SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number:	S. 0285 Amended by Senate Finance K-12 Subcommittee on February 14, 2023
Author:	Davis
Subject:	Providing Academic Choice in Education (PACE)
Requestor:	Senate Finance
RFA Analyst(s):	Jolliff and Tipton
Impact Date:	February 21, 2023

Fiscal Impact Summary

This bill as amended adds Article 26 to Chapter 6, Title 12 to establish Academic Choice in Education. The bill creates scholarship funding programs for primary and secondary education and establishes tax credits for taxpayers who contribute to a scholarship funding organization. The bill repeals the Educational Credit for Exceptional Needs Children in Section 12-6-3790 upon full implementation of the bill in the 2024-25 school year.

This bill is expected to increase expenses for the State Treasurer's Office (STO) by $386,850 in FY 2023-24, and $366,850 in each year thereafter for 3.0 FTEs to administer the nonprofit scholarship funding program, as well as administrative, IT, executive costs, and travel for outreach, education, and technical assistance. The office indicated that additional General Fund appropriations would be requested to cover the increase in expenses. STO provided the potential impact on the agency based on the responsibilities outlined in the bill as introduced, which included similar requirements. We anticipate the expenditure impact for STO will largely remain the same but will update this impact statement if there are substantive changes in STO's response.

This bill will have an undetermined impact on the Administrative Law Court (ALC), as the court indicated that additional staff may be needed to comply with the bill's requirement that an ALC judge must hold a hearing within seven days of an organization's request. However, the number of additional cases filed with the court requiring a hearing within seven days is currently unknown.

This bill will have no impact on the Education Oversight Committee (EOC) as the current Exceptional Needs Scholarship Program is managed by existing staff with no additional funding, and therefore, this bill's elimination of that program in FY 2024-25 will not prompt any expenditure savings.

This bill is not expected to impact expenditures for the Department of Revenue (DOR), as the agency will continue responsibility for allocating the new credits on a first-come, first-served basis. Any updates for forms will be accomplished with existing staff and resources.

The bill creates new tax credits totaling up to $55,000,000 and eliminates the current Exceptional Needs tax credits beginning in FY 2024-25, which are currently capped at $12,000,000. Taxpayers may claim up to their total tax liability and any unused credit may be carried forward for the next ten tax years. The expansion of eligible children for scholarships beyond the current exceptional needs program may expand interest in donating to the programs. Additionally, whereas currently statute creates one scholarship funding nonprofit organization, Exceptional SC, this bill allows for multiple scholarship funding organizations so long as they follow the organizational restrictions in the bill. This may increase the number of entities that raise money and solicit donations and could potentially impact the overall amount of donations received. Lastly, since the new credit is for up to 100 percent of a taxpayer's liability, as opposed to 75 percent, this may accelerate use of the tax credits.

Given the significant changes to the program, it is unclear how this may impact donations and the resulting tax credits. While it is unlikely that the total tax credits will reach the limit, particularly in the first year, there is potential to exceed the current $12,000,000 limit. Based on other state's experiences and until additional data on program utilization are available, anticipating that the full credit limit will be reached is prudent. Subtracting the current $12,000,000 Exceptional Needs credit limit from the potential new credits of $55,000,000 results in a potential General Fund revenue impact of up to $43,000,000 on individual income, corporate income, and bank taxes beginning in FY 2024-25.

Explanation of Fiscal Impact

Amended by Senate Finance K-12 Subcommittee on February 14, 2023
State Expenditure
This bill adds Article 26 to Chapter 6, Title 12 to establish Academic Choice in Education. The bill creates scholarship funding programs for primary and secondary education and establishes tax credits for taxpayers who contribute to a scholarship funding organization. The bill repeals the Educational Credit for Exceptional Needs Children in Section 12-6-3790 upon full implementation of the new program in 2024-25.

Currently, Exceptional SC, a non-profit organization established under the current Exceptional Needs statute, administers the program to provide tax credits to exceptional needs children. DOR is responsible for establishing an application process to determine the amount of credit available under the limits and ensuring that total tax credits do not exceed the limits. DOR also provides an annual report to the General Assembly regarding the allocation of scholarship funds and tax credits. The EOC is responsible for approving eligible independent schools that may participate in the program, collecting information from the independent schools on student achievement, and reporting to the General Assembly on the impact of the Educational Credit for Exceptional Needs Children Program on student achievement.

State Treasurer's Office. This bill as amended eliminates the current administration of the Exceptional Needs scholarship program by the EOC and establishes a new scholarship funding program administered by STO for general, exceptional needs, disadvantaged, and home-school children as defined by the bill. The bill establishes requirements of the office in the administration of the program, including the regulation of nonprofit scholarship funding organizations, development and administration of the scholarship application process, and coordination with DOR for the development of the tax credit application to claim tax credits and provide public notice of tax credits. STO is further required to publish information regarding the approved nonprofit scholarship funding organizations on its website, and must provide an annual financial report of the organizations to the Chairman of the Senate Finance Committee, Chairman of the House Ways and Means Committee, and the Governor. The scholarship funding program will take effect beginning with the 2024-2025 academic term, with STO undertaking and executing the responsibilities of the act upon approval by the Governor.

Under the bill's introduced version, which established similar requirements of the office, STO indicated that 3.0 additional FTEs would be needed to administer the scholarship funding program established by the bill. The office reported that 1.0 Program Manager II with annual salary and fringe of $113,200 would be required for oversight of the program, 1.0 Program Coordinator II with annual salary and fringe of $84,900 would be needed for eligibility determination and compliance, and 1.0 Program Coordinator I with annual salary and fringe of $70,750 would be needed as a program liaison for participants and partner agencies. Additionally, the office indicated that annual administrative, IT, and executive costs would be $75,000, annual office supplies and IT equipment costs would be $8,000, office space would cost $10,000 annually, and travel for outreach, education, and technical assistance would cost $5,000 annually. STO indicated that the initial purchase of IT equipment and office furniture would result in a non-recurring expense of $20,000. In total, the introduced version of the bill would increase expenses for STO by $386,850 in FY 2023-24, and $366,850 in each year thereafter. The office indicated that additional General Fund appropriations would be requested to cover the increase in expenses.

STO provided the potential impact on the agency based on the responsibilities outlined in the bill as introduced, which provided similar requirements. We anticipate the expenditure impact for STO will largely remain the same but will update this impact statement if there are substantive changes in STO's response.

Department of Revenue. This bill as amended is not expected to impact expenditures for DOR. The agency allocates the current credits based on applications. DOR will maintain responsibility for allocating the tax credits in the new statute on a first-come, first-served basis. Any updates for forms will be accomplished with existing staff and resources.

Administrative Law Court. This bill as amended allows a nonprofit scholarship funding organization whose participation in the program was revoked by STO or DOR to request a contested hearing before the ALC within thirty days of the revocation. An ALC judge must hold the hearing within seven days of the organization's request and determine whether the revocation was reasonable. Under this bill revocation of an organization by STO or DOR is reasonable if the department has substantial credible evidence that the organization is not being operated in a manner consistent with requirements for nonprofits, or is not in compliance with other substantial provisions of this section. Upon determining whether the revocation was reasonable, an administrative law judge is required to remand the case to STO or DOR to issue a determination for permanent revocation within the time period set by the judge. The organization may appeal within thirty days of the administrative judge's determination and parties may raise new issues and arguments.

ALC indicated that the bill could result in the need for additional staff, under the requirement that an ALC judge must hold a hearing within seven days of an organization's request. Absent this provision, any additional cases could be managed with existing resources. As the number of additional cases filed with the court requiring a hearing within seven days as a result of the bill are unknown, this bill will have an undetermined expenditure impact on ALC.

Education Oversight Committee. This bill as amended repeals the current Exceptional Needs Scholarship program administered by EOC upon the implementation of the new program by STO, and thereby will eliminate various statutory requirements of the EOC. EOC reported that the duties required by the Exceptional Needs Program have been integrated with no additional funding through the agency's current Administrative Coordinator and thus the bill's elimination of that program will not prompt any expenditure savings. Therefore, this bill will have no expenditure impact on the EOC.

State Revenue

This bill as amended creates a new education scholarship program and new tax credits for taxpayers who contribute to a scholarship funding organization. The bill repeals the Educational Credit for Exceptional Needs Children in Section 12-6-3790 in FY 2024-25 upon full implementation of the new scholarship program.

Currently, taxpayers may earn a non-refundable tax credit for a donation to Exceptional SC. These credits are capped at $12,000,000 per year. Donations are used to award a grant for a qualifying exceptional needs student to attend an eligible school. Grants may be awarded in an amount not exceeding $11,000 or the total annual cost of tuition, whichever is less, to a qualifying student at an eligible school. Taxpayers may claim the credit for up to 75 percent of their total tax liability, and unused credits may be carried forward for three tax years.

Additionally, a taxpayer may claim a refundable tax credit, not exceeding $11,000 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. The refundable tax credits may not exceed $2,000,000 per year. However, as amended in Act 79 of 2021, if less than $12,000,000 is authorized for the non-refundable tax credits, then the maximum cumulative total refundable tax credits may be increased by up to $3,000,000. The table below shows the total credits earned annually since 2019.

Educational Credit for Exceptional Needs Children in Section 12-6-3790

Year	Donation Nonrefundable Credits	Parental Refundable Credits	Total
2019	$4,547,101.10	$2,000,000	$6,547,101.10
2020	$4,095,107.80	$2,000,000	$6,095,107.80
2021	$5,476,184.67	$5,000,000	$10,476,184.67
2022(e)	$3,066,903.43	$5,000,000	$8,066,903.43

The bill creates new tax credits and repeals the current credits in FY 2024-25. The bill creates a tax credit that may be claimed against income taxes or bank taxes for a donation to a nonprofit scholarship funding organization. The donations must be used to provide scholarships to eligible students. Credits may be claimed for up to 100 percent of a taxpayer's liability and may be carried forward for the next ten tax years. Credits must be awarded by DOR on a first-come, first-served basis.

To be eligible to receive a scholarship, a student must meet the definition of general child, disadvantaged child, exceptional needs child, or home school child. The bill provides the following definitions:

- "General child" means a child who is a South Carolina resident who, immediately before receiving a scholarship under this section and enrolling in an eligible school or program, was enrolled in a South Carolina secondary or primary public school or who is eligible to enroll in a qualified first grade, kindergarten, or prekindergarten program or received a scholarship pursuant to this chapter for the previous school year; provided, however, that if a student is considered to be an eligible student pursuant to this item, he shall continue to qualify as such until he graduates, reaches the age of twenty, or returns to a public school, whichever occurs first.

  This provision would encompass any child enrolled in a public school, or approximately 759,000 students, and students enrolling in first grade, kindergarten, or a prekindergarten program.

- "Disadvantaged child" means a child or their family who meets the qualifications for federal Medicaid benefits, or whose family has an annual adjusted gross income of two hundred percent or less of the federal poverty guidelines as promulgated annually by the United States Department of Health and Human Services.

  For FY 2022-23, approximately 464,145 students in public schools, or 61.1 percent, were categorized as pupils in poverty based on student reporting for State Aid to Classrooms.

- "Exceptional needs child" means a child:
  - (a)(i) 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
    - (ii) who has been diagnosed as either permanently or 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; and
    - (b) the child's parents or legal guardian believes that the services provided by the school district of legal residence do not sufficiently meet the needs of the child.

    For FY 2022-23, approximately 103,646 students in public schools, or 13.6 percent, were categorized as having some form of special educational need based on student reporting for State Aid to Classrooms.

- "Home school child" means any child attending an eligible home school.
    - "Home school" means a home, residence, or location where a parent or legal guardian teaches one or more children as authorized pursuant to Section 59-65-40, 59-65-45, or 59-65-47

    For FY 2022-23, RFA estimates there are approximately 30,807 home school students.

The amount of the scholarship a student may receive depends on the student's qualifying category. For a general child, the amount may not exceed the actual state allocated revenue per pupil as calculated by RFA published in the annual appropriations act or the total amount of qualifying expenses, whichever is less. A disadvantaged or exceptional needs child may receive a scholarship in an amount not exceeding 140 percent of the amount for a general child or the total qualifying expenses, whichever is less. A home school child may receive an amount of 20 percent of the amount for a general child. For FY 2022-23, the state revenue per pupil was estimated to be $7,694 as published in the appropriations act. Historically, growth in state revenue per pupil has averaged approximately 4.7 percent in the most recent 5 years. Using this growth rate, we have estimated the potential scholarship levels. However, actual levels will depend on annual appropriations and funding decisions.

Estimated FY 2024-25 Scholarship Levels

General Child	Disadvantaged or Exceptional Child	Home School Child
$8,428	$11,800	$1,686

The amount of the tax credits is limited to a total of $15,000,000 for each qualifying category of general child, disadvantaged child, and exceptional needs child in each calendar year, for a total of $45,000,000. Further, credits for eligible students in the home school child category may not exceed a total of $10,000,000 each calendar year. In total, credits may not exceed $55,000,000 in a calendar year. However, if one of the eligible student qualifying categories reaches its limits but another category has not reached its limit by October first of each tax year, then DOR may transfer the unused credits to the eligible student qualifying category that has reached its limit. Taxpayers may claim up to their total tax liability and any unused credit may be carried forward for the next ten tax years.

The expansion of eligible children may expand interest in donating to the programs. Additionally, whereas currently statute creates one scholarship funding nonprofit organization, Exceptional SC, this bill allows for multiple scholarship funding organizations so long as they follow the organizational restrictions in the bill. This may increase the number of entities that raise money and solicit donations and could potentially impact the overall amount of donations received. Lastly, since the new credit is for up to 100 percent of a taxpayer's liability, this may accelerate use of the tax credits.

Florida has a tax credit scholarship program for families that have limited financial resources. Florida's program provides tax credits for corporations as well as credits against insurance premium taxes, severance taxes on oil and gas production, and other similar taxes. In 2021-22, 85,612 students received a scholarship. Scholarship funding totaled $568,796,783.[1] Based on Census population age 5-17, South Carolina's student population is about 26.2 percent of the size of Florida's student population. If South Carolina generated a similar level of scholarship funding, this amount would total approximately $149,086,000 based on student-age population.

Given the significant changes to the program, it is unclear how this may impact donations and the resulting tax credits. The expansions in the program to include additional students and allow more scholarship funding organizations are likely to encourage additional donations beyond the current levels. While it is unlikely that the total tax credits will reach the limit, particularly in the first year, there is potential to exceed the current $12,000,000 limit. Based on other state's experiences and until additional data on program utilization are available, anticipating that the full credit limit will be reached is prudent. Subtracting the current $12,000,000 Exceptional Needs credit limit from the potential new credits of $55,000,000 results in a potential General Fund revenue impact of up to $43,000,000 on individual income, corporate income, and bank taxes beginning in FY 2024-25. Any unused credit can be carried forward for the next ten tax years.

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[1] https://www.fldoe.org/schools/school-choice/facts-figures.stml

Local Expenditure
N/A

Local Revenue
N/A

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