COMMITTEE REPORT

March 8, 2012

**H. 4894**

Introduced by Reps. White, Bedingfield, McCoy, Loftis, Bingham, Herbkersman, Parker, Bowen, Erickson, Taylor, G.M. Smith, Forrester, Frye, G.R. Smith, Merrill, Stringer, Lowe, Nanney, Tribble, Crawford, Ryan, Corbin, Southard, J.R. Smith, Allison, Barfield, Chumley, Clemmons, Cole, Crosby, Delleney, Edge, Hamilton, Hardwick, Harrell, Harrison, Hearn, Henderson, Hixon, Limehouse, Long, Lucas, D.C. Moss, Murphy, Norman, Owens, Pinson, Pitts, Putnam, Quinn, Simrill, Skelton, Sottile, Spires, Tallon, Thayer, Toole, Viers, Young, Atwater, Huggins and Patrick

S. Printed 3/8/12--H. [SEC 3/27/12 3:35 PM]

Read the first time February 23, 2012.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 4894) to amend the Code of Laws of South Carolina, 1976, by adding Section 12‑6‑1145 so as to authorize a deduction from state of South Carolina taxable income, 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 12‑6‑1146 of the 1976 Code, as contained in SECTION 2, by striking items (2) and (3) of subsection (K), beginning on line 3, page 8, and inserting:

/ (2)(a) By the first day of August of each year, beginning on August 1, 2012, the Education Oversight Committee, on its website available to the general public, shall provide a list with addresses and telephone numbers of nonprofit scholarship funding organizations in good standing which provide grants under this section, and a list of approved independent schools which accept grants for eligible students under this section and which in its determination are in compliance with the requirements of subsection (C)(1) of this section.

(b) Student test scores each year, by category, on national achievement or state standardized tests, or both, for all grades tested administered by an eligible school receiving or entitled to receive scholarship grants under this section must be transmitted to the Education Oversight Committee which in turn shall publish this information on its website with the most recent scores by category included.

(3) Any independent school not determined to be an eligible school under 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. /

Amend the bill further, as and if amended, by adding an appropriately numbered SECTION to read:

/ SECTION \_\_. Public schools may offer the same tests referenced in Section 12‑6‑1146(C)(1)(d) of the 1976 Code as added by SECTION 2 of this act. /

Renumber sections to conform.

Amend title to conform.

W. BRIAN WHITE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

This bill will reduce general fund income taxes, insurance premium taxes, and bank license fees by $36,723,225 in FY 2012-13.

**Explanation**

This bill allows a $2,000 tax deduction for expenses paid for a student to attend a home school, a $4,000 tax deduction for tuition, textbook and other fees, and school-related transportation paid for a student to attend an independent school, and a $1,000 deduction for public school students to attend a school district which is not their school district of residence. Beginning with FY 2013-14 the dollar amount of the deductions must be increased on an annual basis by an inflation factor equal to the percentage increase in the previous year of the Consumer Price Index, Southeast Region, plus the percentage increase in the previous year in the population of the State as determined by the Office of Research and Statistics of the State Budget and Control Board.

The legislation also allows a tax credit for contributions to nonprofit scholarship funding organizations of up to $15 million per year for students eligible for the federal free or reduced price lunch program or whose family qualifies for Medicaid benefits and an additional tax credit of up to $10 million per year for scholarship contributions to nonprofit organizations for exceptional needs children. Both tax credits are limited to 60% of the taxpayers’ tax liability. Unused credits may be carried forward for five years. Beginning with FY 2013-14 the dollar amount of the credits must be increased on an annual basis by an inflation factor equal to the percentage increase in the previous year of the Consumer Price Index, Southeast Region, plus the percentage increase in the previous year in the population of the State as determined by the Office of Research and Statistics of the State Budget and Control Board. The two tax credits may be applied to individual and corporate income taxes, insurance premium taxes, or bank license fees.

The following tables report our detailed estimates of the revenue impact for each deduction and credit.

**H. 4894 Revenue Impact Summary of Tax Deductions for Student Tuition and Expenses and Tax Credits for Contributions to Nonprofit Scholarship Granting Organizations**

**FY 2012-13**

**Type of Deduction Number of Total Tax Total**

**Students Deductions Revenue**

**Claiming Claimed Reduction**

**Deduction**

$2,000 **deduction**

for home school

instruction-related

expenditures 10,426 20,852,000 844,328

$4,000 **deduction**

for independent

school tuition 52,620 210,480,000 10,781,779

$1,000 **deduction**

for public school

students attending a

non-resident school

district 2,416 2,416,000 97,118

**Credit** for

contribution to a

nonprofit scholarship

funding organization

for students eligible

for the federal free or

reduced price lunch

program or whose

families qualify for

Medicaid benefits

and attend an

independent school     15,000,000

**Credit** for

contribution to a

nonprofit

scholarship funding

organization for

students with

exceptional needs     10,000,000

**Totals** 65,462 233,748,000 36,723,225

**$2,000 Income Tax Deduction**

**for Home School Students by SC Taxable Income**

**FY 2012-13**

(1) (2) (3) (4) (5) (6) (7) (8)

SC Taxable Average IIT Average K - 12 Tax Total Average Total

Income Liability Tax Total Deduc Tax Tax Revenue

Class Per Return Rate Home tions Deduc- Liability Reduction

School Claimed tions per

Students Claimed Student

No

Taxable

Income - 5,121 - - - - -

1 1,000 11 0.22% 470 470 940,000 4 2,095

1,001 2,000 12 0.77% 378 378 756,000 15 5,823

2,001 3,000 17 0.65% 350 350 700,000 13 4,567

3,001 4,000 42 1.13% 321 321 642,000 23 7,237

4,001 5,000 74 1.56% 311 311 622,000 31 9,674

5,001 6,000 101 1.75% 293 293 586,000 35 10,229

6,001 7,000 145 2.12% 280 280 560,000 42 11,858

7,001 8,000 184 2.33% 270 270 540,000 47 12,602

8,001 9,000 221 2.46% 255 255 510,000 49 12,556

9,001 10,000 276 2.76% 243 243 486,000 55 13,409

10,001 11,000 333 3.01% 227 227 454,000 60 13,651

11,001 12,000 389 3.21% 219 219 438,000 64 14,067

12,001 13,000 446 3.38% 207 207 414,000 68 14,011

13,001 14,000 514 3.61% 194 194 388,000 72 14,016

14,001 15,000 582 3.80% 184 184 368,000 76 14,001

15,001 20,000 786 4.28% 788 788 1,576,000 86 67,405

20,001 25,000 1,138 4.81% 647 647 1,294,000 96 62,253

25,001 35,000 1,642 5.24% 1,035 1,035 2,070,000 105 108,553

35,001 50,000 2,472 5.59% 1,120 1,120 2,240,000 112 125,317

50,001 75,000 3,764 5.85% 1,244 1,244 2,488,000 117 145,597

75,001 100,000 5,523 6.10% 623 623 1,246,000 122 75,990

100,001 200,000 8,893 6.38% 562 562 1,124,000 128 71,745

200,001 500,000 20,812 6.81% 169 169 338,000 136 23,032

500,001 over 76,567 6.44% 36 36 20,852,000 81 844,328

**Columns 1-3:** BEA staff estimates of SC taxable income, average tax liability, and average tax rate are based on DOR Tax Year 2008 data and individual income tax revenue projection for FY 2012-13.

**Column 4:** BEA staff estimate of the number of home school students by income levels is based on the number of exemptions claimed on individual income tax returns and U.S. Department of Education, National Center for Educational Statistics, Parent and Family Involvement in Education Survey of the National Household Education Surveys Program, 2007. BEA staff estimate of 15,549 for the total number of home school students in FY 2012-13 is based on the most recent five years of growth as reported by an Office of Research and Statistics survey.

**Column 5:** Tax deductions claimed are estimated for all returns with income tax liability. All students are qualified pursuant to the proposed legislation, but the family return must have taxable income to claim the deduction since the deduction is non-refundable.

**Column 6:** Total tax deductions claimed is the $2,000 deduction times the number of deductions claimed.

**Column 7:** The average tax liability reduction per student is calculated by multiplying the $2,000 deduction times the average tax rate for taxpayers at the various levels of taxable income listed.

**Column 8:** The total revenue reduction is calculated by multiplying the average tax liability reduction per student times the number of deductions claimed at each taxable income level listed.

**$4,000 Income Tax Deduction**

**for Independent School Students by SC Taxable Income**

**FY 2012-13**

(1) (2) (3) (4) (5) (6) (7) (8)

SC Taxable Average IIT Average K - 12 Tax Total Average Total

Income Liability Tax Total Deductions Tax Tax Revenue

Class Per Rate Inde- Claimed Deductions Liability Reduction

Return pendent Claimed Reduction

School per

Students Student

No

Taxable

Income - 0.00% 299 - - - - -

1 1,000 11 0.22% 1,043 1,043 4,172,000 9 9,298

1,001 2,000 12 0.77% 840 840 3,360,000 31 25,881

2,001 3,000 17 0.65% 780 780 3,120,000 26 20,355

3,001 4,000 42 1.13% 716 716 2,864,000 45 32,285

4,001 5,000 74 1.56% 707 707 2,828,000 62 43,984

5,001 6,000 101 1.75% 666 666 2,664,000 70 46,500

6,001 7,000 145 2.12% 637 637 2,548,000 85 53,955

7,001 8,000 184 2.33% 612 612 2,448,000 93 57,128

8,001 9,000 221 2.46% 599 599 2,396,000 98 58,987

9,001 10,000 276 2.76% 563 563 2,252,000 110 62,132

10,001 11,000 333 3.01% 525 525 2,100,000 120 63,145

11,001 12,000 389 3.21% 505 505 2,020,000 128 64,874

12,001 13,000 446 3.38% 477 477 1,908,000 135 64,571

13,001 14,000 514 3.61% 436 436 1,744,000 144 63,000

14,001 15,000 582 3.80% 409 409 1,636,000 152 62,245

15,001 20,000 786 4.28% 1,740 1,740 6,960,000 171 297,676

20,001 25,000 1,138 4.81% 1,407 1,407 5,628,000 192 270,757

25,001 35,000 1,642 5.24% 2,349 2,349 9,396,000 210 492,737

35,001 50,000 2,472 5.59% 10,583 10,583 42,332,000 224 2,368,275

50,001 75,000 3,764 5.85% 11,663 11,663 46,652,000 234 2,730,058

75,001 100,000 5,523 6.10% 5,797 5,797 23,188,000 244 1,414,179

100,001 200,000 8,893 6.38% 7,014 7,014 28,056,000 255 1,790,816

200,001 500,000 20,812 6.81% 2,103 2,103 8,412,000 273 573,207

500,001 over 76,567 6.44% 449 449 1,796,000 258 115,732

Totals 1,443 5.66% 52,916 52,620 210,480,000 205 10,781,779

**Columns 1-3:** BEA staff estimates of SC taxable income, average tax liability, and average tax rate are based on DOR Tax Year 2008 data and individual income tax revenue projection for FY 2012-13

**Column 4:** BEA staff estimate of the number of independent school students by income levels is based on the number of exemptions claimed on individual income tax returns and U.S. Department of Education, National Center for Educational Statistics, Parent and Family Involvement in Education Survey of the National Household Education Surveys Program, 2007. BEA staff estimate of 52,916 for the total number of independent school students in FY 2012-13 is based on the historical growth from 1995 to 2011 as reported by an Office of Research and Statistics survey of SC private schools.

**Column 5:** Tax deductions claimed are estimated for all returns with income tax liability. All students are qualified pursuant to the proposed legislation, but the family return must have taxable income to claim the deduction since the deduction is non-refundable

**Column 6:** Total tax deductions claimed is the $4,000 deduction times the number of deductions claimed.

**Column 7:** The average tax liability reduction is calculated by multiplying the $4,000 deduction times the average tax rate for taxpayers at the various levels of taxable income listed.

**Column 8:** The total revenue reduction is calculated by multiplying the average tax liability reduction per student times the number of deductions claimed at each taxable income level listed.

**$1,000 Income Tax Deduction**

**for Public School Students Attending a Non-Resident School District by SC Taxable Income**

**FY 2012-13**

(1) (2) (3) (4) (5) (6) (7) (8)

SC Taxable Average IIT Average K - 12 Number Total Average Total

Income Liability Tax Total of Tax Tax Tax Revenue

Class Per Rate Public Deductions DeductionsLiability Reduction

Return School Claimed Claimed Reduction

Students per

Student

No

Taxable

Income - - 1,338 - - - -

1 1,000 11 0.22% 111 111 111,000 2 247

1,001 2,000 12 0.77% 89 89 89,000 8 686

2,001 3,000 17 0.65% 83 83 83,000 7 542

3,001 4,000 42 1.13% 76 76 76,000 11 857

4,001 5,000 74 1.56% 74 74 74,000 16 1,151

5,001 6,000 101 1.75% 70 70 70,000 17 1,222

6,001 7,000 145 2.12% 67 67 67,000 21 1,419

7,001 8,000 184 2.33% 64 64 64,000 23 1,494

8,000 9,000 221 2.46% 60 60 60,000 25 1,477

9,001 10,000 276 2.76% 57 57 57,000 28 1,573

10,001 11,000 333 3.01% 53 53 53,000 30 1,594

11,001 12,000 389 3.21% 51 51 51,000 32 1,638

12,001 13,000 446 3.38% 49 49 49,000 34 1,658

13,001 14,000 514 3.61% 45 45 45,000 36 1,626

14,001 15,000 582 3.80% 42 42 42,000 38 1,598

15,001 20,000 786 4.28% 181 181 181,000 43 7,741

20,001 25,000 1,138 4.81% 148 148 148,000 48 7,120

25,001 35,000 1,642 5.24% 236 236 236,000 52 12,376

35,001 50,000 2,472 5.59% 265 265 265,000 56 14,825

50,001 75,000 3,764 5.85% 280 280 280,000 59 16,386

75,001 100,000 5,523 6.10% 137 137 137,000 61 8,355

100,00 1 200,000 8,893 6.38% 131 131 131,000 64 8,362

200,001 500,000 20,812 6.81% 39 39 39,000 68 2,658

500,001 over 76,567 6.44% 8 8 8,000 64 516

Totals 1,443 5.66% 3,755 2,416 2,416,000 40 97,118

**Columns 1-3:** BEA staff estimates of SC taxable income, average tax liability, and average tax rate are based on DOR Tax Year 2008 data and individual income tax revenue projection for FY 2012-13.

**Column 4:** BEA staff estimate of the number of public school students attending a non-resident school district by income levels is based on the number of exemptions claimed on individual income tax returns and U.S. Department of Education, National Center for Educational Statistics, Parent and Family Involvement in Education Survey of the National Household Education Surveys Program, 2007. BEA staff estimate of 3,755 for the total number of public school students attending a non-resident school district in FY 2012-13 is based on a September 2011 survey of the school districts by the BEA and the SC Association of School Business Officials.

**Column 5:** Tax deductions claimed are estimated for all returns with income tax liability. All students are qualified pursuant to the proposed legislation, but the family return must have taxable income to claim the deduction since the deduction is non-refundable.

**Column 6:** Total tax deductions claimed is the $1,000 deduction times the number of deductions claimed.

**Column 7:** The average tax liability reduction per student is calculated by multiplying the $1,000 deduction times the average tax rate for taxpayers at the various levels of taxable income listed.

**Column 8:** The total tuition deduction is calculated by multiplying the average tax liability reduction per student times the number of deductions claimed at each taxable income level listed.

*Approved By:*

Frank A. Rainwater

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑6‑1145 SO AS TO AUTHORIZE A DEDUCTION FROM STATE OF SOUTH CAROLINA TAXABLE INCOME UP TO SPECIFIED AMOUNTS FOR TUITION PAID BY A PARENT OR LEGAL GUARDIAN FOR THEIR CHILD OR WARD TO ATTEND AN INDEPENDENT SCHOOL OR A PUBLIC SCHOOL OUTSIDE THE CHILD’S OR WARD’S SCHOOL DISTRICT OF RESIDENCE, AND TO ALSO AUTHORIZE A SIMILAR INCOME TAX DEDUCTION UP TO A SPECIFIED AMOUNT TO A PARENT OR LEGAL GUARDIAN FOR HOME SCHOOL EXPENDITURES; AND BY ADDING SECTION 12‑6‑1146 SO AS TO AUTHORIZE A CREDIT AGAINST A TAXPAYER’S SOUTH CAROLINA INCOME TAX LIABILITY OR CERTAIN OTHER TAX LIABILITY FOR CONTRIBUTIONS MADE TO NONPROFIT SCHOLARSHIP FUNDING ORGANIZATIONS THAT PROVIDE GRANTS FOR CHILDREN WHO ARE ELIGIBLE FOR THE FEDERAL FREE OR REDUCED SCHOOL LUNCH PROGRAM, WHO ARE “EXCEPTIONAL NEEDS” CHILDREN, OR WHOSE FAMILIES MEET THE REQUIREMENTS FOR FEDERAL MEDICAID BENEFITS TO ATTEND INDEPENDENT SCHOOLS OF THEIR CHOICE, AND TO PROVIDE THE PROCEDURES FOR, AND CONDITIONS AND LIMITATIONS OF THESE TAX CREDITS.

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

SECTION 1. Article 9, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑1145. (A) As used in this section:

(1) ‘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, or national origin. For purposes of this definition, ‘independent school’ does not include a home school as defined in item (2).

(2) ‘Home school’ means a home, residence, or location where a parent or legal guardian teaches one or more children as authorized pursuant to Section 59‑65‑40, 59‑65‑45, or 59‑65‑47.

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

(4) ‘Qualifying student’ means a student who is 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 current school year.

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

(6) ‘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 and school‑related transportation.

(B)(1) Beginning with the 2012‑2013 school year, a parent or legal guardian who teaches one or more qualifying students at home as authorized pursuant to Section 59‑65‑40, 59‑65‑45, or 59‑65‑47 may take a deduction against their State of South Carolina taxable income of up to two thousand dollars per home school student for instruction‑related expenditures. This deduction is limited to a total of two thousand dollars per child per year regardless of the number of taxpayers incurring home school instruction‑related expenses on behalf of that child. The deduction allowed by this subsection is fully deductible for the calendar year in which the home school term begins provided the qualifying student completes the school term for that school year.

(2) Beginning with the 2012‑2013 school year, a parent or legal guardian is entitled to a deduction against their State of South Carolina taxable income of up to four thousand dollars paid to an independent school within this State for tuition on behalf of their child or ward to attend the independent school for that school year. The child or ward must be a qualifying student as this term is defined in subsection (A)(4). This deduction is limited to a total of four thousand dollars per child per year regardless of the number of taxpayers making tuition payments on behalf of that child. The deduction allowed by this subsection is fully deductible for the calendar year in which the school term begins provided the qualifying student completes the school term for that school year.

(3) Beginning with the 2012‑2013 school year, a parent or legal guardian is entitled to a deduction against their State of South Carolina taxable income of up to one thousand dollars paid on behalf of their child or ward to attend a school in a school district which is not the school district of residence of the child or ward. This deduction is limited to a total of one thousand dollars per child per year regardless of the number of taxpayers making payments to another school district on behalf of that child. The deduction allowed by this subsection is fully deductible for the calendar year in which the school term begins provided the qualifying student completes the school term for that school year.

(4) Beginning with the 2013-2014 school year, the dollar amount of the deductions provided for in items (1), (2), and (3) above must be increased on an annual basis by an inflation factor equal to the percentage increase in the previous year of the Consumer Price Index, Southeast Region, as published by the United States Department of Labor, Bureau of Labor Statistics plus the percentage increase in the previous year in the population of the State as determined by the Office of Research and Statistics of the State Budget and Control Board.

The department shall publish the increases as determined in this item each year on its website available to the general public.”

SECTION 2. Article 9, Chapter 6, Title 12, of the 1976 Code is amended by adding:

“Section 12‑6‑1146. (A) The purpose of this section is to:

(1) provide tax credits for certain contributions to a nonprofit scholarship funding organization;

(2) expand educational opportunities for children of families that have limited financial resources or exceptional needs; and

(3) enable children in this State to achieve a greater level of excellence in their education.

(B) In enacting this section, the General Assembly recognizes diversity among children and affirms that every child is unique. The General Assembly also affirms that children learn differently from one another and may benefit from expanded educational opportunities.

(C) As used in this section:

(1) ‘Eligible school’ means an independent school including those religious in nature, other than a public or home 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) ‘Nonprofit scholarship funding organization’ means a charitable organization that:

(a) is exempt from federal tax under 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‑five percent of its annual contributions and revenue received during a particular year to provide grants for tuition, transportation, or textbook expenses (collectively hereinafter referred to as tuition) or any combination thereof 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 five percent of its annual contributions and revenue for a particular year;

(c) allocates all of its funds used for grants on an annual basis to children who are ‘exceptional needs’ students as defined herein, or who are eligible for the federal free or reduced lunch program, or whose families meet the qualifications for federal Medicaid benefits;

(d) does not provide grants solely for the benefit of one school, and if the Department of Revenue 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 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; and

(f) does not have as a member of its governing board any person who has been convicted of a felony, or who has declared bankruptcy within the last seven years.

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

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

(D) The tax credits allowed by this section may be used in computing any tax imposed by this chapter or in computing insurance premium taxes or bank license fees; provided, that the tax credit may not offset more than sixty percent of the taxpayer’s liability for a particular year.

(E) A person is entitled to a tax credit under this section for the amount of money the person contributes to a nonprofit scholarship funding organization up to the limits of this section if:

(1) the contribution is used to provide grants for tuition, transportation, or textbook expenses (tuition) or any combination thereof to children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

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

(F)(1) Grants may be awarded by the nonprofit scholarship funding organization in an amount not exceeding five thousand dollars per year or seventy‑five percent of the cost of tuition, whichever is less, for children who are eligible for the federal free or reduced school lunch program or whose families meet the requirements for federal Medicaid benefits to attend an independent school. The dollar and percentage amounts of grants permitted by this item must be increased annually beginning with 2013, in the manner provided in subsection (H).

(2) In addition to the provisions of item (1), grants may be awarded by a scholarship funding organization in an amount not exceeding ten thousand dollars or seventy‑five percent of the cost of tuition, whichever is less, for students with ‘exceptional needs’ to attend an independent school. An ‘exceptional needs’ child is defined as a child who has significant cognitive, mental, physical, or emotional disabilities and whose parents or legal guardian believe that the services provided by the school district of legal residence do not sufficiently meet the needs of their child. The dollar and percentage amounts of the grants permitted by this item must be increased annually beginning in 2013, in the manner provided in subsection (H).

(G)(1) The tax credits authorized by this section may not exceed cumulatively a total of fifteen million dollars annually for contributions made on behalf of students who are eligible for the federal free or reduced lunch program and whose families meet the qualifications for federal Medicaid benefits, and the tax credits authorized by this section may not exceed cumulatively a total of ten million dollars annually for contributions made on behalf of ‘exceptional needs’ students. If the Department of Revenue determines for a particular year that the total of such credits claimed by all taxpayers for one or both categories exceed these amounts, it shall proportionally reduce the credits of all taxpayers pro rata for that year in that category. The dollar amount of each of the tax credit caps imposed by this item, beginning with 2013, must be increased annually in the manner provided in subsection (H).

(2) Taxpayers making contributions to a nonprofit scholarship funding organization who desire that a portion or all of their contributions be used for grants for exceptional needs children shall state with their contribution the amount to be used for this purpose. These amounts so stated must be used for purposes of computing the maximum tax credit amounts under item (1) of this subsection authorized for contributions on behalf of exceptional needs students. If no such designation for exceptional needs children is made, the contribution shall come within the maximum tax credit limitation for contributions pertaining to students who are eligible for the federal free or reduced lunch program and whose families meet the qualifications for federal Medicaid benefits provided in item (1).

(3) If a husband and wife file separate returns for any year, they each may only claim one‑half of the tax credit that would have been allowed for a joint return for the year.

(4) The person shall apply for a credit under this section on or with the tax return for the period for which the credit is claimed.

(5) The Department of Revenue shall prescribe the form and manner of proof required to obtain the credit authorized by this section.

(6) A person may claim a credit under this section for a contribution during a particular period only against the tax owed for the corresponding period.

(7) Any unused tax credit, including the portion of a contribution which is reduced pro rata under item (1) of this subsection, may be carried forward for a period not exceeding five consecutive years. However, the tax credit is not refundable.

(H)(1) Beginning with the year 2013, the dollar amount and percentage amount of a scholarship which may be granted under this section and the dollar amount of each of the tax credit caps provided in subsection (G)(1) must be increased on an annual basis by an inflation factor equal to the percentage increase in the previous year of the Consumer Price Index, Southeast Region, as published by the United States Department of Labor, Bureau of Labor Statistics plus the percentage increase in the previous year in the population of the State as determined by the Office of Research and Statistics of the State Budget and Control Board.

(2) The department shall publish the increases determined under item (1) each year on its website available to the general public.

(I) A corporation or entity entitled to a credit under this section may not convey, assign, or transfer the deduction or 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.

(J) Except as otherwise provided by this section, 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.

(K)(1) 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 (C)(1) of this section, and shall annually publish an approved list of such schools meeting this criteria as provided in item (2) below. 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) By the first day of August of each year, beginning on August 1, 2012, the Education Oversight Committee, on its website available to the general public, shall provide a list with addresses and telephone numbers of nonprofit scholarship funding organizations in good standing which provide grants under this section, and a list of approved independent schools which accept grants for eligible students under this section and which in its determination are in compliance with the requirements of subsection (C)(1) of this section.

(3) Any independent school not determined to be an eligible school by the Education Oversight Committee under its authority under this section may appeal this determination to the Administrative Law Court within thirty days of this determination.

(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 (C)(1)(d).

(L)(1) Every nonprofit scholarship funding organization providing grants under this section shall cause an outside auditing firm each year to conduct a comprehensive financial audit of its operations in conformity with generally accepted accounting principles and shall furnish same within thirty days of its completion and acceptance to the Secretary of State and Department of Revenue which must be made available by them on their website for public review.

(2) Every independent school accepting grants for eligible students under this section shall cause to be conducted a compliance audit by an outside entity or auditing firm examining its compliance with the provisions of this section and shall furnish the same within thirty days of its completion and acceptance to the Secretary of State and Department of Revenue which must be made available by them on their website for public review.

(M) On January 1, 2015, and on January first every three years thereafter, the Education Oversight Committee shall report to the Governor and the General Assembly on the effectiveness and success of this section and whether or not the purposes of this section as provided in subsections (A) and (B) hereunder have been accomplished.”

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

SECTION 4. This act takes effect upon approval by the Governor, and the tax deductions authorized by Section 1 and tax credits authorized by Section 2 of this act may be taken to the extent authorized beginning with calendar year 2012.

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