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Indicates New Matter

AMENDED

May 11, 2021

**H. 3899**

Introduced by Reps. Elliott, G.R. Smith, Erickson, Herbkersman, Daning, Taylor, Hixon, Bennett, Willis, Bannister, Morgan, Stringer, Haddon, Burns, B. Cox, Huggins, B. Newton, Fry and McGarry

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Read the first time April 8, 2021.

**A** **BILL**

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

Amend Title To Conform

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

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

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

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

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

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

(5) By January fifteenth of each year, the ~~department~~ public charity 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.”

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

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

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

“(b) A taxpayer may not claim more than ~~sixty~~ seventy‑five 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. Any unused credit may be carried forward three tax years after the tax year in which the qualified contribution is first eligible to be claimed.”

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

“(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~~. The school also shall provide individual student test scores on national achievement or state standardized tests, or both, for any student in grades one through twelve who received a grant from the program during the prior school year. The information must be used to provide program level reports to determine whether students participating in the program have experienced measurable improvement. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement~~;”

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

“(1)(a) Tax credits authorized by subsection (H)(1) and subsection (I) annually may not exceed cumulatively a total of twelve million dollars for contributions to the Educational Credit for Exceptional Needs Children's Fund, unless an increased limit is authorized in the annual general appropriations act.

(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, unless an increased limit is authorized in the annual general appropriations act. However, if less than the maximum cumulative total of tax credits allowed pursuant to subitem (a) are authorized, then, the maximum cumulative total of tax credits allowed pursuant to this subitem may be increased by up to three million dollars, but the cumulative total of all tax credits authorized pursuant to this section may not be increased as a result.

(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.”

SECTION 5. This act takes effect upon approval by the Governor.

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