**South Carolina General Assembly**

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**H. 4305**

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Summary: Income tax credit

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/9/2017 House Introduced and read first time ([House Journal‑page 191](file:///h:\hj\20170509.docx))

5/9/2017 House Referred to Committee on **Ways and Means** ([House Journal‑page 191](file:///h:\hj\20170509.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=4305&session=122&summary=B) at the website

**VERSIONS OF THIS BILL**

[5/9/2017](file:///p:\pprever\2017-18\4305_20170509.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑6‑3780 SO AS TO PROVIDE DEFINITIONS, 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, TO SPECIFY THE MANNER IN WHICH THE CREDIT IS CLAIMED, 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, AND TO PROVIDE THAT THE EDUCATION OVERSIGHT COMMITTEE IS RESPONSIBLE FOR DETERMINING WHICH SCHOOLS ARE ELIGIBLE.

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

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

“Section 12‑6‑3780. (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 supports or services to meet the needs of exceptional needs students, or is a school specifically existing to meet the needs of only exceptional 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 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; or

(c) who has been identified by the South Carolina Department of Social Services as having special educational or developmental needs;

(4) ‘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.

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

(6) ‘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 elementary or secondary public school at the kindergarten or later year level for the applicable school year.

(7) ‘Resident public school district’ means the public school district in which a student resides, or in the case of dependents of active duty military personnel, the public school district which the student may attend.

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

(9) ‘Tuition’ means the total amount of monies 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.

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

(B)(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’s 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 pursuant to 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 the 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 may claim only a credit equal to the difference of eleven thousand dollars or the cost of tuition, whichever is lower, and the amount of the grant.

(C) 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 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 pursuant to the provisions of this section; and

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

(D)(1)(a) Tax credits authorized by subsections (B)(1) and (C) annually may not exceed cumulatively a total of twelve million dollars for contributions to the Educational Credit for Exceptional Needs Children’s Fund. The cumulative total must increase by two million dollars each year until tax year 2023, in which the cumulative total must remain at twenty‑two million dollars for each year after.

(b) Tax credits authorized pursuant to subsection (B)(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 subitem (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. Subject to the provisions of subitem (e), contributions must be made annually before January first, in order to claim 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 (B)(1) or (C). 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 (B)(1) or (C), then he may not 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 (B)(1) or (C). The department also shall develop a method of informing taxpayers if the credit limit is met at any time during the year.

(e) A taxpayer only may claim a credit pursuant to subsections (B)(1) and (C) for contributions made during the tax year.

(3) A corporation or entity entitled to a credit pursuant to subsections (B)(1) and (C) 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) There is created the ‘Educational Credit for Exceptional Needs Children’s Fund’ that is separate and distinct from the state general fund. The fund is organized as a public charity as defined by the Internal Revenue Code pursuant to Section 509(a) and consists 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 the deposits are not property of the State. Amounts on deposit in the fund may not be commingled with public funds and the State has no 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)(a) The fund is governed by the following:

(1) two directors 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;

(2) two directors appointed by the Chairman of the Senate Finance Committee based upon the recommendations of the South Carolina Independent Schools Association; and

(3) one director appointed by the Governor based upon the recommendation of the Palmetto Association of Independent Schools.

(b) The directors of the fund, along with the Director of the Department of Revenue, shall designate an executive director of the fund.

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

(5) By June thirtieth of each year, the Department of Revenue shall report to the Chairman of the House Ways and Means Committee, the Chairman of the Senate Finance Committee, and the Governor:

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

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

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

(F)(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 any grant, the fund must 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 fund must 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 the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school shall return a prorated amount of the grant to the fund 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 fund may not award grants only for the benefit of one school.

(5) The department may not release any personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain.

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

(G)(1) The Education Oversight Committee is responsible for determining which schools are eligible to participate in the program. Annually, the Education Oversight Committee shall establish an application process for new schools and a renewal process for schools that participated in the prior year.

(2) The application process for new schools is limited to the following information:

(a) 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;

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

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

(3) The Education Oversight Committee may waive any deadline upon good cause shown by an independent school.

(4) The annual renewal process for schools is limited to the following information:

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

(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.

(5)(a) The Education Oversight Committee shall maintain 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 items (2)(a) and (b).

(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.

(6) 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.

(7) 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.

(H)(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.

(I) 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.

(J) Before January 1, 2019, the Education Oversight Committee shall submit a report to the Governor, the Chairman of the House Ways and Means Committee, and the Chairman of the Senate Finance Committee to advise as to whether the administration of the Exceptional Needs Children’s Fund should be controlled by a public nonprofit or private nonprofit entity, and to advise which entity could best administer the fund.”

SECTION 2. This act takes effect upon approval of the Governor and applies to income tax years beginning after 2017.

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