

1 SB261  
2 217896-2  
3 By Senators Roberts, Marsh and Givhan  
4 RFD: Finance and Taxation Education  
5 First Read: 23-FEB-22

1 SB261

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4 ENROLLED, An Act,

5 Relating to scholarship granting organizations; to  
6 amend Section 16-6D-9 of the Code of Alabama 1975, to allow a  
7 taxpayer to claim a tax credit of up to 100 percent of the tax  
8 liability of the taxpayer, not to exceed a specified amount,  
9 for contributions made to a scholarship granting organization  
10 for educational scholarships; to require a scholarship  
11 granting organization to ensure that scholarship funds on hand  
12 at the beginning of a calendar year are expended on  
13 educational scholarships within three calendar years; and to  
14 provide for a retroactive effective date.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Section 16-6D-9 of the Code of Alabama  
17 1975, is amended to read as follows:

18 "§16-6D-9.

19 "(a) (1) An individual taxpayer who files a state  
20 income tax return and is not claimed as a dependent of another  
21 taxpayer, a taxpayer subject to the corporate income tax  
22 levied by Chapter 18 of Title 40, an Alabama S corporation as  
23 defined in Section 40-18-160, or a Subchapter K entity as  
24 defined in Section 40-18-1 may claim a credit for a  
25 contribution made to a scholarship granting organization. If

1 the credit is claimed by an Alabama S corporation or  
2 Subchapter K entity, the credit shall pass through to and may  
3 be claimed by any taxpayer eligible to claim a credit under  
4 this subdivision who is a shareholder, partner, or member  
5 thereof, based on the taxpayer's pro rata or distributive  
6 share, respectively, of the credit.

7 "(2) The tax credit may be claimed by an individual  
8 taxpayer or a married couple filing jointly in an amount equal  
9 to 100 percent of the total contributions the taxpayer made to  
10 a scholarship granting organization for educational  
11 scholarships during the taxable year for which the credit is  
12 claimed, up to ~~50~~ 100 percent of the tax liability of the  
13 individual taxpayer, not to exceed ~~fifty thousand dollars~~  
14 ~~(\$50,000)~~ one hundred thousand dollars (\$100,000) per  
15 individual taxpayer or married couple filing jointly. For  
16 purposes of this section, an individual taxpayer includes an  
17 individual who is a shareholder of an Alabama S corporation or  
18 a partner or member of a Subchapter K entity that made a  
19 contribution to a scholarship granting organization.

20 "(3) The tax credit may be claimed by a taxpayer  
21 subject to the Alabama corporate income tax in an amount equal  
22 to 100 percent of the total contributions the taxpayer made to  
23 a scholarship granting organization for educational  
24 scholarships during the taxable year for which the credit is

1 claimed, up to ~~50~~ 100 percent of the tax liability of the  
2 taxpayer.

3 "(4) A taxpayer subject to the Alabama corporate  
4 income tax, an individual taxpayer, or a married couple filing  
5 jointly may carry forward a tax credit earned under the tax  
6 credit scholarship program for up to three taxable years.

7 "(5) The cumulative amount of tax credits issued  
8 pursuant to subdivision (2) and subdivision (3) shall not  
9 exceed thirty million dollars (\$30,000,000) annually, based on  
10 the calendar year. A taxpayer making one or more otherwise  
11 tax-creditable contributions before the due date, with  
12 extensions, of a timely filed 2014 tax return may elect to  
13 treat all or a portion of such contributions as applying to  
14 and creditable against its 2014 Alabama income tax liability,  
15 if the taxpayer properly reserves the credit on the website of  
16 the Department of Revenue or another method provided by the  
17 Department of Revenue. The amount creditable against the  
18 taxpayer's 2014 income tax liability shall be limited to the  
19 lesser of the amount so designated or the remaining balance,  
20 if any, of the cumulative amount of the twenty-five million  
21 dollars (\$25,000,000) of tax credits available for the 2014  
22 calendar year. No such contribution and election by a taxpayer  
23 to reserve tax credits against the remaining balance of the  
24 cumulative amount of tax credits available for 2014 shall  
25 preclude the taxpayer from making additional contributions in

1 2015 and reserving those amounts against the cumulative amount  
2 of tax credits available for 2015. The Department of Revenue  
3 shall develop a procedure to ensure that this cap is not  
4 exceeded and shall also prescribe the various methods by which  
5 these credits are to be issued.

6 "(6) No credit may be claimed for a contribution  
7 made to a scholarship granting organization if the  
8 contribution is restricted or conditioned in any way by the  
9 donor including, but not limited to, requiring the scholarship  
10 granting organization to direct all or part of the  
11 contribution to a particular qualifying school or to grant an  
12 educational scholarship to a particular eligible student.

13 "(b) (1) ADMINISTRATIVE ACCOUNTABILITY STANDARDS. All  
14 scholarship granting organizations shall do all of the  
15 following:

16 "a. Notify the Department of Revenue of their intent  
17 to provide educational scholarships to eligible students.

18 "b. Demonstrate to the Department of Revenue that  
19 they have been granted exemption from the federal income tax  
20 as an organization described in Section 501(c) (3) of the  
21 Internal Revenue Code, as in effect from time to time.

22 "c. Distribute periodic educational scholarship  
23 payments as checks made out and mailed to or directly  
24 deposited with the school where the student is enrolled.

1           "d. Provide a Department of Revenue approved receipt  
2 to taxpayers for contributions made to the scholarship  
3 granting organization.

4           "e. Ensure that all determinations with respect to  
5 the eligibility of a student to receive an educational  
6 scholarship shall be made by the scholarship granting  
7 organization. A scholarship granting organization shall not  
8 delegate any responsibility for determining the eligibility of  
9 a student for an educational scholarship or any other  
10 requirements it is subject to under this chapter to any  
11 qualifying school or an entity affiliated therewith.

12           "f. Ensure that at least 95 percent of their revenue  
13 from donations is expended on educational scholarships, and  
14 that all revenue from interest or investments is expended on  
15 educational scholarships. A scholarship granting organization  
16 may expend up to five percent of its revenue from donations on  
17 administrative and operating expenses in the calendar year of  
18 the donation or in any subsequent calendar year.

19           "g. Ensure that scholarship funds on hand at the  
20 beginning of a calendar year are expended on educational  
21 scholarships ~~by the end of the academic year ending within the~~  
22 ~~next succeeding calendar year~~ within three calendar years. Any  
23 scholarship funds on hand at the beginning of a calendar year  
24 that are not expended on educational scholarships ~~by the end~~  
25 ~~of the academic year ending within the next succeeding~~

1 ~~calendar year~~ within three calendar years shall be turned over  
2 to and deposited with the State Department of Education for  
3 the benefit of its At-Risk Student Program to be distributed  
4 to local boards of education on the basis determined by the  
5 State Department of Education in furtherance of support to  
6 underperforming schools.

7 "h. Ensure that at least 75 percent of first-time  
8 recipients of educational scholarships were not continuously  
9 enrolled in a private school during the previous academic  
10 year.

11 "i. Cooperate with the Department of Revenue to  
12 conduct criminal background checks on all of their employees  
13 and board members and exclude from employment or governance  
14 any individual who may reasonably pose a risk to the  
15 appropriate use of contributed funds.

16 "j. Ensure that educational scholarships are  
17 portable during the academic year and can be used at any  
18 qualifying school that accepts the eligible student according  
19 to the wishes of the parent. If an eligible student transfers  
20 to another qualifying school during an academic year, the  
21 educational scholarship amount may be prorated.

22 "k. Publicly report to the Department of Revenue by  
23 September 1 of each year all of the following information  
24 prepared by a certified public accountant regarding their  
25 educational scholarships funded in the previous academic year:

1           "1. The name and address of the scholarship granting  
2 organization.

3           "2. The total number and total dollar amount of  
4 contributions received during the previous academic year.

5           "3. The total number and total dollar amount of  
6 educational scholarships awarded and funded during the  
7 previous academic year, the total number and total dollar  
8 amount of educational scholarships awarded and funded during  
9 the previous academic year for students qualifying for the  
10 federal free and reduced-price lunch program, and the  
11 percentage of first-time recipients of educational  
12 scholarships who were enrolled in a public school during the  
13 previous academic year.

14           "1. Publicly report to the Department of Revenue, by  
15 the 15th day after the close of each calendar quarter, all of  
16 the following information about educational scholarships  
17 granted during the quarter:

18           "1. The total number of scholarships awarded and  
19 funded.

20           "2. The names of the qualifying schools that  
21 received funding for educational scholarships, the total  
22 amount of funds paid to each qualifying school, and the total  
23 number of scholarship recipients enrolled in each qualifying  
24 school.



1           "3. The total number of eligible students zoned to  
2 attend a failing school who received educational scholarships  
3 from the scholarship granting organization.

4           "4. The total number of first time scholarship  
5 recipients who were continuously enrolled in a nonpublic  
6 school prior to receiving an educational scholarship from that  
7 scholarship granting organization.

8           "m. Ensure that educational scholarships are not  
9 provided for eligible students to attend a school with paid  
10 staff or board members, or relatives thereof, in common with  
11 the scholarship granting organization.

12           "n. Ensure that educational scholarships are  
13 provided in a manner that does not discriminate based on the  
14 gender, race, or disability status of the scholarship  
15 applicant or his or her parent.

16           "o. Ensure that educational scholarships are  
17 provided only to eligible students who are zoned to attend a  
18 failing school so that the eligible student can attend a  
19 qualifying school. To ensure compliance with the immediately  
20 preceding sentence, the local board of education for the  
21 county or municipality in which an eligible student applying  
22 for an educational scholarship resides, upon written request  
23 by a parent, shall provide written verification that a  
24 particular address is in the attendance zone of a specified  
25 public school. The State Department of Education shall provide

1 written verification of enrollment in a failing school under  
2 this chapter. With respect to first time educational  
3 scholarship recipients, scholarship granting organizations  
4 shall give priority to eligible students zoned to attend  
5 failing schools over eligible students not zoned to attend  
6 failing schools. Any scholarship funds unaccounted for on July  
7 31st of each calendar year may be made available to eligible  
8 students to defray the costs of attending a qualifying school,  
9 whether or not the student is zoned to attend a failing  
10 school. Any provision of this section to the contrary  
11 notwithstanding, once an eligible student receives an  
12 educational scholarship under this program, scholarship funds  
13 may be made available to the student for educational  
14 scholarships until the student graduates from high school or  
15 reaches 19 years of age, regardless of whether the student is  
16 zoned to attend a failing school, subject to the income  
17 eligibility requirements of paragraph b. of subdivision (4) of  
18 Section 16-6D-4.

19 "p. Ensure that no donations are directly made to  
20 benefit specifically designated scholarship recipients or to  
21 particular qualifying schools.

22 "q. Submit to the Department of Revenue annual  
23 verification of the scholarship granting organization's  
24 policies and procedures used to determine scholarship  
25 eligibility. The verification shall confirm that the

1 scholarship granting organization, and not one or more  
2 qualifying schools accepting educational scholarship  
3 recipients or scholarship funds, is determining whether  
4 scholarship applicants are eligible to receive educational  
5 scholarships. The verification shall also confirm that the  
6 scholarship granting organization is giving priority to  
7 receive an educational scholarship to eligible students zoned  
8 to attend failing schools.

9 "r. Submit to the Department of Revenue annual  
10 verification that none of its actions or policies restricts a  
11 parent's educational choice by limiting or prohibiting the  
12 enrollment of eligible students in a qualifying school if  
13 those eligible students received educational scholarships from  
14 other scholarship granting organizations.

15 "(2) FINANCIAL ACCOUNTABILITY STANDARDS.

16 "a. All scholarship granting organizations shall  
17 demonstrate their financial accountability by doing all of the  
18 following:

19 "1. Annually submitting to the Department of Revenue  
20 a financial information report for the scholarship granting  
21 organization that complies with uniform financial accounting  
22 standards established by the Department of Revenue and  
23 conducted by a certified public accountant.

24 "2. Having the auditor certify that the report is  
25 free of material misstatements.

1            "b. All qualifying nonpublic schools shall  
2 demonstrate financial viability, if they are to receive  
3 donations of fifty thousand dollars (\$50,000) or more during  
4 the academic year, by doing either of the following:

5            "1. Filing with the scholarship granting  
6 organization prior to receipt of the first educational  
7 scholarship payment for that academic year a surety bond  
8 payable to the scholarship granting organization in an amount  
9 equal to the aggregate amount of scholarship funds expected to  
10 be received during the academic year.

11           "2. Filing with the scholarship granting  
12 organization prior to receipt of the first educational  
13 scholarship payment for that academic year financial  
14 information that demonstrates the financial viability of the  
15 qualifying nonpublic school.

16           "(c) (1) Each scholarship granting organization shall  
17 annually collect and submit to the Department of Revenue with  
18 the annual report required by paragraph k. of subdivision (1)  
19 of subsection (b) written verification from qualifying  
20 nonpublic schools that accept its educational scholarship  
21 students that those schools do all of the following:

22           "a. Comply with all health and safety laws or codes  
23 that otherwise apply to nonpublic schools.

24           "b. Hold a valid occupancy permit if required by the  
25 municipality.

1            "c. Certify compliance with nondiscrimination  
2 policies set forth in 42 U.S.C. 1981.

3            "d. Conduct criminal background checks on employees  
4 and then do all of the following:

5            "1. Exclude from employment any person not permitted  
6 by state law to work in a public school.

7            "2. Exclude from employment any person who may  
8 reasonably pose a threat to the safety of students.

9            "(2) By August 1 of each year, each qualifying  
10 nonpublic school shall provide to each scholarship granting  
11 organization from which it receives educational scholarships  
12 verification that the qualifying nonpublic school is in  
13 compliance with the Alabama Child Protection Act of 1999,  
14 Chapter 22A of this title. Any qualifying nonpublic school  
15 failing to timely provide such annual verification shall be  
16 prohibited from participating in the scholarship program. Each  
17 scholarship granting organization shall annually submit to the  
18 Department of Revenue with the annual report required by  
19 paragraph k. of subdivision (1) of subsection (b) copies of  
20 the written verifications it receives from each qualifying  
21 nonpublic school.

22            "(3) ACADEMIC ACCOUNTABILITY STANDARDS. There shall  
23 be sufficient information about the academic impact  
24 educational scholarship tax credits have on students  
25 participating in the tax credit scholarship program in order

1 to allow parents and taxpayers to measure the achievements of  
2 the tax credit scholarship program, and therefore:

3 "a. Each scholarship granting organization shall  
4 ensure that qualifying schools that accept its educational  
5 scholarship students shall do all of the following:

6 "1. Annually administer either the state achievement  
7 tests or nationally recognized norm-referenced tests that  
8 measure learning gains in math and language arts to all  
9 students receiving an educational scholarship in grades that  
10 require testing under the accountability testing laws of the  
11 state for public schools, in order that the state can compare  
12 the academic achievement and learning gains of students  
13 receiving educational scholarships with students of the same  
14 socioeconomic and educational backgrounds who are taking the  
15 state achievement tests or nationally norm-referenced tests.

16 "2. Allow the costs of the testing requirement to be  
17 covered by the educational scholarships distributed by the  
18 scholarship granting organizations.

19 "3. Provide the parents of each student who was  
20 tested with a copy of the results of the tests on an annual  
21 basis, beginning with the first year of testing.

22 "4. Provide the test results to the Department of  
23 Revenue on an annual basis, beginning with the first year of  
24 testing.

1           "5. Report student information that allows the state  
2 to aggregate data by grade level, gender, family income level,  
3 and race.

4           "6. Provide graduation rates of those students  
5 benefitting from ~~education~~ educational scholarships to the  
6 Department of Revenue or an organization chosen by the state  
7 in a manner consistent with nationally recognized standards.

8           "7. Ensure that a student who receives an  
9 educational scholarship conforms to the attendance  
10 requirements of the qualifying school. If a student fails to  
11 conform, the qualifying school shall immediately communicate  
12 the failure to the applicable scholarship granting  
13 organization.

14           "b.1. The Department of Revenue shall select an  
15 independent research organization, which may be a public or  
16 private entity or university, to analyze the results of the  
17 testing required by paragraph a. every other academic year.  
18 The cost of analyzing and reporting on the test results to the  
19 Department of Revenue by the independent research organization  
20 shall be borne by all scholarship granting organizations in  
21 proportion to the total scholarship donations received for the  
22 two calendar years prior to the report being published.  
23 Scholarship granting organizations may receive and use funds  
24 from outside sources to pay for its share of the biennial  
25 report.

1           "2. The independent research organization shall  
2 report to the Department of Revenue every other year on the  
3 learning gains of students receiving educational scholarships  
4 and the report shall be aggregated by the grade level, gender,  
5 family income level, number of years of participation in the  
6 tax credit scholarship program, and race of the student  
7 receiving an educational scholarship. The report shall also  
8 include, to the extent possible, a comparison of the learning  
9 gains of students participating in the tax credit scholarship  
10 program to the statewide learning gains of public school  
11 students with socioeconomic and educational backgrounds  
12 similar to those students participating in the tax credit  
13 scholarship program.

14           "3. The first report under this paragraph shall be  
15 submitted to the Department of Revenue by September 1, 2016.  
16 Each biennial report thereafter shall be submitted to the  
17 Department of Revenue on September 1 of the year the report is  
18 due. All biennial reports required by this paragraph shall be  
19 published on the website of the Department of Revenue.

20           "4. Each scholarship granting organization shall  
21 collect all test results from qualifying schools accepting its  
22 scholarship recipients and turn over such test results to the  
23 independent research organization described in this paragraph  
24 by August 15 of each calendar year.



1           "5. The sharing and reporting of student learning  
2 gain data under this paragraph shall conform to the  
3 requirements of the Family Educational Rights and Privacy Act,  
4 20 U.S.C. § 1232g., and shall be for the sole purpose of  
5 creating the biennial report required by this paragraph. All  
6 parties shall preserve the confidentiality of such information  
7 as required by law. The biennial report shall not disaggregate  
8 data to a level that could identify qualifying schools  
9 participating in the tax credit scholarship program or  
10 disclose the academic level of individual students.

11           "6. At the same time the biennial report under  
12 ~~paragraph 2~~ subparagraph 2. is submitted to the Department of  
13 Revenue, it shall be submitted to the Chair of the Senate  
14 Education Policy Committee and the Chair of the House  
15 Education Policy Committee.

16           "(d) (1) The Department of Revenue shall adopt rules  
17 and procedures consistent with this section as necessary.

18           "(2) The Department of Revenue shall provide a  
19 standardized format for a receipt to be issued by a  
20 scholarship granting organization to a taxpayer to indicate  
21 the value of a contribution received. The Department of  
22 Revenue shall require a taxpayer to provide a copy of the  
23 receipt when claiming the tax credit pursuant to this section.

24           "(3) The Department of Revenue shall provide a  
25 standardized format for a scholarship granting organization to

1 report the information required in paragraphs k. and l. of  
2 subdivision (1) of subsection (b).

3 "(4) The Department of Revenue may conduct either a  
4 financial review or audit of a scholarship granting  
5 organization.

6 "(5) The Department of Revenue may bar a scholarship  
7 granting organization or a qualifying school from  
8 participating in the tax credit scholarship program if the  
9 Department of Revenue establishes that the scholarship  
10 granting organization or the qualifying school has  
11 intentionally and substantially failed to comply with the  
12 requirements in subsection (b) or subsection (c).

13 "(6) If the Department of Revenue decides to bar a  
14 scholarship granting organization or a qualifying school from  
15 the tax credit scholarship program, the Department of Revenue  
16 shall notify affected educational scholarship students and  
17 their parents of the decision as quickly as possible.

18 "(7) The Department of Revenue shall publish and  
19 routinely update, on the website of the department, a list of  
20 scholarship granting organizations in the state, by county.

21 "(8) The Department of Revenue shall publish and  
22 make publicly available on its website all annual and  
23 quarterly reports required to be filed with it by scholarship  
24 granting organizations under paragraphs k. and l. of  
25 subdivision (1) of subsection (b).

1           "(e) (1) All schools participating in the tax credit  
2 scholarship program shall be required to operate in Alabama.

3           "(2) All schools participating in the tax credit  
4 scholarship program shall comply with all state laws that  
5 apply to public schools regarding criminal background checks  
6 for employees and exclude from employment any person not  
7 permitted by state law to work in a public school.

8           "(3) All qualifying nonpublic schools participating  
9 in the tax credit scholarship program shall maintain a website  
10 that describes the school, the instructional program of the  
11 school, and the tuition and mandatory fees charged by the  
12 school, updated prior to the beginning of each semester.

13           "(4) The amount of a scholarship awarded a student  
14 to attend a nonpublic school may not exceed the total sum of  
15 tuition and mandatory fees normally charged a student to  
16 attend the nonpublic school for the same attendance period.  
17 The amount of a scholarship awarded a student to attend a  
18 public school may not exceed the total state appropriation  
19 provided for a student to attend the public school for the  
20 same attendance period.

21           "(f) The tax credit provided in this section may be  
22 first claimed for the 2013 tax year, but may not be claimed  
23 for any tax year prior to the 2013 tax year.

24           "(g) (1) Nothing in this section shall be construed  
25 to force any public school, school system, or school district

1 or any nonpublic school, school system, or school district to  
2 enroll any student. No qualifying school may enter into any  
3 agreement, whether oral or written, with a scholarship  
4 granting organization that would prohibit or limit an eligible  
5 student from enrolling in the school based on the identity of  
6 the scholarship granting organization from which the eligible  
7 student received an educational scholarship.

8 "(2) A public school, school system, or school  
9 district or any nonpublic school, school system, or school  
10 district may develop the terms and conditions under which it  
11 will allow a student who receives a scholarship from a  
12 scholarship granting organization pursuant to this section to  
13 be enrolled, but such terms and conditions may not  
14 discriminate on the basis of the race, gender, religion,  
15 ~~color~~, disability status, or ethnicity of the student or of  
16 the student's parent.

17 "(3) Nothing in this section shall be construed to  
18 authorize the violation of or supersede the authority of any  
19 court ruling that applies to the public school, school system,  
20 or school district, specifically any federal court order  
21 related to the desegregation of the local school system's  
22 student population.

23 "(h) Nothing in this chapter shall affect or change  
24 the athletic eligibility rules of student athletes governed by

1 the Alabama High School Athletic Association or similar  
2 association."

3 Section 2. This act shall become effective  
4 immediately following its passage and approval by the  
5 Governor, or its otherwise becoming law, and shall apply  
6 retroactively to tax years or periods beginning after December  
7 31, 2021.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB261

Senate 15-MAR-22

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,  
Secretary.

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House of Representatives  
Passed: 05-APR-22

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By: Senator Roberts