**South Carolina General Assembly**

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**S. 867**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Hayes

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Currently residing in the Senate Committee on **Finance**

Summary: General Appropriation Act

**HISTORY OF LEGISLATIVE ACTIONS**

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12/17/2013 Senate Referred to Committee on **Finance**

1/14/2014 Senate Introduced and read first time ([Senate Journal‑page 52](file:///H:\SJ%20Archive\2014\01-14-14.docx))

1/14/2014 Senate Referred to Committee on **Finance** ([Senate Journal‑page 52](file:///H:\SJ%20Archive\2014\01-14-14.docx))

**VERSIONS OF THIS BILL**

[12/17/2013](file:///p:\pprever\2013-14\867_20131217.docx)

**A** **BILL**

TO AMEND ACT 101 OF 2013, RELATING TO THE 2013‑2014 GENERAL APPROPRIATIONS ACT, SO AS TO REVISE PARAGRAPH 1.85, SECTION 1, PART 1B, THAT ALLOWS FOR A TAX CREDIT FOR CONTRIBUTIONS TO A NONPROFIT SCHOLARSHIP FUNDING ORGANIZATION BY SPECIFYING THE TAXES FOR WHICH THE CREDIT MAY BE CLAIMED AGAINST, TO AMEND THE DEFINITION OF “EXCEPTIONAL NEEDS”, TO ESTABLISH AN APPLICATION PROCESS TO DETERMINE THE AMOUNT OF CREDIT AVAILABLE TO BE CLAIMED, AND TO DELETE A PROVISION RELATING TO MARRIED PERSONS FILING SEPARATELY.

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

SECTION 1. Paragraph 1.85, Section 1, Part 1B of Act 101 of 2013 is amended to read:

“1.85. (SDE: Educational Credit for Exceptional Needs Children) (A) As used in this proviso:

(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, religion, or national origin.

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

(3) ‘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.

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

(5) ‘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.

(6) ‘Eligible school’ means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59‑65‑10 may be met, that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state’s diploma requirements and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

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

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

(7) ‘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;

(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.

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

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

(B) A person is entitled to a tax credit against income taxes imposed pursuant to Chapter 6 or Chapter 11, Title 12 or bank taxes imposed pursuant to Chapter 11, Title 12 for the amount of money the person contributes to a nonprofit scholarship funding organization up to the limits of this proviso if:

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

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

(C) Grants may be awarded by a scholarship funding organization in an amount not exceeding ten thousand dollars or the total cost of tuition, whichever is less, for students with ‘exceptional needs’ to attend an independent school. An ‘exceptional needs’ child is defined as a child:

(1)(a) who has been designated by the South Carolina Department of Education to meet the requirements of 34 C.F.R. Part A Section 300.8; or

(b) who has been evaluated by a psycho educational specialist, a licensed school psychologist, a licensed clinical psychologist, or a licensed neuro psychologist who determines that the student needs special education and related services; and

(2) the child’s parents or legal guardian believe that the services provided by the school district of legal residence do not sufficiently meet the needs of the child.

(D)(1)(a) The tax credits authorized by subsection (B) may not exceed cumulatively a total of eight million dollars for contributions made on behalf of ‘exceptional needs’ students. If the Department of Revenue determines that the total of such credits claimed by all taxpayers exceeds this amount, it shall allow credits only up to those amounts on a first come, first serve basis.

(b) The department shall establish an application process to determine the amount of credit available to be claimed. The receipt of the application by the department will determine priority for the credit. Contributions must be made on or before June 30, 2014, in order to claim the credit.

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

(3) ~~If a husband and wife file separate returns, 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 subsection (B) on or with the tax return for the period for which the credit is claimed.

~~(5)~~(4) The Department of Revenue shall prescribe the form and manner of proof required to obtain the credit authorized by subsection (B). Also, the department shall develop a method of informing taxpayers if either of the credit limits are met ~~at any time during the 2013 tax year~~.

~~(6)~~(5) A person may claim a credit under subsection (B) for contributions made on or after January 1, 2014.

(E) A corporation or entity entitled to a credit under subsection (B) 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.

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

(G)(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 (A)(6), and shall publish an approved list of such schools meeting this criteria 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)(a) By the first day of August for the current fiscal year, 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 proviso, and a list of approved independent schools which accept grants for eligible students and which in its determination are in compliance with the requirements of subsection (A)(6).

(b) Student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by an eligible school receiving or entitled to receive scholarship grants under this proviso 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 proviso may seek review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court’s rules of procedure.

(4) The Education Oversight Committee, after consultation with its nine‑member advisory committee, may exempt an independent school having students with exceptional needs who receive scholarship grants pursuant to this proviso from the curriculum requirements of subsection (A)(6)(d).

(H)(1) Every nonprofit scholarship funding organization providing grants under subsection (C), shall cause an outside auditing firm to conduct a comprehensive financial audit of its operations in conformity with generally accepted accounting principles 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.

(2) Every independent school accepting grants for eligible students shall cause to be conducted a compliance audit by an outside entity or auditing firm examining its compliance with the provisions of this proviso, 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.”

SECTION 2. This act takes effect upon approval by the Governor.

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