SCHOOLS, OR THE DIOCESE OF CHARLESTON TO VERIFY THAT THE SCHOOL IS STILL A MEMBER IN GOOD STANDING AND THAT THE SCHOOL CONTINUES TO SERVE EXCEPTIONAL NEEDS CHILDREN. AN INDEPENDENT SCHOOL WHO DID NOT PARTICIPATE IN THE PROGRAM IN THE PREVIOUS YEAR BUT DESIRES TO PARTICIPATE IN THE PROGRAM IN THE CURRENT YEAR SHALL APPLY TO THE EDUCATION OVERSIGHT COMMITTEE. THE EDUCATION OVERSIGHT COMMITTEE SHALL DEVELOP AN APPLICATION TO BE COMPLETED BY THE INDEPENDENT SCHOOLS WHICH MUST CONTAIN AT LEAST:

(A) THE NUMBER AND TOTAL AMOUNT OF GRANTS RECEIVED IN THE PRECEDING SCHOOL 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 SCHOOL YEAR;

(C) A COPY OF A COMPILATION, REVIEW, OR COMPLIANCE AUDIT OF THE ORGANIZATION'S FINANCIAL STATEMENTS AS RELATING TO THE GRANTS RECEIVED, 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.

(2)(A) THE EDUCATION OVERSIGHT COMMITTEE MAY WAIVE THE AUGUST FIRST DEADLINE CONTAINED IN SUBSECTION (E) UPON GOOD CAUSE SHOWN BY AN INDEPENDENT SCHOOL.

(B) THE EDUCATION OVERSIGHT COMMITTEE MAY WAIVE SOME OR ALL OF THE CURRICULUM REQUIREMENTS CONTAINED IN SUBSECTION (A)(1)(D) FOLLOWING CONSULTATION WITH THE ADVISORY COMMITTEE.

(3)(A) BY SEPTEMBER FIRST OF EACH YEAR THE EDUCATION OVERSIGHT COMMITTEE SHALL PUBLISH ON ITS WEBSITE A COMPREHENSIVE LIST OF INDEPENDENT SCHOOLS CERTIFIED AS ELIGIBLE INSTITUTIONS. THE LIST MUST INCLUDE FOR EACH ELIGIBLE INSTITUTION:

(I) THE INSTITUTION'S NAME, ADDRESSES, TELEPHONE NUMBERS, AND, IF AVAILABLE, WEBSITE ADDRESSES; AND

(II) THE SCORE REPORTS AND COMPLIANCE AUDITS RECEIVED BY THE COMMITTEE PURSUANT TO SUBSECTION (E)(1)(B) AND (C).

(B) THE EDUCATION OVERSIGHT COMMITTEE SHALL SUMMARIZE OR REDACT THE SCORE REPORTS IDENTIFIED IN SUBITEM (A)(II) IF NECESSARY TO PREVENT THE DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION.

(4) AN INDEPENDENT SCHOOL THAT DOES NOT APPLY FOR CERTIFICATION PURSUANT TO THIS SUBSECTION MAY NOT BE INCLUDED ON THE LIST OF ELIGIBLE SCHOOLS AND CONTRIBUTIONS TO THAT SCHOOL MAY NOT BE ALLOWED FOR PURPOSES OF THE TAX CREDITS PERMITTED BY THIS SECTION.

(5) AN INDEPENDENT SCHOOL THAT IS DENIED CERTIFICATION PURSUANT TO 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.

(F)(1) 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.

(2) THE ADVISORY COMMITTEE SHALL:

(A) CONSULT WITH THE EDUCATION OVERSIGHT COMMITTEE CONCERNING REQUESTS FOR EXEMPTIONS FROM CURRICULUM REQUIREMENTS; AND

(B) PROVIDE RECOMMENDATIONS ON OTHER MATTERS REQUESTED BY THE EDUCATION OVERSIGHT COMMITTEE.

(G) EXCEPT AS OTHERWISE PROVIDED, THE DEPARTMENT OF EDUCATION, THE EDUCATION OVERSIGHT COMMITTEE, AND THE DEPARTMENT OF REVENUE, OR ANY OTHER STATE AGENCY MAY NOT REGULATE THE EDUCATIONAL PROGRAM OF AN INDEPENDENT SCHOOL THAT ACCEPTS STUDENTS RECEIVING SCHOLARSHIP GRANTS PURSUANT TO THIS SECTION.

(H)(1) A TAXPAYER IS ENTITLED TO A TAX CREDIT AGAINST INCOME TAXES IMPOSED PURSUANT TO THIS CHAPTER FOR THE AMOUNT OF CASH AND THE MONETARY VALUE OF ANY PUBLICLY TRADED

SECURITIES THE TAXPAYER CONTRIBUTES TO THE EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN FUND UP TO THE LIMITS CONTAINED IN SUBSECTION (D)(1)(A) 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 TAXPAYER DOES NOT DESIGNATE A SPECIFIC CHILD OR SCHOOL AS THE BENEFICIARY OF THE CONTRIBUTION.

(2)(A) A TAXPAYER IS ENTITLED TO A REFUNDABLE TAX CREDIT AGAINST INCOME TAXES IMPOSED PURSUANT TO THIS CHAPTER FOR THE AMOUNT OF CASH AND THE MONETARY VALUE OF ANY PUBLICLY TRADED SECURITIES, NOT EXCEEDING ELEVEN THOUSAND DOLLARS FOR EACH CHILD, FOR TUITION PAYMENTS TO AN ELIGIBLE SCHOOL FOR AN EXCEPTIONAL NEEDS CHILD WITHIN HIS CUSTODY OR CARE WHO WOULD BE ELIGIBLE FOR A GRANT PURSUANT TO THIS SECTION UP TO THE LIMITS CONTAINED IN SUBSECTION (D)(1)(B).

(B) IF A CHILD WITHIN THE CARE AND CUSTODY OF TAXPAYER CLAIMING A TAX CREDIT PURSUANT TO THIS ITEM ALSO RECEIVES A GRANT FROM THE EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND, THEN THE TAXPAYER ONLY MAY CLAIM A CREDIT EQUAL TO THE DIFFERENCE OF ELEVEN THOUSAND DOLLARS OR THE COST OF TUITION, WHICHEVER IS LOWER, AND THE AMOUNT OF THE GRANT.

(I) A TAXPAYER IS ENTITLED TO A TAX CREDIT AGAINST INCOME TAXES IMPOSED PURSUANT TO CHAPTER 11, TITLE 12 FOR THE AMOUNT OF CASH AND THE MONETARY VALUE OF ANY PUBLICLY TRADED SECURITIES THE TAXPAYER CONTRIBUTES TO THE EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN'S FUND UP TO THE LIMITS CONTAINED IN SUBSECTION (D)(1)(A) IF:

(1) 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

(2) THE TAXPAYER DOES NOT DESIGNATE A SPECIFIC CHILD OR SCHOOL AS THE BENEFICIARY OF THE CONTRIBUTION.

(J)(1) THE DEPARTMENT SHALL CONDUCT A COMPREHENSIVE STUDY OF THE EXCEPTIONAL NEEDS TAX CREDIT PROGRAM. THE STUDY MUST EXAMINE THE FOLLOWING:

(A) WHETHER OR NOT THE STUDENTS PARTICIPATING IN THE PROGRAM HAVE EXPERIENCED MEASURABLE IMPROVEMENT AS A RESULT OF PARTICIPATION;

(B) THE ALLOCATION OF SCHOLARSHIP FUNDS AND TAX CREDITS AMONG STUDENTS, INCLUDING THE EFFECT OF FUNDING LIMITATIONS ON THE ADDITION OF NEW PARTICIPANTS; THE DEMOGRAPHIC AND SOCIO-ECONOMIC DATA OF THE PARTICIPANTS AND THEIR FAMILIES; AND THE GEOGRAPHICAL DISTRIBUTION OF THE PARTICIPANTS;

(C) THE DISTRIBUTION OF SCHOLARSHIP FUNDS AMONG ALL ELIGIBLE SCHOOLS;

(D) IDENTIFICATION OF THE SCHOOLS IN WHICH THE MOST MEASURABLE IMPROVEMENT HAS OCCURRED AMONG STUDENTS, WITH AN ANALYSIS OF THE TYPES OF SCHOOLS ACHIEVING THE BEST RESULTS AND BEST PRACTICES IMPLEMENTED BY THOSE SCHOOLS; AND

(E) ANY OTHER ASPECT OF THE PROGRAM THAT THE DEPARTMENT DETERMINES WOULD BE RELEVANT AND USEFUL IN MAKING FUTURE POLICY DECISIONS IN REGARD TO THE PROGRAM AND ITS CONTINUED EXISTENCE OR EXPANSION.

(2) THE DEPARTMENT SHALL SUBMIT A REPORT OF ITS STUDY TO THE GENERAL ASSEMBLY NO LATER THAN JANUARY FIFTEENTH OF EACH YEAR.”

SECTION 2. THIS ACT TAKES EFFECT UPON APPROVAL OF THE GOVERNOR AND APPLIES TO INCOME TAX YEARS BEGINNING AFTER

2017. ALL TAX CREDITS EARNED AS A RESULT OF A CONTRIBUTION MADE TO THE EDUCATIONAL CREDIT FOR THE EXCEPTIONAL NEEDS CHILDREN'S FUND IN 2018 APPLY TO THE CUMULATIVE TOTAL OF ELEVEN MILLION DOLLARS REGARDLESS OF WHEN IN 2018 THE CONTRIBUTION IS MADE. ALL TAX CREDITS EARNED AS A RESULT OF A TUITION PAYMENT MADE BY A TAXPAYER TO AN ELIGIBLE SCHOOL FOR AN EXCEPTIONAL NEEDS CHILD WITHIN HIS CUSTODY OR CARE IN 2018 APPLY TO THE CUMULATIVE TOTAL OF TWO MILLION DOLLARS REGARDLESS OF WHEN IN 2018 THE PAYMENT IS MADE. ALL NECESSARY REPORTS AND FORMS MUST BE SUBMITTED AS SOON AS PRACTICABLE UPON THE ENACTMENT OF THIS ACT. /

RENUMBER SECTIONS TO CONFORM.

AMEND TITLE TO CONFORM.

1 DRAFT PREPARED BY LEGISLATIVE COUNCIL
2 Attorney: Allen
3 Stenographer: Downey
4 Date: January 12, 2018
5 DOC. I.D.: L:\COUNCIL\BILLS\NBD\11191SA18.DOCX
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9 **A BILL**

10
11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, BY ADDING SECTION 12-6-3790 SO AS TO PROVIDE
13 DEFINITIONS, TO CREATE THE "EDUCATIONAL CREDIT
14 FOR EXCEPTIONAL NEEDS CHILDREN'S FUND", TO
15 PROVIDE FOR GOVERNANCE AND ADMINISTRATION OF
16 THE FUND, TO PROVIDE FOR THE MANNER IN WHICH
17 GRANTS ARE AWARDED, TO PROVIDE THAT THE
18 EDUCATION OVERSIGHT COMMITTEE IS RESPONSIBLE
19 FOR DETERMINING WHICH SCHOOLS ARE ELIGIBLE, TO
20 ALLOW FOR AN INCOME TAX CREDIT FOR
21 CONTRIBUTIONS TO THE EDUCATIONAL CREDIT FOR
22 EXCEPTIONAL NEEDS CHILDREN'S FUND AND FOR
23 TUITION PAYMENTS MADE TO AN ELIGIBLE SCHOOL FOR
24 AN EXCEPTIONAL NEEDS CHILD WITHIN THE
25 TAXPAYER'S CUSTODY OR CARE, TO PROVIDE FOR
26 ANNUAL LIMITS ON INCOME TAX CREDITS AVAILABLE,
27 AND TO SPECIFY THE MANNER IN WHICH THE CREDIT IS
28 CLAIMED.

29
30 Be it enacted by the General Assembly of the State of South
31 Carolina:

32
33 SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is
34 amended by adding:

35
36 "Section 12-6-3790 (A) As used in this section:
37 (1) 'Eligible school' means an independent school including
38 those religious in nature, other than a public school, at which the
39 compulsory attendance requirements of Section 59-65-10 may be
40 met, that:
41 (a) offers a general education to primary or secondary
42 school students;

[]

- 1 (b) does not discriminate on the basis of race, color, or
2 national origin;
- 3 (c) is located in this State;
- 4 (d) has an educational curriculum that includes courses set
5 forth in the state's diploma requirements, graduation certificate
6 requirements for special needs children, and where the students
7 attending are administered national achievement or state
8 standardized tests, or both, at progressive grade levels to determine
9 student progress;
- 10 (e) has school facilities that are subject to applicable
11 federal, state, and local laws;
- 12 (f) is a member in good standing of the Southern
13 Association of Colleges and Schools, the South Carolina
14 Association of Christian Schools, the South Carolina Independent
15 Schools Association, or Palmetto Association of Independent
16 Schools; and
- 17 (g) provides a specially designed program or learning
18 resource center to provide needed accommodations based on the
19 needs of exceptional needs students or provides onsite educational
20 services or supports to meet the needs of exceptional needs students,
21 or is a school specifically existing to meet the needs of only
22 exceptional needs students with documented disabilities.
- 23 (2) 'Exceptional needs child' means a child:
- 24 (a) who has been evaluated in accordance with this state's
25 evaluation criteria, as set forth in S.C. Code Ann. Regs. 43-243.1,
26 and determined eligible as a child with a disability who needs
27 special education and related services, in accordance with the
28 requirements of Section 300.8 of the Individuals with Disabilities
29 Education Act; or
- 30 (b) who has been diagnosed within the last three years by a
31 licensed speech-language pathologist, psychiatrist, or medical,
32 mental health, psychoeducational, or other comparable licensed
33 health care provider as having a neurodevelopmental disorder, a
34 substantial sensory or physical impairment such as deaf, blind, or
35 orthopedic disability, or some other disability or acute or chronic
36 condition that significantly impedes the student's ability to learn and
37 succeed in school without specialized instructional and associated
38 supports and services tailored to the child's unique needs.
- 39 (3) 'Independent school' means a school, other than a public
40 school, at which the compulsory attendance requirements of Section
41 59-65-10 may be met and that does not discriminate based on the
42 grounds of race, color, religion, or national origin.

1 (4) 'Parent' means the natural or adoptive parent or legal
2 guardian of a child.

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

8 (6) 'Resident public school district' means the public school
9 district in which a student resides, or in the case of dependents of
10 active military personnel, the public school district which the
11 student may attend.

12 (7) 'Transportation' means transportation to and from school
13 only.

14 (8) 'Tuition' means the total amount of money charged for the
15 cost of a qualifying student to attend an independent school
16 including, but not limited to, fees for attending the school, textbook
17 fees, and school-related transportation.

18 (B)(1) There is created the 'Educational Credit for Exceptional
19 Needs Children's Fund' that is separate and distinct from the State
20 general fund. The fund must be organized by the department as a
21 public charity as defined by the Internal Revenue Code under
22 section 509(a)(1) through (4) and consist only of contributions made
23 to the fund. The fund may not receive an appropriation of public
24 funds. The fund must receive and hold all contributions intended for
25 it as well as all earnings until disbursed as provided in this section.
26 Monies received in the fund must be used to provide scholarships to
27 exceptional needs children attending eligible schools.

28 (2) The amounts on deposit in the fund do not constitute
29 public funds and are not the property of the State. Amounts on
30 deposit in the fund may not be commingled with public funds, and
31 the State does not have a claim to or interest in the amounts on
32 deposit. Agreements or contracts entered into by or on behalf of the
33 fund do not constitute a debt or obligation of the State.

34 (3) The public charity is governed by five directors, two
35 appointed by the Chairman of the House Ways and Means
36 Committee, one of which is based upon the recommendation of the
37 South Carolina Association of Christian Schools and one which is
38 based upon the recommendation of the Diocese of Charleston, two
39 appointed by the Chairman of the Senate Finance Committee based
40 upon the recommendations of the South Carolina Independent
41 Schools Association, and one appointed by the Governor based
42 upon the recommendation of the Palmetto Association of
43 Independent Schools. The directors of the public charity, along with

1 the director of the department, shall designate an executive director
2 of the public charity.

3 (4) In concert with the public charity directors, the department
4 shall administer the public charity, including, but not limited to, the
5 keeping of records, the management of accounts, and disbursement
6 of the grants awarded pursuant to this section. The public charity
7 may expend up to two percent of the fund for administration and
8 related costs. The department and the public charity may not expend
9 public funds to administer the program.

10 (5) By January fifteenth of each year, the department shall
11 report to the Chairman of the Senate Finance Committee, the
12 Chairman of the House Ways and Means Committee, and the
13 Governor:

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

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

18 (c) an itemization and detailed explanation of fees or other
19 revenues obtained from or on behalf of an eligible school;

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

23 (e) the criteria and eligibility requirements for scholarship
24 awards.

25 (C)(1) Grants may be awarded in an amount not exceeding
26 eleven thousand dollars or the total annual cost of tuition, whichever
27 is less, to a qualifying student at an eligible school.

28 (2) Before awarding a grant, the public charity shall receive
29 written documentation from the qualifying student's parent or
30 guardian documenting that the qualifying student is an exceptional
31 needs child. Upon approving the application, the public charity shall
32 issue a check to the eligible school in the name of the qualifying
33 student within either thirty days upon approval of the application or
34 thirty days of the start of the school's semester.

35 (3) If a qualifying student leaves or withdraws from the
36 school for any reason before the end of the semester or school year
37 and does not reenroll within thirty days, then the eligible school
38 shall return a prorated amount of the grant to the public charity based
39 on the number of days the qualifying student was enrolled in the
40 school during the semester or school year within sixty days of the
41 qualifying student's departure.

42 (4) The public charity may not award grants only for the
43 benefit of one school.

1 (5) The department or the public charity may not release
2 personally identifiable information pertaining to students or donors
3 or use information collected about donors, students, or schools for
4 financial gain.

5 (6) The public charity shall develop a process to prioritize the
6 awarding of grants to eligible incumbent grant recipients at eligible
7 schools.

8 (D)(1)(a) Tax credits authorized by subsection (H)(1) and
9 subsection (I) annually may not exceed cumulatively a total of
10 eleven million dollars for contributions to the Educational Credit for
11 Exceptional Needs Children's Fund.

12 (b) Tax credits authorized pursuant to subsection (H)(2)
13 annually may not exceed cumulatively a total of two million dollars
14 for tuition payments made on behalf of qualifying students.

15 (c) If the department determines that the total of the credits
16 claimed by all taxpayers exceeds either limit amount as contained in
17 subitems (a) or (b), it shall allow credits only up to those amounts
18 on a first come, first-served basis.

19 (2)(a) The department shall establish an application process to
20 determine the amount of credit available to be claimed. The receipt
21 of the application by the department determines priority for the
22 credit. The credit must be claimed on the return for the tax year that
23 the contribution is made.

24 (b) A taxpayer may not claim more than sixty percent of his
25 total tax liability for the year in contribution toward the tax credit
26 authorized by subsection (H)(1) or subsection (I). This credit is
27 nonrefundable.

28 (c) If a taxpayer deducts the amount of the contribution on
29 his federal return and claims the credit allowed by subsection (H)(1)
30 or subsection (I), then he must add back the amount of the deduction
31 for purposes of South Carolina income taxes.

32 (d) The department shall prescribe the form and manner of
33 proof required to obtain the credit authorized by subsection (H)(1)
34 or subsection (I). The department also shall develop a method of
35 informing taxpayers if the credit limit is met any time during the tax
36 year.

37 (e) A taxpayer only may claim a credit pursuant to
38 subsection (H)(1) and subsection (I) for contributions made during
39 the tax year.

40 (3) A corporation or entity entitled to a credit under
41 subsection (H)(1) and subsection (I) may not convey, assign, or
42 transfer the credit authorized by this section to another entity unless

1 all of the assets of the entity are conveyed, assigned, or transferred
2 in the same transaction.

3 (E)(1) By August first of each year, an independent school who
4 participated in the program in the previous year and who desires to
5 participate in the program in the current year shall reapply to the
6 Education Oversight Committee. The independent school shall
7 certify to the Education Oversight Committee that it continues to
8 meet all program requirements and shall provide to the committee
9 student test score data from the previous school year by December
10 thirty-first. If student test score data is not submitted by December
11 thirty-first, then the Education Oversight Committee shall remove
12 the school from the program. The Education Oversight Committee
13 shall consult with the Southern Association of Colleges and
14 Schools, the South Carolina Association of Christian Schools, the
15 South Carolina Independent Schools Association, the Palmetto
16 Association of Independent Schools, or the Diocese of Charleston
17 to verify that the school is still a member in good standing and that
18 the school continues to serve exceptional needs children. An
19 independent school who did not participate in the program in the
20 previous year but desires to participate in the program in the current
21 year shall apply to the Education Oversight Committee. The
22 Education Oversight Committee shall develop an application to be
23 completed by the independent schools which must contain at least:

24 (a) the number and total amount of grants received in the
25 preceding school year;

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

31 (c) a copy of a compilation, review, or compliance audit of
32 the organization's financial statements as relating to the grants
33 received, conducted by a certified public accounting firm; and

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

38 (2)(a) The Education Oversight Committee may waive the
39 August first deadline contained in subsection (E) upon good cause
40 shown by an independent school.

41 (b) The Education Oversight Committee may waive some
42 or all of the curriculum requirements contained in subsection
43 (A)(1)(d) following consultation with the advisory committee.

1 (3)(a) By September first of each year the Education
2 Oversight Committee shall publish on its website a comprehensive
3 list of independent schools certified as eligible institutions. The list
4 must include for each eligible institution:

5 (i) the institution's name, addresses, telephone numbers,
6 and, if available, website addresses; and

7 (ii) the score reports and compliance audits received by
8 the committee pursuant to subsection (E)(1)(b) and (c).

9 (b) The Education Oversight Committee shall summarize
10 or redact the score reports identified in subitem (a)(ii) if necessary
11 to prevent the disclosure of personally identifiable information.

12 (4) An independent school that does not apply for
13 certification pursuant to this subsection may not be included on the
14 list of eligible schools and contributions to that school may not be
15 allowed for purposes of the tax credits permitted by this section.

16 (5) An independent school that is denied certification
17 pursuant to this section may seek review by filing a request for a
18 contested case hearing with the Administrative Law Court in
19 accordance with the court's rules of procedure.

20 (F)(1) The Education Oversight Committee shall establish an
21 advisory committee made up of not more than nine members,
22 including parents, and representatives of independent schools and
23 independent school associations.

24 (2) The advisory committee shall:

25 (a) consult with the Education Oversight Committee
26 concerning requests for exemptions from curriculum requirements;
27 and

28 (b) provide recommendations on other matters requested
29 by the Education Oversight Committee.

30 (G) Except as otherwise provided, the Department of Education,
31 the Education Oversight Committee, and the Department of
32 Revenue, or any other state agency may not regulate the educational
33 program of an independent school that accepts students receiving
34 scholarship grants pursuant to this section.

35 (H)(1) A taxpayer is entitled to a tax credit against income taxes
36 imposed pursuant to this chapter for the amount of cash and the
37 monetary value of any publicly traded securities the taxpayer
38 contributes to the Educational Credit for Exceptional Needs
39 Children Fund up to the limits contained in subsection (D)(1)(a) if:

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

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

3 (2)(a) A taxpayer is entitled to a refundable tax credit against
4 income taxes imposed pursuant to this chapter for the amount of
5 cash and the monetary value of any publicly traded securities, not
6 exceeding eleven thousand dollars for each child, for tuition
7 payments to an eligible school for an exceptional needs child within
8 his custody or care who would be eligible for a grant pursuant to this
9 section up to the limits contained in subsection (D)(1)(b).

10 (b) If a child within the care and custody of taxpayer
11 claiming a tax credit pursuant to this item also receives a grant from
12 the Educational Credit for Exceptional Needs Children's Fund, then
13 the taxpayer may only claim a credit equal to the difference of
14 eleven thousand dollars or the cost of tuition, whichever is lower,
15 and the amount of the grant.

16 (I) A taxpayer is entitled to a tax credit against income taxes
17 imposed pursuant to Chapter 11, Title 12 for the amount of cash and
18 the monetary value of any publicly traded securities the taxpayer
19 contributes to the Educational Credit for Exceptional Needs
20 Children's Fund up to the limits contained in subsection (D)(1)(a)
21 if:

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

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

27 (J)(1) The department shall conduct a comprehensive study of
28 the Exceptional Needs Tax Credit program. The study must examine
29 the following:

30 (a) whether or not the students participating in the program
31 have experienced measurable improvement as a result of
32 participation;

33 (b) the allocation of scholarship funds and tax credits
34 among students, including the effect of funding limitations on the
35 addition of new participants; the demographic and socio-economic
36 data of the participants and their families; and the geographical
37 distribution of the participants;

38 (c) the distribution of scholarship funds among all eligible
39 schools;

40 (d) identification of the schools in which the most
41 measurable improvement has occurred among students, with an
42 analysis of the types of schools achieving the best results and best
43 practices implemented by those schools; and

1 (e) any other aspect of the program that the department
2 determines would be relevant and useful in making future policy
3 decisions in regard to the program and its continued existence or
4 expansion.

5 (2) The department shall submit a report of its study to the
6 General Assembly no later than January fifteenth of each year”
7

8 SECTION 2. This act takes effect upon approval of the Governor
9 and applies to income tax years beginning after 2017. All tax credits
10 earned as a result of a contribution made to the Educational Credit
11 for the Exceptional Needs Children’s Fund in 2018 apply to the
12 cumulative total of eleven million dollars regardless of when in
13 2018 the contribution is made. All tax credits earned as a result of a
14 tuition payment made by a taxpayer to an eligible school for an
15 exceptional needs child within his custody or care in 2018 apply to
16 the cumulative total of two million dollars regardless of when in
17 2018 the payment is made. All necessary reports and forms must be
18 submitted as soon as practicable upon the enactment of this act.
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