

The Senate Committee on Finance offered the following substitute to HB 517:

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to
2 student scholarship organizations, so as to provide for the inclusion of earned interest in the
3 calculation of minimum revenue obligations for scholarships and tuition grants; to require
4 that student scholarship organization audits are conducted in accordance with generally
5 accepted auditing standards; to provide for the expansion of the scope of such audits; to
6 provide for a deadline by which such audits shall be reported to the Department of Revenue;
7 to require that student scholarship organizations immediately notify the Department of
8 Education if the Department of Revenue ceases preapproving contributions to student
9 scholarship organizations; to require student scholarship organizations to annually submit
10 copies of Form 990s to the Department of Revenue; to provide that student scholarship
11 organizations are solely responsible for verifying student eligibility; to provide for expansion
12 of public reporting requirements; to amend Code Section 48-7-29.16 of the Official Code of
13 Georgia Annotated, relating to qualified education tax credits, so as to provide for qualified
14 education tax credits to be used by certain insurance companies against certain tax liability;
15 to provide for conditions and limitations; to increase the limit available to individuals, heads
16 of household, married couples filing joint returns, and individuals who are members of
17 certain limited liability companies, shareholders of Subchapter "S" corporations, or partners

18 in a partnership; provide for related matters; to provide for an effective date and applicability;
19 to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **PART I**
22 **SECTION 1-1.**

23 Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student
24 scholarship organizations, is amended by revising Code Section 20-2A-2, relating to
25 requirements for student scholarship organizations, as follows:

26 "20-2A-2.

27 Each student scholarship organization:

28 (1) With respect to the first \$1.5 million of its annual revenue received from donations
29 for scholarships or tuition grants, ~~must~~ including interest earned on deposits and
30 investments of scholarship funds or tuition grants, shall obligate at least 92 percent of
31 such revenue for scholarships or tuition grants; with respect to its annual revenue
32 received from donations for scholarships or tuition grants in excess of \$1.5 million and
33 up to and including \$10 million, ~~must~~ including interest earned on deposits and
34 investments of scholarship funds or tuition grants, shall obligate at least 94 percent of
35 such revenue for scholarships ~~and~~ or tuition grants; with respect to its annual revenue
36 received from donations for scholarships or tuition grants in excess of \$10 million and
37 up to and including \$20 million, ~~must~~ including interest earned on deposits and
38 investments of scholarship funds or tuition grants, shall obligate at least 95 percent of
39 such revenue for scholarships ~~and~~ or tuition grants; and, with respect to its annual
40 revenue received from donations for scholarships or tuition grants in excess of \$20
41 million, ~~must~~ including interest earned on deposits and investments of scholarship funds

42 or tuition grants, shall obligate at least 96 percent of such revenue for scholarships ~~and~~
43 or tuition grants. On or before the end of the calendar year following the calendar year
44 in which a student scholarship organization receives revenues from donations and
45 obligates them for the awarding of scholarships or tuition grants, the student scholarship
46 organization shall designate the obligated revenues for specific student recipients. Once
47 the student scholarship organization designates obligated revenues for specific student
48 recipients, in the case of multiyear scholarships or tuition grants, the student scholarship
49 organization may distribute the entire obligated and designated revenues to a qualified
50 school or program to be held in accordance with Department of Revenue rules for
51 distribution to the specified recipients during the years in which the recipients are
52 projected in writing by the private school to be enrolled at the qualified school or
53 program. In making a multiyear distribution to a qualified school or program, the student
54 scholarship organization shall require that if the designated student becomes ineligible
55 or for any other reason the qualified school or program elects not to continue
56 disbursement of the multiyear scholarship or tuition grant to the designated student for
57 all the projected years, then the qualified school or program shall immediately return the
58 remaining funds to the student scholarship organization. Once the student scholarship
59 organization designates obligated revenues for specific student recipients, in the case of
60 multiyear scholarships or tuition grants for which the student scholarship organization
61 distributes the obligated and designated revenues to a qualified school or program
62 annually rather than the entire amount, if the designated student becomes ineligible or for
63 any other reason the student scholarship organization elects not to continue disbursement
64 for all years, then the student scholarship organization shall designate any remaining
65 previously obligated revenues for a new specific student recipient on or before the end
66 of the following calendar year. The maximum scholarship amount given by the student
67 scholarship organization in any given year shall not exceed the average state and local
68 expenditures per student in fall enrollment in public elementary and secondary education

69 for this state. The Department of Education shall determine and publish such amount
70 annually, no later than January 1;

71 (1.1) In awarding scholarships or tuition grants, shall consider financial needs of students
72 based on all sources, including the federal adjusted gross income from the federal income
73 tax return most recently filed by the parents or guardians of such students, as adjusted for
74 family size. If the parents or guardians of a student have not filed a federal income tax
75 return in either of the two calendar years immediately preceding the year of application,
76 the student scholarship organization shall consider the financial need of the student based
77 on proof of employment income of the parents or guardians from the 30 consecutive days
78 closest to when the applicant submitted the scholarship application and on any other
79 sources of income, including, but not limited to, unemployment benefits, social security
80 benefits, and child support benefits;

81 (2) ~~Shall~~ ~~Must~~ maintain separate accounts for scholarship funds and operating funds.
82 Until obligated revenues are designated for specific student recipients, the student
83 scholarship organization shall hold the obligated revenues in a bank or investment
84 account owned by the student scholarship organization and over which it has complete
85 control; provided, however, that interest earned on deposits and investments of
86 scholarship funds and tuition grants shall be included in the calculation of the minimum
87 obligations provided for in paragraph (1) of this Code section;

88 (3) ~~Shall~~ ~~Must~~ have an independent board of directors with at least three members;

89 (4) May transfer funds to another student scholarship organization;

90 (5) Within 120 days after the completion of the student scholarship organization's fiscal
91 year, shall ~~Must~~ conduct an audit of its accounts by an independent certified public
92 accountant ~~within 120 days after the completion of the student scholarship organization's~~
93 ~~fiscal year~~ in accordance with generally accepted auditing standards verifying that it the
94 student scholarship organization has complied with all requirements of this ~~Code section~~
95 chapter, including, but not limited to, scholarship fund management requirements,

96 operational fund management requirements, other financial requirements, student
97 eligibility requirements, school qualification requirements, and other scholarship
98 management requirements. Within 60 days of completion of such audit, each Each
99 student scholarship organization shall provide a copy of such audit to the Department of
100 Revenue in accordance with Code Section 20-2A-3. Notwithstanding Code Sections
101 20-2A-7, 48-2-15, 48-7-60, and 48-7-61, if the copy of the audit submitted fails to verify
102 that the student scholarship organization obligated its annual revenue received from
103 donations for scholarships or tuition grants, including interest earned on deposits and
104 investments of such funds, as required under paragraph (1) of this Code section; that
105 obligated revenues were designated for specific student recipients within the time frame
106 required by paragraph (1) of this Code section; and that all obligated and designated
107 revenue distributed to a qualified school or program for the funding of multiyear
108 scholarships or tuition grants complied with all applicable Department of Revenue rules,
109 then the Department of Revenue shall post on its website the details of such failure to
110 verify. Until any such noncompliant student scholarship organization submits an
111 amended audit, which, to the satisfaction of the Department of Revenue, contains the
112 verifications required under this Code section, the Department of Revenue shall not
113 preapprove any contributions to the noncompliant student scholarship organization;
114 (5.1) In addition to the audit required by paragraph (5) of this Code section, in 2023, the
115 state auditor shall issue an economic analysis report on the performance of this tax credit
116 to the chairpersons of the House Committee on Ways and Means and the Senate Finance
117 Committee. An economic analysis shall include, but not be limited to, a good faith
118 estimate, on both a direct and indirect basis, as to the:

- 119 (A) Net change in state revenue;
- 120 (B) Net change in state expenditures, which shall include, but not be limited to, costs
121 of administering the tax credit;
- 122 (C) Net change in economic activity; and

- 123 (D) Net change in public benefit; and
- 124 (6) ~~Shall~~ Must annually submit notice to the Department of Education in accordance with
- 125 department guidelines of its participation as a student scholarship organization under this
- 126 chapter; provided, however, that the student scholarship organization shall immediately
- 127 notify the Department of Education if the Department of Revenue has temporarily or
- 128 permanently ceased preapproving contributions to the student scholarship organization
- 129 in accordance with the provisions of paragraph (5) of this Code section;
- 130 (7) Shall annually submit to the Department of Revenue a copy of its most recent Form
- 131 990 filed with the United States Internal Revenue Service; and
- 132 (8) Shall be solely responsible for verifying the eligibility of students for participation
- 133 in the program provided for in this chapter."

134 **SECTION 1-2.**

135 Said chapter is amended further by revising Code Section 20-2A-3, relating to taxation

136 reporting requirements for student scholarship organizations, as follows:

137 "20-2A-3.

138 (a) Each student scholarship organization ~~must~~ shall report annually to the Department of

139 Revenue, on a date determined by the Department of Revenue, subject to the time limits

140 provided for in paragraph (5) of Code Section 20-2A-2, and on a form provided by the

141 Department of Revenue, the following information:

142 (1) The total number and dollar value of individual contributions and tax credits

143 approved. Individual contributions shall include contributions made by those filing

144 income tax returns as a single individual or head of household and those filing joint

145 returns;

146 (2) The total number and dollar value of corporate contributions and tax credits

147 approved;

148 (3) The total number and dollar value of scholarships awarded to eligible students;

149 (4) The total number of scholarship recipients whose family's adjusted gross income
150 falls:

151 (A) Under 125 percent of the federal poverty level;

152 (B) Between 125 and 250 percent of the federal poverty level;

153 (C) Between 250 and 400 percent of the federal poverty level; and

154 (D) Above 400 percent of the federal poverty level;

155 (5) The average scholarship dollar amount by adjusted gross income category as
156 provided in paragraph (4) of this subsection; and

157 (6) A list of donors, including the dollar value of each donation and the dollar value of
158 each approved tax credit.

159 Such report shall also include a copy of the audit conducted pursuant to paragraph (5) of
160 Code Section 20-2A-2. The Department of Revenue shall post on its website the
161 information received from each student scholarship organization pursuant to paragraphs
162 (1) through (5) of this subsection and the report of the student scholarship organization's
163 most recent audit conducted pursuant to paragraph (5) of Code Section 20-2A-2 , except
164 that no information of confidential taxpayer information contained in such audit report
165 shall be posted or otherwise disclosed to the public by the Department of Revenue.

166 (b) Except for the allowable information included in the report of the audit conducted
167 pursuant to paragraph (5) of Code Section 20-2A-2 and the information reported pursuant
168 to paragraphs (1) through (5) of subsection (a) of this Code section, all information or
169 reports provided by student scholarship organizations to the Department of Revenue shall
170 be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and
171 48-7-61, whether it relates to the donor or the student scholarship organization."

PART II
SECTION 2-1.

174 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
175 imposition, rate, computation, and exemptions from state income taxes, is amended by
176 revising Code Section 48-7-29.16, relating to a qualified education tax credit, as follows:
177 "48-7-29.16.

178 (a) As used in this Code section, the term:

179 ~~(1)~~ (1) 'Business enterprise' means any insurance company or the headquarters of any
180 insurance company required to pay the tax provided for in Code Section 33-8-4.

181 ~~(1)(2)~~ (2) 'Eligible student' shall have the same meaning as in paragraph (1) of Code Section
182 20-2A-1.

183 ~~(2)(3)~~ (3) 'Qualified education expense' means the expenditure of funds by the taxpayer or
184 business enterprise during the tax year for which a credit under this Code section is
185 claimed and allowed to a student scholarship organization operating pursuant to Chapter
186 2A of Title 20 which are used for tuition and fees for a qualified school or program.

187 ~~(3)(4)~~ (4) 'Qualified school or program' shall have the same meaning as in paragraph (2) of
188 Code Section 20-2A-1.

189 ~~(4)(5)~~ (5) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
190 of Code Section 20-2A-1.

191 (b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter
192 for qualified education expenses as follows:

193 (1) In the case of a single individual or a head of household, the actual amount expended
194 or ~~\$1,000.00~~ \$2,500.00 per tax year, whichever is less;

195 (2) In the case of a married couple filing a joint return, the actual amount expended or
196 ~~\$2,500.00~~ \$5,000.00 per tax year, whichever is less; or

197 (3) Anything to the contrary contained in paragraph (1) or (2) of this subsection
198 notwithstanding, in the case of an individual who is a member of a limited liability
199 company duly formed under state law, a shareholder of a Subchapter 'S' corporation, or
200 a partner in a partnership, the amount expended or ~~\$10,000.00~~ \$25,000.00 per tax year,
201 whichever is less; provided, however, that tax credits pursuant to this paragraph shall
202 only be allowed for the portion of the income on which such tax was actually paid by
203 such member of the limited liability company, shareholder of a Subchapter 'S'
204 corporation, or partner in a partnership.

205 (c) A corporation or other entity shall be allowed a credit against the tax imposed by this
206 chapter for qualified education expenses in an amount not to exceed the actual amount
207 expended or 75 percent of the corporation's income tax liability, whichever is less.

208 (c.1) A business enterprise shall be allowed a credit against the tax imposed by Code
209 Section 33-8-4 in an amount equal to its qualified education expenses or 75 percent of the
210 business enterprise's state insurance premium tax liability owed pursuant to Code
211 Section 33-8-4, whichever is less; provided, however, that the amount of such credit shall
212 not exceed \$1 million.

213 (d)(1) The tax credit shall not be allowed if the taxpayer or business enterprise designates
214 ~~the taxpayer's~~ its qualified education expense for the direct benefit of any particular
215 individual, whether or not such individual is a dependent of the taxpayer or business
216 enterprise.

217 (2) In soliciting contributions, a student scholarship organization shall not represent, or
218 direct a qualified private school to represent, that, in exchange for contributing to the
219 student scholarship organization, a taxpayer or business enterprise shall receive a
220 scholarship for the direct benefit of any particular individual, whether or not such
221 individual is a dependent of the taxpayer or business enterprise. The status as a student
222 scholarship organization shall be revoked for any such organization which violates this
223 paragraph.

224 (e) In no event shall the total amount of the tax credit allowed to any taxpayer or business
225 enterprise under this Code section for a taxable year exceed ~~the~~ such taxpayer's income tax
226 liability or such business enterprise's state insurance premium tax liability owed pursuant
227 to Code Section 33-8-4, provided that any. ~~Any~~ unused tax credit shall be allowed the
228 taxpayer or business enterprise against ~~the~~ up to its succeeding five years' tax liability. No
229 such credit shall be allowed the taxpayer or business enterprise against prior years' tax
230 liability.

231 (f)(1) The aggregate amount of tax credits allowed under this Code section shall not
232 exceed:

233 (A) Fifty-eight million dollars for the tax year ending on December 31, 2018;

234 (B) One hundred million dollars for tax years beginning on January 1, 2019, and
235 ending on December 31, 2028; and

236 (C) Fifty-eight million dollars for the tax year beginning on January 1, 2029, and for
237 all subsequent tax years.

238 (1.1) In no event shall the aggregate amount of tax credits allowed under this Code
239 section to all business enterprises for state insurance premium tax liability owed pursuant
240 to Code Section 33-8-4 combined exceed 5 percent of the annual cap provided in
241 paragraph (1) of this subsection for any year.

242 (2) The commissioner shall allow the tax credits on a first come, first served basis.

243 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
244 organization shall notify a potential donor of the requirements of this Code section.
245 Before making a contribution to a student scholarship organization, the taxpayer or
246 business enterprise shall electronically notify the department, in a manner specified by
247 the department, of the total amount of contributions that the taxpayer or business
248 enterprise intends to make to the student scholarship organization. The commissioner
249 shall preapprove, deny, or prorate the requested amount within 30 days after receiving
250 the request from the taxpayer or business enterprise and shall provide notice to the

251 taxpayer or business enterprise and the student scholarship organization of such
252 preapproval, denial, or proration which shall not require any signed release or notarized
253 approval by the taxpayer or business enterprise. In order to receive a tax credit under this
254 Code section, the taxpayer or business enterprise shall make the contribution to the
255 student scholarship organization within 60 days after receiving notice from the
256 department that the requested amount was preapproved. If the taxpayer or business
257 enterprise does not comply with this paragraph, the commissioner shall not include this
258 preapproved contribution amount when calculating the limit prescribed in paragraph (1)
259 of this subsection or the additional limitation specific to business enterprises prescribed
260 in paragraph (1.1) of this subsection. The department shall establish a web based
261 donation approval process to implement this subsection.

262 (4) Preapproval of contributions by the commissioner shall be based solely on the
263 availability of tax credits subject to the aggregate total limit established under
264 paragraph (1) of this subsection or the additional limitation specific to business
265 enterprises prescribed in paragraph (1.1) of this subsection. The department shall
266 maintain an ongoing, current list on its website of the amount of tax credits available
267 under this Code section.

268 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
269 action against donors to student scholarship organizations if the commissioner
270 preapproved a donation for a tax credit prior to the date the student scholarship
271 organization is removed from the Department of Education list pursuant to Code Section
272 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to
273 the donor's compliance with paragraph (3) of this subsection.

274 (6) In addition to the reporting requirements in Code Section 20-2A-3, each student
275 scholarship organization shall file an annual report with the department showing any fees
276 or assessments retained by the student scholarship organization during the calendar year.

277 (g)(1) In order for the taxpayer to claim the student scholarship organization tax credit
278 under this Code section, a letter of confirmation of donation issued by the student
279 scholarship organization to which the contribution was made shall be attached to the
280 taxpayer's tax return or a business enterprise's tax return provided for in Code Section
281 33-8-6.

282 (2)(A) However, in the event the taxpayer files an electronic return permitted by this
283 chapter, such confirmation shall only be required to be electronically attached to the
284 return if the Internal Revenue Service allows such attachments when the data is
285 transmitted to the department. In the event the taxpayer files an electronic return and
286 such confirmation is not attached because the Internal Revenue Service does not, at the
287 time of such electronic filing, allow electronic attachments to the Georgia return, such
288 confirmation shall be maintained by the taxpayer and made available upon request by
289 the commissioner.

290 (B) With respect to a business enterprise's tax return provided for in Code Section
291 33-8-6, the Commissioner of Insurance is authorized to promulgate rules and
292 regulations regarding the manner in which such letters of confirmation of donations
293 shall be filed in the case of tax returns filed electronically.

294 (3) The letter of confirmation of donation shall contain the taxpayer's or business
295 enterprise's name, address, tax identification number, the amount of the contribution, the
296 date of the contribution, and the amount of the credit.

297 (h)(1) No credit shall be allowed under this Code section with respect to any amount
298 deducted from taxable net income by the taxpayer or business enterprise as a charitable
299 contribution to a bona fide charitable organization qualified under Section 501(c)(3) of
300 the Internal Revenue Code.

301 (2) The amount of any scholarship received by an eligible student or eligible
302 pre-kindergarten student shall be excluded from taxable net income for Georgia income
303 tax purposes.

304 (i) The commissioner shall be authorized to promulgate any rules and regulations
305 necessary to implement and administer the tax provisions of this Code section."

306

PART III

307

SECTION 3-1.

308 This Act shall become effective on July 1, 2021; provided, however, that Part II of this Act
309 shall become effective on January 1, 2022, and shall be applicable to all taxable years
310 beginning on or after January 1, 2022.

311

SECTION 3-2.

312 All laws and parts of laws in conflict with this Act are repealed.