

1 COMMITTEE REPORT

2 May 17, 2011

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4 **H. 3407**

5  
6 Introduced by Reps. Herbkersman, Owens, Quinn, Simrill, Stringer, Bedingfield, Barfield, Bowen,  
7 Clemmons, Corbin, Delleney, Hamilton, Hardwick, Harrison, Henderson, Hixon, Limehouse, Loftis,  
8 Long, Lowe, McCoy, D.C. Moss, Murphy, Nanney, Patrick, Pitts, Ryan, G.M. Smith, G.R. Smith,  
9 J.R. Smith, Sottile, Taylor, Viers, Crawford, Spires, Tribble, Lucas and Brantley

10  
11 S. Printed 5/17/11--H.

12 Read the first time January 20, 2011.

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14  
15 **THE COMMITTEE ON WAYS AND MEANS**

16 To whom was referred a Bill (H. 3407) to amend the Code of Laws of South Carolina, 1976, to enact  
17 the "Educational Opportunity Act" by adding Article 6 to Chapter 63, Title 59 so as to provide, etc.,  
18 respectfully

19 **REPORT:**

20 That they have duly and carefully considered the same and recommend that the same do pass with  
21 amendment:

22  
23 Amend the bill, as and if amended, by striking all after the enacting words and inserting:

24 / SECTION 1. This act may be cited as the "South Carolina Educational Opportunity Act".

25 SECTION 2. (A) The General Assembly finds:

26 (1) it has the inherent power to determine subjects of taxation for general or particular public  
27 purposes;

28 (2) expanding educational opportunities and improving the quality of educational services within  
29 the State are valid public purposes that the General Assembly may promote using its sovereign power to  
30 determine subjects of taxation and exemptions from taxation;

31 (3) ensuring that all parents, regardless of means, may exercise and enjoy their basic right to  
32 educate their children as they see fit is a valid public purpose that the General Assembly may promote  
33 using its sovereign power to determine subjects of taxation and exemptions from taxation;

34 (4) expanding educational opportunities and the healthy competition they promote are critical to  
35 improving the quality of education in the State and ensuring that all children receive the highquality  
36 education to which they are entitled; and

37 (B) The purpose of this article is to:

38 (1) allow maximum freedom to parents and independent schools to respond to and provide for the  
39 educational needs of children without governmental control, and this act must be liberally construed to  
40 achieve that purpose;

41 (2) enable taxpayers to make private, voluntary contributions to nonprofit scholarship funding  
42 organizations in order to promote the general welfare;

43 (3) provide taxpayers who wish to help parents with limited resources exercise their basic right to  
44 educate their children as they see fit with a means to do so;

45 (4) promote general welfare by expanding educational opportunities for children of families that  
46 have limited financial resources;

47 (5) enable children in this State to achieve a greater level of excellence in their education;

48 (6) improve the quality of education in this State, both by expanding educational opportunities for  
49 children and by creating incentives for schools to achieve excellence; and

50 (7) enable taxpayers to receive an income tax credit for a portion of tuition paid for a qualifying  
51 student to attend an independent school.

52 SECTION 3. Chapter 63, Title 59 of the 1976 Code is amended by adding:

53 "Article 6

Educational Opportunity Act

Section 5963610. As used in this article:

(1) 'Department' means the Department of Revenue.

(2) 'Independent school' means a school, other than a public school, at which the compulsory attendance requirements of Section 596510 may be met and that does not discriminate based on the grounds of race, color, or national origin. For purposes of this article, 'independent school' does not include a home where a parent or legal guardian teaches one or more children as authorized pursuant to Sections 596540, 596545, or 596547.

(3) 'Nonstudentbased perpupil state funding' means all projected state expenditures to local public school districts not directly related to the number of students, divided by the total projected pupil count in those districts.

(4) 'Owner or operator' includes:

(a) an owner, president, officer, or director of an eligible nonprofit scholarship funding organization or a person with equivalent decision making authority over an eligible nonprofit scholarship funding organization; and

(b) an owner, operator, superintendent, or principal of an eligible independent school or a person with equivalent decision making authority over an eligible independent school.

(5) 'Parent' means the natural or adoptive parent or legal guardian of a child.

(6) 'Public school' means a public school in the State as defined in Section 591120.

(7) 'Qualifying student' means a student who is a South Carolina resident and who was enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the preceding school year or who is eligible to enroll in a qualified fiveyearold kindergarten program. Qualifying student, for purposes of scholarship eligibility pursuant to the provisions of this chapter, also means a student who received a scholarship pursuant to Section 5963620 for the previous academic year and who continues to meet the eligibility requirements in Section 5963620(A)(1)(2).

(8) 'Receipt' means a document developed by the Department of Revenue that is issued by the receiving school to a person who makes a tuition payment on behalf of a qualifying student and that contains, at a minimum:

(a) the name and address of the school;

(b) the name, social security number, and address of the qualifying student for whom the tuition has been paid; and

(c) the name of the payer and the date and amount of tuition paid.

(9) 'Receiving school' means an independent school which the qualifying student seeks to attend.

(10) 'Resident public school district' means the public school district in which a student resides.

(11) 'Release of information form' means a document developed by a receiving school which is signed by the parent or guardian of a qualifying student and which acknowledges the consent of the parent or guardian to release of information contained in the receipt.

(12) 'Scholarship receipt' means a document developed by the Department of Revenue that is issued by the student scholarship organization to a corporation or a person who makes a contribution to a student scholarship organization.

(13) 'State' means the state of South Carolina.

(14) 'Studentbased perpupil state funding' means the sum of projected allocations from all state sources to local districts that are directly related to the number of students, divided by the total projected pupil count in those districts.

(15) 'Student scholarship organization' means a charitable organization incorporated or qualified to do business in this State that:

(a) is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code;

(b) complies with the applicable state and federal antidiscrimination provisions; and

(c) is registered with the Office of the Secretary of State.

(16) 'Total perpupil state funding' means the total projected state expenditures to local public school districts divided by the total projected pupil count in those districts.

1 (17) 'Tuition' means the total amount of money charged for the cost of a qualifying student to attend an  
2 independent school including, but not limited to, fees for attending the school and schoolrelated  
3 transportation.

4 Section 5963620. (A) A qualifying student is eligible to receive a scholarship to attend an  
5 independent school in this State if the student transfers to an independent school or enters kindergarten at  
6 an independent school and:

7 (1) has a household income that qualifies the student to receive free or reduced meals pursuant to  
8 the Richard B. Russell National School Lunch Act, 7 C.F.R. Part 245, or that qualifies the student's family  
9 to receive Medicaid; and

10 (2) is not a student for whom a taxpayer has received a tax credit pursuant to Section 5963623.

11 (B) The value of scholarships given to a qualifying student who meets the criteria provided in  
12 subsection (A) may not exceed the greater of:

13 (1) fifty percent of the state's total projected allocation to the resident public school district of the  
14 student, divided by the projected average daily membership of the resident public school district; or

15 (2) the statewide base student cost as defined in Section 592020.

16 (C) For purposes of this section, the state's total projected allocation to the local public school district  
17 includes both general fund and nongeneral fund allocations, including, but not limited to, restricted state  
18 grants, unrestricted grants, the Education Finance Act (EFA), the Education Improvement Act (EIA),  
19 education lottery revenue, state revenue in lieu of taxes, and other state revenue.

20 Section 5963623. (A) Beginning in the 20112012 school year, a person who files a state income tax  
21 return and who is not a dependent of another taxpayer may claim a tax credit for the tuition paid by that  
22 person for a qualifying student who is not receiving a scholarship pursuant to Section 5963620 to attend  
23 an independent school in an amount not to exceed the greater of:

24 (1) fifty percent of the State's total projected allocation to the resident public school district of the  
25 student, divided by the projected average daily student membership of that school district; or

26 (2) the statewide base student cost.

27 (B) For purposes of this section, the state's total projected allocation to the local public school district  
28 includes both general fund and nongeneral fund allocations, including, but not limited to, restricted state  
29 grants, unrestricted grants, the Education Finance Act (EFA), the Education Improvement Act (EIA),  
30 education lottery revenue, state revenue in lieu of taxes, and other state revenue.

31 (C) In no event may the total amount of the tax credit exceed the amount of actual tuition paid on  
32 behalf of the qualifying student.

33 (D) Beginning with the 20122013 school year and for every school year thereafter, a person who files  
34 a state income tax return and who is not a dependent of another taxpayer may claim a tax credit as  
35 provided in subsection (A) for tuition paid by that person for the qualifying student for whom the tax  
36 credit was initially taken pursuant to subsection (A) who continues to be enrolled in an independent  
37 school and who is not receiving a scholarship pursuant to Section 5963620.

38 (E) A tax credit may not be claimed without a receipt issued by the department.

39 (F) For a student for whom tuition is paid to attend an independent school for which a tax credit is  
40 claimed pursuant to this section and whose enrollment in the independent school is terminated for any  
41 reason during the academic year, the independent school shall notify the department so that no tax credit  
42 may be taken for any tuition paid on behalf of the student.

43 (G) A tax credit may not be claimed for a student who is receiving a scholarship pursuant to Section  
44 5963620.

45 Section 5963624. (A) The State Budget and Control Board, Office of Research and Statistics  
46 annually shall calculate the savings to the State derived from the provisions of this article. The amount of  
47 savings per qualifying student is equal to the amount of the studentbased perpupil state funding which  
48 would otherwise go to that qualifying student's resident public school district, less the value of the tax  
49 credits taken pursuant to Section 5963623 or the value of the scholarship given pursuant to Section  
50 5963620 issued to the qualifying student.

51 (B) Beginning with the 20142015 school year and thereafter, a credit provided in this section must be  
52 available to all persons not otherwise eligible under Section 5963623 for any student who is not eligible  
53 for a scholarship under Section 5963620 or who is not a qualifying student for whom a taxpayer has  
54 received a tax credit under Section 5963623 to attend an independent school notwithstanding the

1 limitation contained in Section 5963610(7). The total amount of funds available for taxpayers to take  
2 advantage of this credit pursuant to this subsection must be capped at eighty percent of the aggregate  
3 amount of the savings for all qualifying students, as calculated in subsection (A), and determined by the  
4 State Budget and Control Board Office of Research and Statistics pursuant to Section 5963650(A)(5). The  
5 amount of the credit available for each student under this section may not exceed fifty percent of the  
6 State's total projected allocation to the resident public school district of the student, divided by the  
7 projected average daily membership of the resident public school district.

8 (C) The State Budget and Control Board Office of Research and Statistics annually shall certify the  
9 amount of the credit per student based upon the amount of savings as calculated in subsections (A) and  
10 (B), divided by the number of eligible students then enrolled in independent schools who are not already  
11 receiving a tax credit under Section 5963623 or a scholarship under Section 5963620.

12 Section 5963625. (A) Beginning with the 20112012 school year, a parent or legal guardian who  
13 teaches one or more qualifying students at home as authorized pursuant to Section 596540, 596545, or  
14 596547 may take a tax credit of up to one thousand dollars per home school student for instructionrelated  
15 expenditures. For the first year a tax credit is claimed pursuant to this section, the taxpayer shall attach to  
16 his state tax return the previous year's attendance record at a South Carolina public school or the record of  
17 birth for the student for whom the credit is claimed.

18 (B) Beginning with the 20122013 school year and for every school year thereafter, a person who files  
19 a state income tax return and who is not a dependent of another taxpayer may claim a tax credit as  
20 provided in subsection (A) for instructionrelated expenditures paid by that person for the qualifying  
21 student for whom the tax credit was initially taken pursuant to subsection (A) who continues to be taught  
22 at home. For any year after the first year a taxpayer claims a credit pursuant to this section, the taxpayer  
23 shall attach the school attendance or birth record described in Section 5963625(A) and the previous year's  
24 state tax return indicating the claim for credit to the current year's tax return.

25 Section 5963630. (A) An independent school that accepts students pursuant to this article shall:

- 26 (1) be included on a list of eligible schools published by the Education Oversight Committee;
- 27 (2) comply with state and federal antidiscrimination laws;
- 28 (3) meet state and local health and safety laws and codes;
- 29 (4) comply with state statutes relating to independent schools, including the compulsory school  
30 attendance requirements provided in Section 596510;
- 31 (5) employ or contract with teachers who hold a baccalaureate or higher degree, have at least three  
32 years of teaching experience in a public or independent school, or have special skills, knowledge, or  
33 expertise that qualify them to provide instruction in subjects taught;
- 34 (6) be academically accountable to the parent or guardian for meeting the education needs of the  
35 student;
- 36 (7) administer to students a nationally recognized achievement test and report the school's  
37 aggregate score to all parents in accordance with Section 5963633;
- 38 (8) accept scholarship students who meet the admissions criteria of the school within the school's  
39 capacity to accept additional students;
- 40 (9) have a physical location in the State in which the students attend classes;
- 41 (10) verify student enrollment and attendance for the previous year pursuant to the issuance of a tax  
42 credit receipt;
- 43 (11) be in operation for three years or post a surety bond or letter of credit equal to two hundred fifty  
44 thousand dollars;
- 45 (12) be a member in good standing of South Carolina Association of Christian Schools, South  
46 Carolina Independent Schools Association, or Southern Association of Colleges and Schools;
- 47 (13) annually contract with an independent certified public accountant to perform the accounting  
48 procedures as required by this section;
- 49 (14) participate, through the independent schools associations, with student scholarship  
50 organizations, in the joint development of procedures to be performed by an independent certified public  
51 accountant as required by this section, if the school received more than one hundred thousand dollars in  
52 scholarship funds from student scholarship organizations in the preceding fiscal year. These procedures  
53 uniformly must apply to all independent schools and must determine, at a minimum, whether the  
54 independent school has been verified as eligible by the Education Oversight Committee pursuant to

1 Section 5963661; has an adequate accounting system, system of financial controls, and process for  
2 deposit and classification of scholarship funds; and has properly expended scholarship funds for  
3 educationrelated expenses. During the development of the procedures, the participating scholarship  
4 funding organizations shall specify guidelines governing the materiality of exceptions that may be found  
5 during the accountant's performance of the procedures. The procedures and guidelines must be provided  
6 to independent schools and the Education Oversight Committee by June first of each year;

7 (15) participate in a joint review of the procedures and guidelines developed pursuant to item (14) by  
8 August 1, 2012, and biennially thereafter, if the school received more than one hundred thousand dollars  
9 in scholarship funds pursuant to this section during the state fiscal year preceding the biennial review. If  
10 the procedures and guidelines are revised, the revisions must be provided to independent schools and the  
11 Education Oversight Committee by August 15, 2012, and biennially thereafter; and

12 (16) produce a report of the results of the procedures required in item (14) if the independent school  
13 receives more than one hundred thousand dollars in funds from scholarships awarded pursuant to this  
14 section in the preceding state fiscal year or a state fiscal year thereafter. An independent school subject to  
15 the provisions of this item shall submit the report by July first of the first full year of participation and  
16 annually thereafter to the scholarship funding organization that awarded the majority of the school's  
17 scholarship funds. The procedures must be conducted in accordance with attestation standards  
18 established by the American Institute of Certified Public Accountants.

19 (B) The inability of an independent school to meet the requirements of this section constitutes a basis  
20 for the ineligibility of the independent school to participate in the scholarship program as determined by  
21 the Education Oversight Committee.

22 Section 5963633. To ensure that schools provide academic accountability to parents of students,  
23 receiving schools annually shall administer the Palmetto Assessment of State Standards (PASS) test or its  
24 equivalent or a nationally recognized norm referenced test including, but not limited to, the Stanford  
25 Achievement Test or the Iowa Test of Basic Skills or other test certified by any other state to meet public  
26 school testing requirements under federal law, in the areas of mathematics and language arts to each  
27 student participating in the program. Receiving schools publicly shall disclose the aggregate results of  
28 the tests by grade level, but only if the disclosure of the aggregate results complies with 20 U.S.C. Section  
29 1232g, Family Educational Rights and Privacy Act of 1974, and shall provide the parents of each student  
30 with a copy of the results. Receiving schools also shall provide aggregate results by grade level to the  
31 Chairman of the House Education and Public Works Committee, the Senate Education Committee, the  
32 Education Oversight Committee, and the Governor no later than August thirtyfirst of the school year in  
33 which the tests are administered.

34 Section 5963647. The department may promulgate regulations to aid in the performance and  
35 assessment of its duties pursuant to this article; however, its power does not extend to matters of school  
36 governance, curriculum, hiring or firing, or religious beliefs or practices.

37 Section 5963648. The department may conduct examinations and investigations when it believes that  
38 the provisions of this article have been evaded or violated. All powers possessed by the department  
39 provided in Title 12 to conduct examinations and investigations apply to examinations and investigations  
40 conducted pursuant to this section.

41 Section 5963650. (A) The State Budget and Control Board, Office of Research and Statistics  
42 annually shall provide for the preparation of a report on the fiscal impact of the implementation of this  
43 article on school enrollment and state and local funding of public schools for the fiscal year most recently  
44 completed. The report must include, but may not be limited to, an analysis of and statement on the:

45 (1) change in public school enrollment, by school district, attributable to this article;

46 (2) amount of funds the State would have had to expend for public schools under all education  
47 funding formulas in existence on or before the enactment of this article and the amount actually expended  
48 by the State in public schools;

49 (3) amount of all federal and locally raised revenue, calculated on a per student basis, retained by  
50 the local school district for each student participating in the scholarship program who is not attending a  
51 public school;

52 (4) impact of the provisions of this article on teacher/pupil ratios in schools in which students have  
53 transferred as well as the need for construction of new schools; and

(5) calculation of savings to the state general fund as a result of the implementation of this article according to the provisions of Section 5963623.

(B) The report must be submitted by December first of each year to the Governor, the Chairman of the Senate Finance Committee, the Chairman of the Senate Education Committee, the Chairman of the House Ways and Means Committee, the Chairman of the House Education and Public Works Committee, the Board of Economic Advisors, the Education Oversight Committee, and the School Choice Trust Fund.

Section 5963655. (A)(1) The Education Oversight Committee, in coordination with the Department of Education, shall provide for a longterm evaluation of the impact of this article. The evaluation must be conducted by contract with one or more qualified persons or entities with previous experience evaluating school choice programs. The evaluation must be conducted every five years; however, the first evaluation must be conducted to study the first three years of the impact of this article and must be completed by December 15, 2014. The evaluation must include an assessment of the:

(a) level of satisfaction of parents of students participating in the scholarship program provided in this article;

(b) level of satisfaction of parents of students in demographically similar public schools;

(c) academic performance of receiving independent schools and demographically similar public schools;

(d) level of student satisfaction with the scholarship program provided in this article;

(e) level of student satisfaction for students attending demographically similar public schools;

(f) impact of the provisions of this article on public school districts, public school students, independent schools, and independent school students;

(g) impact of the provisions of this article on independent school and public school capacity, availability, and quality; and

(h) cumulative savings to the state as calculated pursuant to Section 5963624.

(2) The evaluation must be conducted using appropriate analytical and behavioral science methodologies and must protect the identity of participating schools and students by, at a minimum, keeping anonymous all disaggregated data other than that for the categories of grade, gender, race, and ethnicity. The evaluation of public and independent school students must compute the relative efficiency of public and independent schools, the value added to educational performance by independent schools relative to failing public schools, and a comparison of acceptance rates into college, while adjusting or controlling for student and family background.

(B) State and local government entities shall cooperate with the persons or entities conducting the evaluation provided in subsection (A). Cooperation includes providing available student assessment results and other information needed to complete the evaluation.

(C) Upon completion of the evaluation, the Education Oversight Committee shall provide copies of the report to each member of the General Assembly. At the same time as the report is made public, the persons or entities who conducted the evaluation must make their data and methodology available for public review and inspection, but only if the release of the data and methodology complies with 20 U.S.C. Section 1232g, Family Educational Rights and Privacy Act of 1974.

Section 5963660. The provisions of this article regarding independent schools and their relation to student scholarship organizations apply only to independent schools that choose to accept scholarship students.

Section 5963661. The Education Oversight Committee shall:

(1) submit annually, by March fifteenth, a list of eligible nonprofit scholarship funding organizations that meet the requirements of Section 5963631;

(2) verify annually the eligibility of nonprofit scholarship funding organizations that meet the requirements of Section 5963631;

(3) verify annually the eligibility of independent schools that meet the requirements of Section 5963630;

(4) verify annually the eligibility of expenditures as provided in Section 5963631 using the audit required by Section 5963631(10);

(5) require an annual, notarized, sworn compliance statement by participating independent schools certifying compliance with state laws and retain those records;

(6) select an independent research organization, which may be a public or private entity or university, to which participating independent schools shall report the scores of participating students on the nationally normreferenced test administered by the independent school in grades three through ten;

(a) the independent research organization annually shall report to the Education Oversight Committee and the Department of Education on the yeartoyear learning gains of participating students:

(i) on a statewide basis, the report also must include, to the extent possible, a comparison of these learning gains to the statewide learning gains of public school students with socioeconomic backgrounds similar to those of students participating in the scholarship program; and

(ii) according to each participating independent school in which there are at least thirty participating students who have scores for tests administered during or after the 20112012 school year for two consecutive years at the independent school;

(b) the sharing and reporting of student learning gain data pursuant to this subitem must be in accordance with requirements of 20 U.S.C. 1232g, the Family Educational Rights and Privacy Act of 1974, and must be for the sole purpose of creating the annual report required by item (6)(a)(i). All parties must preserve the confidentiality of this information as required by law. The annual report may not disaggregate data to a level that will identify individual participating schools, except as required pursuant to item (6)(a)(ii), or disclose the academic level of individual students; and

(c) the annual report required in this item must be published by the Education Oversight Committee on its website.

(7) establish a hearing process for independent schools who have been removed from the list of eligible schools or who were not included on the annually published list with an appeal to the Administrative Law Judge Division;

(8) establish and maintain an Internet website including information on scholarship granting organizations and their policies and guidelines and information regarding options provided pursuant to this article for school choice in South Carolina;

(9) contract for and assist in the design and reporting of the evaluation provided in Section 5963655.

Section 5963662. The South Carolina Department of Education shall:

(1) crosscheck the list of participating independent schools with the public school enrollment lists to avoid duplication;

(2) notify an eligible nonprofit scholarship funding organization of any of the organization's identified students who are receiving tax credit scholarships from other eligible nonprofit scholarship funding organizations;

(3) establish a process by which individuals may notify the Department of Education of any violation by a parent, independent school, or school district of state laws relating to program participation. The Department of Education shall conduct an inquiry of any written complaint of a violation of this section, or make a referral to the appropriate agency for an investigation, if the complaint is signed by the complainant and is legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this section or any rule adopted by the State Board of Education has occurred. In order to determine legal sufficiency, the Department of Education may require supporting information or documentation from the complainant;

(4) maintain a list of nationally normreferenced tests identified for purposes of satisfying the testing requirement in Section 5963630(7). The tests must meet industry standards of quality in accordance with State Board of Education rule;

(5) require quarterly reports by an eligible nonprofit scholarship funding organization regarding the number of students participating in the scholarship program, the independent schools at which the students are enrolled, and other information deemed necessary by the Department of Education; and

(6) annually, by December fifteenth, report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the actions of the Department of Education with respect to implementing accountability in the scholarship program pursuant to this section, any substantiated allegations or violations of law or rule by an eligible independent school under this program concerning the enrollment and attendance of students, the credentials of teachers, background screening of teachers, and the corrective action taken by the Department of Education.

1 Section 5963663. (A) A receiving independent school that accepts students benefiting from  
2 scholarships, grants, or tax credits is not an agent or arm of the state or federal government.

3 (B) Except as provided by this article, the Department of Education, Department of Revenue, State  
4 Budget and Control Board, or any other state agency may not regulate the educational program of a  
5 receiving independent school that accepts students pursuant to this article.”

6 SECTION 4. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

7 “Section 1263383. An individual may claim an income tax credit for tuition paid for a child to attend a  
8 qualifying independent school pursuant to the terms and conditions provided in Article 6, Chapter 63,  
9 Title 59.”

10 SECTION 5. If a section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of  
11 this act is for any reason held to be unconstitutional or invalid, this holding does not affect the  
12 constitutionality or the validity of the remaining portions of this act, the General Assembly hereby  
13 declaring that it would have passed this act, and each section, subsection, paragraph, subparagraph,  
14 sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections,  
15 subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words thereof may be declared to  
16 be unconstitutional, invalid, or otherwise ineffective.

17 SECTION 6. The provisions included in this act are repealed five years after the effective date of this  
18 act if the Office of Research and Statistics certifies that the savings anticipated pursuant to Section  
19 596324 have not been realized.

20 SECTION 7. This act takes effect upon approval by the Governor and applies at the start of the first  
21 school year beginning after approval of this act.

22 SECTION 8. Article 6, Chapter 63, Title 59 is amended by adding:

23 “Section 5963631. (A) A corporation or a person may claim a credit against state income tax imposed  
24 by Chapter 6, Title 12, bank tax imposed by Chapter 11, Title 12, license fees imposed by Chapter 20,  
25 Title 12, or insurance premium taxes imposed by Chapter 7, Title 38 or any combination of them for  
26 ninetyfive percent of the value of a contribution made to a student scholarship organization.

27 (B) A tax credit may not be claimed without a scholarship receipt.

28 (C) If the amount of the tax credit exceeds the taxpayer’s income tax liability or franchise fee tax  
29 liability for that taxable year, the taxpayer may carry forward the excess for up to three years.

30 (D) A student scholarship organization shall:

31 (1) allocate ninetyfive percent of its annual revenue received from donors who were issued  
32 scholarship receipts to scholarships or tuition grants for qualifying students to attend independent schools;

33 (2) not have an owner or operator who in the last seven years has filed for personal bankruptcy or  
34 corporate bankruptcy in a corporation of which he or she owned more than twenty percent;

35 (3) not have an owner or operator who owns or operates an eligible independent school that  
36 participates in the scholarship program;

37 (4) provide scholarships, from eligible contributions, to qualifying students to defray the cost of  
38 tuition and fees for an eligible independent school located in South Carolina;

39 (5) not restrict or reserve scholarships for use at a single independent school or provide scholarships  
40 to a child of an owner or operator;

41 (6) verify the eligibility through transcripts and attendance records of a qualifying student who  
42 applies for a scholarship;

43 (7) not use more than five percent of eligible contributions received during the state fiscal year in  
44 which the contributions are collected, and for which scholarship receipts were issued for tax credit  
45 purposes, for administrative expenses. These administrative expenses must be reasonable and necessary  
46 for the organization’s management and distribution of eligible contributions pursuant to this section. No  
47 more than onethird of the funds authorized for administrative expenses pursuant to this item may be used  
48 for expenses related to the recruitment of contributions from taxpayers;

49 (8) expend an amount equal to or greater ninetyfive percent of the net eligible contributions  
50 remaining after administrative expenses are expended for annual or partialyear scholarships during the  
51 state fiscal year in which these contributions are collected. No more than five percent of these net eligible  
52 contributions remaining after administrative expenses during the state fiscal year in which such  
53 contributions are collected may be carried forward to the following state fiscal year. Any amounts carried  
54 forward must be expended for annual or partialyear scholarships in the following state fiscal year. Net



1 eligible contributions remaining on June thirtieth of each year that are in excess of the five percent that  
2 must be carried forward must be returned to the State Treasury for deposit in the general revenue fund;

3 (9) maintain separate accounts for scholarship funds and operating funds;

4 (10) provide to the Education Oversight Committee an annual financial and compliance audit of its  
5 accounts and records conducted by an independent certified public accountant and in compliance with  
6 generally accepted auditing standards. It also must include a report on financial statements presented in  
7 accordance with generally accepted accounting principles provided by the American Institute of Certified  
8 Public Accountants for notforprofit organizations and a determination of compliance with statutory  
9 eligibility and expenditure requirements provided in this section. Audits must be provided to the  
10 Education Oversight Committee within one hundred eighty days after completion of the eligible nonprofit  
11 scholarship funding organization's fiscal year;

12 (11) prepare and submit quarterly reports to the Department of Education. In addition, an eligible  
13 nonprofit scholarship funding organization must submit in a timely manner any information requested by  
14 the Education Oversight Committee relating to the scholarship program;

15 (12) participate in the joint development, with independent schools associations and other student  
16 scholarship organizations, of procedures to be performed by an independent certified public accountant as  
17 required pursuant to Section 5963630(14) if the student scholarship organization provided the majority of  
18 the scholarship funds received by a receiving school. The procedures uniformly must apply to all  
19 independent schools and must determine, at a minimum, whether the independent school has been  
20 verified as eligible by the Department of Education pursuant to Section 5963661; has an adequate  
21 accounting system, system of financial controls, and process for deposit and classification of scholarship  
22 funds; and has properly expended scholarship funds for educationrelated expenses. During the  
23 development of the procedures, the participating scholarship funding organizations shall specify  
24 guidelines governing the materiality of exceptions that may be found during the accountant's performance  
25 of the procedures. The procedures and guidelines must be provided to independent schools and the  
26 Education Oversight Committee;

27 (13) participate in a joint review of the procedures and guidelines developed pursuant to Section  
28 5963630(14) by August 1, 2012, and biennially thereafter. If the procedures and guidelines are revised,  
29 the revisions must be provided to independent schools and the Education Oversight Committee by August  
30 15, 2012, and biennially thereafter;

31 (14) monitor the compliance of an independent school with Section 5963630 if the scholarship  
32 funding organization provided the majority of the scholarship funding to the school. For each  
33 independent school subject to Section 5963630(14), the appropriate scholarship funding organization  
34 shall notify the Education Oversight Committee by August 15, 2012, and annually thereafter of:

35 (a) an independent school's failure to submit the report required pursuant to Section 5963630; or

36 (b) any material exceptions set forth in the report required pursuant to Section 5963630; and

37 (15) seek input from state recognized independent school accreditation organizations or other  
38 independent school associations when jointly developing the procedures and guidelines provided in  
39 Section 5963630 and conducting a review of those procedures and guidelines pursuant to Section  
40 5963630.”/

41 Renumber sections to conform.

42 Amend title to conform.

43  
44 DANIEL T. COOPER for Committee.

45  
46  
47 **STATEMENT OF ESTIMATED FISCAL IMPACT**

48 ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

49 A Cost to the General Fund (See Below)

50 ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

\$0 (No additional expenditures or savings are expected)

51 **EXPLANATION OF IMPACT:**

52 State Budget and Control Board

Section 59-63-650 (A) requires the Budget and Control Board to provide for the preparation of an annual report on the fiscal impact of the implementation of the Educational Opportunity Act on school enrollment and state and local funding of public schools for the most recently completed fiscal year. Among other things, the report must include an analysis and statement on the amounts the state spent in public schools compared to the amounts that would have been spent under all education funding formulas in existence on or before enactment of this legislation; and savings to the state general fund as a result of this legislation. The Economic Research section of the Budget and Control Board estimates costs at \$249,306 annually and 3 FTEs to fulfill these responsibilities. This estimate is for the staff services associated with economic research, design, collection, organization and analysis of relevant data. Cost also includes all associated operating expenses. These costs would also cover the board's requirement to provide members of the General Assembly with interim and final longitudinal reports on the legislation's impact.

Legislative Audit Council (LAC)

If the LAC is responsible for paying for the evaluation required by section 59-63-655 of the bill, the council estimates the cost to the state general fund of at least \$1 million over five years. If the LAC is only responsible for overseeing the contract and its procurement, the cost to the general fund would be approximately \$100,000 over five years.

State Department of Education (SDE) and Education Oversight Committee (EOC)

Both agencies indicate any fiscal impact associated with this bill would be minimal and could be absorbed within existing resources.

Department of Revenue

The department is in the process of reviewing the bill for its potential impact on its programs and expenditures. This impact statement will be revised to include this information once the review and analysis is completed.

*Approved By:*  
Harry Bell  
Office of State Budget

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT <sup>1/</sup>**

This bill as amended is expected to reduce general fund income tax, bank tax, corporate license fees, or insurance premium tax revenue by \$64,170,126 in FY 2011-12. By FY 2023-24 when all tax credits are fully implemented, this bill is expected to reduce general fund revenue by \$248,722,676. State appropriations could potentially be reduced by \$66,246,631 in the first year and by \$115,646,833 in FY 2023-24. The net impact on the state finances would be a net gain of \$2,076,505 in FY 2011-12 and net losses for all other years culminating in an annual net loss of \$133,057,842 in FY 2023-24 when all tax credits are fully implemented. The revenue impact on local school districts corresponds to the estimated potential state appropriation reductions. We expect that reduced state appropriations would reduce local school districts revenue by \$66,246,631 in the first year and by \$115,646,833 in FY 2023-24.

**Explanation**

This bill as amended would create a scholarship tax credit for taxpayers contributing to a student scholarship organization. The scholarship credit is 95% of the value of the contribution and is applied against income tax, bank tax, corporate license fees, or insurance premium tax. Students eligible to receive the scholarships include public school students transferring to an independent school or a student entering kindergarten at an independent school. These students must also have a household income that entitles the student to receive either free or reduced priced meals or Medicaid. The value of the scholarship is the greater of 50% of the state's per-pupil allocation to the student's resident school district or the statewide base student cost. We estimate that statewide total per-student state funding for FY 2011-12 will be \$4,834. One-half of this amount would be \$2,417. The estimated statewide base student cost for FY 2011-12 is \$1,788. We estimate that the proposed scholarship credit would reduce general fund revenue by \$21,778,983 in FY 2011-12 and by \$38,114,013 in FY 2023-24. Row 1 of the Table on pages

9 and 10 of the attached report provides the estimated revenue reductions for FY 2011-12 through FY 2023-24.

The proposed legislation also creates three new tuition tax credits for public, independent, and home school students beginning in School Year (SY) 2011-12. Under the first credit, families with public school students that transfer to an independent school or a student that enrolls in a kindergarten program at an independent school are eligible for a tuition tax credit in an amount not to exceed the greater of 50% of the state's per-pupil allocation to the student's resident school district or the statewide base student cost. In SY 2012-13 and beyond, the initial students may continue to claim the tax credit along with any student entering kindergarten at an independent school. In other words, after a 13 year phase-in all students at independent schools along with the public school students that transfer to independent schools will be eligible for the credit. Students are eligible for either the tuition tax credit or the scholarship, not both. We expect that state general fund revenue will be reduced by \$32,278,510 in FY 2011-12 from tax credits claimed by families of the estimated 13,531 public school students that would transfer to independent schools. Our estimate of the general fund revenue reduction increases to \$53,214,394 in FY 2023-24. The annual estimated revenue reduction for tax credits claimed by families of public school students transferring to independent schools are provided in row 7 of the Table on pages 9 and 10 of the attached report. The estimated revenue reduction for credits claimed by the families of kindergarten students enrolling in an independent school in the first year of the 13 year phase-in is expected to be \$9,353,725. When the phase-in is complete in FY 2023-24, we expect that tuition tax credits for an estimated 58,115 kindergarten through 12th grade independent school students will reduce general fund revenue by \$148,857,579.

The second credit begins in SY 2014-15 for students not qualified for the scholarship credit or the tuition tax credit above. These students include all remaining independent school students in the grades not eligible for the tuition tax credit. This credit is capped at 80% of the amount of the per-pupil state funding that is directly related to the number of students which would otherwise go to the student's resident school district less the value of the scholarship or tuition tax credits. We estimate that the 35,624 parents of independent school students would benefit from this credit in SY 2014-15, reducing general fund revenue by an estimated \$9,840,026. The number of students eligible for this credit will decline in future years until SY 2023-24 when the credit would be phased-out. In FY 2022-23 we expect this tax credit would reduce General fund revenue by \$9,968,228. Estimates of the revenue reductions for FY 2014-15 through FY 2022-23 are provided in row 16 of the Table on pages 9 and 10 of the attached report.

The third credit is for parents who teach one or more students at home. This credit is up to \$1,000 annually per student for instruction related expenses. Students eligible for the credit will be entering kindergarten in SY 2011-12 or home school students that attended a public school the previous year. The remaining grades would be phased-in at one additional grade per year to cover all home school students by SY 2023-24. We expect that families of 1,088 students will claim the credit, amounting to \$758,909 in the first year. When fully implemented in FY 2023-24, we expect 11,874 home school students will be eligible, and their tuition tax credits will total \$8,536,690. Estimates for each year are provided in row 21 of the Table on pages 9 and 10 of the attached report.

Potentially offsetting these general fund revenue reductions are state expenditure reductions for students that transfer from public schools to independent schools. We estimate that per-pupil state expenditures directly related to the number of students amount to \$2,878 in FY 2011-12. Multiplying this \$2,878 per-pupil amount times the number of students moving to independent schools yields an estimated \$66,246,631 in reduced state appropriations to local school districts for FY 2011-12. This appropriation reduction offsets the \$64,170,126 decline in general fund revenue from the tax credits. In FY 2011-12 the net impact to the state (appropriation reductions less tax credit revenue reduction) is \$2,076,505. In FY 2012-13 and all subsequent years, the potential state appropriation reductions are less than the revenue declines from the tax credits resulting in annual net losses to state finances. By FY 2023-24 when the legislation is fully implemented, the potential state appropriation reduction is estimated at \$115,646,833. However, the estimated general fund revenue reduction from the tax credits totals \$248,722,676 generating an annual net loss in state revenue of \$133,075,842. The Table on page 12 of the attached report summarizes the net gain or loss to the state by fiscal year over the 13 year timeframe.

1 The attached report contains our detailed analysis of this legislation and the methodology we used to  
2 estimate the revenue impact. Comments made by interested parties on an earlier advisory letter on this  
3 legislation have been incorporated into the analysis.

4  
5 *Approved By:*  
6 William C. Gillespie  
7 Board of Economic Advisors  
8

9 1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local  
10 revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic  
11 Research.  
12

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9 **A BILL**

10  
11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,  
12 1976, TO ENACT THE “EDUCATIONAL OPPORTUNITY  
13 ACT” BY ADDING ARTICLE 6 TO CHAPTER 63, TITLE 59 SO  
14 AS TO PROVIDE THAT A QUALIFYING STUDENT IS  
15 ELIGIBLE TO RECEIVE A SCHOLARSHIP TO ATTEND AN  
16 INDEPENDENT SCHOOL IF HE MEETS CERTAIN  
17 CONDITIONS, AND TO PROVIDE THE VALUE OF THOSE  
18 SCHOLARSHIPS; TO ALLOW A TAX CREDIT TO BE TAKEN  
19 BY A PERSON WHO FILES STATE INCOME TAX FOR  
20 TUITION PAID FOR A QUALIFYING STUDENT TO ATTEND  
21 AN INDEPENDENT SCHOOL UPON CERTAIN CONDITIONS,  
22 TO PROVIDE THE VALUE OF THE TAX CREDIT, TO  
23 PROVIDE THAT THE TAX CREDIT MAY BE TAKEN IN  
24 FUTURE YEARS UPON CERTAIN CONDITIONS, TO  
25 REQUIRE A RECEIPT TO CLAIM THE TAX CREDIT, AND TO  
26 PROVIDE THAT A TAX CREDIT MAY NOT BE TAKEN IF  
27 THE STUDENT’S ENROLLMENT IN THE INDEPENDENT  
28 SCHOOL IS TERMINATED; TO REQUIRE THE STATE  
29 BUDGET AND CONTROL BOARD TO CALCULATE THE  
30 SAVINGS TO THE STATE GENERAL FUND DERIVED FROM  
31 THE PROVISIONS OF THIS ARTICLE, TO PROVIDE THE  
32 MECHANISM FOR THAT CALCULATION, TO PROVIDE FOR  
33 TAX CREDITS TO BE TAKEN FOR TUITION PAID FOR  
34 OTHER STUDENTS TO ATTEND INDEPENDENT SCHOOLS,  
35 AND TO PROVIDE FOR THE TOTAL AND INDIVIDUAL  
36 AMOUNTS OF THOSE TAX CREDITS; TO PROVIDE FOR A  
37 TAX CREDIT FOR A PERSON WHO TEACHES A  
38 QUALIFYING STUDENT AT HOME, AND TO PROVIDE  
39 THAT THE TAX CREDIT MAY BE TAKEN IN FUTURE  
40 YEARS UPON CERTAIN CONDITIONS; TO ALLOW A  
41 CORPORATION OR PERSON TO CLAIM A CREDIT  
42 AGAINST STATE INCOME TAX OR FRANCHISE FEES FOR

1 A CONTRIBUTION MADE TO A STUDENT SCHOLARSHIP  
2 ORGANIZATION; TO PROVIDE DUTIES FOR  
3 INDEPENDENT SCHOOLS AND STUDENT SCHOLARSHIP  
4 ORGANIZATIONS WITH REGARD TO THIS ARTICLE; TO  
5 PROVIDE TESTING REQUIREMENTS; TO ALLOW THE  
6 DEPARTMENT OF REVENUE TO PROMULGATE  
7 NECESSARY REGULATIONS AND TO CONDUCT  
8 NECESSARY EXAMINATIONS AND INVESTIGATIONS; TO  
9 PROVIDE REPORTING REQUIREMENTS BY THE STATE  
10 BUDGET AND CONTROL BOARD AND THE LEGISLATIVE  
11 AUDIT COUNCIL; TO PROVIDE DUTIES OF THE  
12 EDUCATION OVERSIGHT COMMITTEE AND THE  
13 DEPARTMENT OF EDUCATION WITH REGARD TO THIS  
14 ARTICLE; TO PROVIDE THAT AN INDEPENDENT SCHOOL  
15 IS NOT AN AGENT OR ARM OF THE STATE OR FEDERAL  
16 GOVERNMENT WITH RESPECT TO THIS ARTICLE; TO  
17 PROVIDE THAT OTHER STATE AGENCIES MAY NOT  
18 REGULATE THE EDUCATIONAL PROGRAM OF AN  
19 INDEPENDENT SCHOOL; AND BY ADDING SECTION  
20 1263383 SO AS TO ALLOW AN INDIVIDUAL TO CLAIM AN  
21 INCOME TAX CREDIT PURSUANT TO THE PROVISIONS OF  
22 ARTICLE 6, CHAPTER 63, TITLE 59.

23  
24 Be it enacted by the General Assembly of the State of South  
25 Carolina:

26  
27 SECTION 1. This act may be cited as the “South Carolina  
28 Educational Opportunity Act”.

29  
30 SECTION 2. (A) The General Assembly finds:

31 (1) it has the inherent power to determine subjects of  
32 taxation for general or particular public purposes;

33 (2) expanding educational opportunities and improving the  
34 quality of educational services within the State are valid public  
35 purposes that the General Assembly may promote using its  
36 sovereign power to determine subjects of taxation and exemptions  
37 from taxation;

38 (3) ensuring that all parents, regardless of means, may  
39 exercise and enjoy their basic right to educate their children as  
40 they see fit is a valid public purpose that the General Assembly  
41 may promote using its sovereign power to determine subjects of  
42 taxation and exemptions from taxation;

1 (4) expanding educational opportunities and the healthy  
2 competition they promote are critical to improving the quality of  
3 education in the State and ensuring that all children receive the  
4 highquality education to which they are entitled; and

5 (B) The purpose of this article is to:

6 (1) allow maximum freedom to parents and independent  
7 schools to respond to and provide for the educational needs of  
8 children without governmental control, and this act must be  
9 liberally construed to achieve that purpose;

10 (2) enable taxpayers to make private, voluntary contributions  
11 to nonprofit scholarship funding organizations in order to promote  
12 the general welfare;

13 (3) provide taxpayers who wish to help parents with limited  
14 resources exercise their basic right to educate their children as they  
15 see fit with a means to do so;

16 (4) promote general welfare by expanding educational  
17 opportunities for children of families that have limited financial  
18 resources;

19 (5) enable children in this State to achieve a greater level of  
20 excellence in their education;

21 (6) improve the quality of education in this State, both by  
22 expanding educational opportunities for children and by creating  
23 incentives for schools to achieve excellence; and

24 (7) enable taxpayers to receive an income tax credit for a  
25 portion of tuition paid for a qualifying student to attend an  
26 independent school.

27  
28 SECTION 3. Chapter 63, Title 59 of the 1976 Code is amended  
29 by adding:

30  
31 “Article 6

32  
33 Educational Opportunity Act

34  
35 Section 5963610. As used in this article:

36 (1) ‘Department’ means the Department of Revenue.

37 (2) ‘Independent school’ means a school, other than a public  
38 school, at which the compulsory attendance requirements of  
39 Section 596510 may be met and that does not discriminate based  
40 on the grounds of race, color, or national origin. For purposes of  
41 this article, ‘independent school’ does not include a home where a  
42 parent or legal guardian teaches one or more children as authorized  
43 pursuant to Sections 596540, 596545, or 596547.

1 (3) 'Nonstudentbased perpupil state funding' means all  
2 projected state expenditures to local public school districts not  
3 directly related to the number of students, divided by the total  
4 projected pupil count in those districts.

5 (4) 'Owner or operator' includes:

6 (a) an owner, president, officer, or director of an eligible  
7 nonprofit scholarship funding organization or a person with  
8 equivalent decision making authority over an eligible nonprofit  
9 scholarship funding organization; and

10 (b) an owner, operator, superintendent, or principal of an  
11 eligible independent school or a person with equivalent decision  
12 making authority over an eligible independent school.

13 (5) 'Parent' means the natural or adoptive parent or legal  
14 guardian of a child.

15 (6) 'Public school' means a public school in the State as  
16 defined in Section 591120.

17 (7) 'Qualifying student' means a student who is a South  
18 Carolina resident and who was enrolled in a South Carolina  
19 secondary or primary public school at the kindergarten or later  
20 year level for the preceding school year or who is eligible to enroll  
21 in a qualified fiveyearold kindergarten program.

22 (8) 'Receipt' means a document developed by the Department  
23 of Revenue that is issued by the receiving school to a person who  
24 makes a tuition payment on behalf of a qualifying student and that  
25 contains, at a minimum:

26 (a) the name and address of the school;

27 (b) the name, social security number, and address of the  
28 qualifying student for whom the tuition has been paid; and

29 (c) the name of the payer and the date and amount of tuition  
30 paid.

31 (9) 'Receiving school' means an independent school which the  
32 qualifying student seeks to attend.

33 (10) 'Resident public school district' means the public school  
34 district in which a student resides.

35 (11) 'Release of information form' means a document developed  
36 by a receiving school which is signed by the parent or guardian of  
37 a qualifying student and which acknowledges the consent of the  
38 parent or guardian to release of information contained in the  
39 receipt.

40 (12) 'Scholarship receipt' means a document developed by the  
41 Department of Revenue that is issued by the student scholarship  
42 organization to a corporation or a person who makes a contribution  
43 to a student scholarship organization.



1 (13) 'State' means the state of South Carolina.

2 (14) 'Studentbased perpupil state funding' means the sum of  
3 projected allocations from all state sources to local districts that are  
4 directly related to the number of students, divided by the total  
5 projected pupil count in those districts.

6 (15) 'Student scholarship organization' means a charitable  
7 organization incorporated or qualified to do business in this State  
8 that:

9 (a) is exempt from federal income taxation pursuant to  
10 Section 501(c)(3) of the Internal Revenue Code;

11 (b) complies with the applicable state and federal  
12 antidiscrimination provisions; and

13 (c) is registered with the Office of the Secretary of State.

14 (16) 'Total perpupil state funding' means the total projected state  
15 expenditures to local public school districts divided by the total  
16 projected pupil count in those districts.

17 (17) 'Tuition' means the total amount of money charged for the  
18 cost of a qualifying student to attend an independent school  
19 including, but not limited to, fees for attending the school and  
20 schoolrelated transportation.

21  
22 Section 5963620. (A) A qualifying student is eligible to  
23 receive a scholarship to attend an independent school in this State  
24 if the student transfers to an independent school or enters  
25 kindergarten at an independent school and:

26 (1) has a household income that qualifies the student to  
27 receive free or reduced meals pursuant to the Richard B. Russell  
28 National School Lunch Act, 7 C.F.R. Part 245, or that qualifies the  
29 student's family to receive Medicaid; and

30 (2) is not a student for whom a taxpayer has received a tax  
31 credit pursuant to Section 5963623.

32 (B) The value of a scholarship given to a qualifying student  
33 who meets the criteria provided in subsection (A) may not exceed  
34 the greater of:

35 (1) fifty percent of the state's total projected allocation to the  
36 resident public school district of the student, divided by the  
37 projected average daily membership of the resident public school  
38 district; or

39 (2) the statewide base student cost as defined in Section  
40 592020.

41 (C) For purposes of this section, the state's total projected  
42 allocation to the local public school district includes both general  
43 fund and nongeneral fund allocations, including, but not limited to,

1 restricted state grants, unrestricted grants, the Education Finance  
2 Act (EFA), the Education Improvement Act (EIA), education  
3 lottery revenue, state revenue in lieu of taxes, and other state  
4 revenue.

5  
6 Section 5963623. (A) Beginning in the 20112012 school year,  
7 a person who files a state income tax return and who is not a  
8 dependent of another taxpayer may claim a tax credit for the  
9 tuition paid by that person for a qualifying student to attend an  
10 independent school in an amount not to exceed the greater of:

11 (1) fifty percent of the State's total projected allocation to  
12 the resident public school district of the student, divided by the  
13 projected average daily student membership of that school district;  
14 or

15 (2) the statewide base student cost.

16 (B) For purposes of this section, the state's total projected  
17 allocation to the local public school district includes both general  
18 fund and nongeneral fund allocations, including, but not limited to,  
19 restricted state grants, unrestricted grants, the Education Finance  
20 Act (EFA), the Education Improvement Act (EIA), education  
21 lottery revenue, state revenue in lieu of taxes, and other state  
22 revenue.

23 (C) In no event may the total amount of the tax credit exceed  
24 the amount of actual tuition paid on behalf of the qualifying  
25 student.

26 (D) Beginning with the 20122013 school year and for every  
27 school year thereafter, a person who files a state income tax return  
28 and who is not a dependent of another taxpayer may claim a tax  
29 credit as provided in subsection (A) for tuition paid by that person  
30 for the qualifying student for whom the tax credit was initially  
31 taken pursuant to subsection (A) who continues to be enrolled in  
32 an independent school.

33 (E) A tax credit may not be claimed without a receipt issued by  
34 the department.

35 (F) For a student for whom tuition is paid to attend an  
36 independent school for which a tax credit is claimed pursuant to  
37 this section and whose enrollment in the independent school is  
38 terminated for any reason during the academic year, the  
39 independent school shall notify the department so that no tax credit  
40 may be taken for any tuition paid on behalf of the student.

41  
42 Section 5963624. (A) The State Budget and Control Board  
43 annually shall calculate the savings to the state general fund

1 derived from the provisions of this article. The amount of savings  
2 per school district is equal to the amount of the studentbased  
3 perpupil state funding to each district less the value of tax credits  
4 taken pursuant to Section 5963623 and scholarships given pursuant  
5 to Section 5963620 issued to qualifying students in the district.

6 (B) Beginning with the 20142015 school year and thereafter,  
7 the credit provided in Section 5963623 must be available to all  
8 persons otherwise eligible under that section for any students to  
9 attend an independent school notwithstanding the limitation  
10 contained in Section 5963610(7). The total amount of funds  
11 available for taxpayers to take advantage of this credit pursuant to  
12 this subsection must be capped at eighty percent of the aggregate  
13 amount of the savings for all local districts, as calculated in  
14 subsection (A), and determined by the State Budget and Control  
15 Board pursuant to Section 5963650(A)(5).

16 (C) The department annually shall certify the amount of the  
17 credit per student based upon the amount of savings as calculated  
18 in subsections (A) and (B), divided by the number of eligible  
19 students then enrolled in independent schools.

20  
21 Section 5963625. (A) A parent or legal guardian who teaches  
22 one or more qualifying students at home as authorized pursuant to  
23 Section 596540, 596545, or 596547 may take a tax credit of up to  
24 one thousand dollars per home school student for instructionrelated  
25 expenditures.

26 (B) Beginning with the 20122013 school year and for every  
27 school year thereafter, a person who files a state income tax return  
28 and who is not a dependent of another taxpayer may claim a tax  
29 credit as provided in subsection (A) for instructionrelated  
30 expenditures paid by that person for the qualifying student for  
31 whom the tax credit was initially taken pursuant to subsection (A)  
32 who continues to be taught at home.

33  
34 Section 5963627. (A) A corporation or a person may claim a  
35 credit against state income tax or against state franchise fees for a  
36 contribution made to a student scholarship organization.

37 (B) A tax credit may not be claimed without a scholarship receipt.

38  
39 Section 5963630. (A) An independent school that accepts  
40 students pursuant to this article shall:

41 (1) be included on a list of eligible schools published by the  
42 Education Oversight Committee;

43 (2) comply with state and federal antidiscrimination laws;

(3) meet state and local health and safety laws and codes;

(4) comply with state statutes relating to independent schools, including the compulsory school attendance requirements provided in Section 596510;

(5) employ or contract with teachers who hold a baccalaureate or higher degree, have at least three years of teaching experience in a public or independent school, or have special skills, knowledge, or expertise that qualify them to provide instruction in subjects taught;

(6) be academically accountable to the parent or guardian for meeting the education needs of the student;

(7) administer to students a nationally recognized achievement test and report the school's aggregate score to all parents in accordance with Section 5963633;

(8) accept scholarship students who meet the admissions criteria of the school within the school's capacity to accept additional students;

(9) have a physical location in the State in which the students attend classes;

(10) verify student enrollment and attendance for the previous year pursuant to the issuance of a tax credit receipt;

(11) be in operation for three years or post a surety bond or letter of credit equal to two hundred fifty thousand dollars;

(12) be a member in good standing of South Carolina Association of Christian Schools, South Carolina Independent Schools Association, or Southern Association of Colleges and Schools;

(13) annually contract with an independent certified public accountant to perform the accounting procedures as required by this section;

(14) participate, through the independent schools associations, with student scholarship organizations, in the joint development of procedures to be performed by an independent certified public accountant as required by this section, if the school received more than one hundred thousand dollars in scholarship funds from student scholarship organizations in the preceding fiscal year. These procedures uniformly must apply to all independent schools and must determine, at a minimum, whether the independent school has been verified as eligible by the Education Oversight Committee pursuant to Section 5963661; has an adequate accounting system, system of financial controls, and process for deposit and classification of scholarship funds; and has properly expended scholarship funds for educationrelated expenses. During

1 the development of the procedures, the participating scholarship  
2 funding organizations shall specify guidelines governing the  
3 materiality of exceptions that may be found during the  
4 accountant's performance of the procedures. The procedures and  
5 guidelines must be provided to independent schools and the  
6 Education Oversight Committee by June first of each year;

7 (15) participate in a joint review of the procedures and  
8 guidelines developed pursuant to item (14) by August 1, 2012, and  
9 biennially thereafter, if the school received more than one hundred  
10 thousand dollars in scholarship funds pursuant to this section  
11 during the state fiscal year preceding the biennial review. If the  
12 procedures and guidelines are revised, the revisions must be  
13 provided to independent schools and the Education Oversight  
14 Committee by August 15, 2012, and biennially thereafter; and

15 (16) produce a report of the results of the procedures required  
16 in item (14) if the independent school receives more than one  
17 hundred thousand dollars in funds from scholarships awarded  
18 pursuant to this section in the preceding state fiscal year or a state  
19 fiscal year thereafter. An independent school subject to the  
20 provisions of this item shall submit the report by July first of the  
21 first full year of participation and annually thereafter to the  
22 scholarship funding organization that awarded the majority of the  
23 school's scholarship funds. The procedures must be conducted in  
24 accordance with attestation standards established by the American  
25 Institute of Certified Public Accountants.

26 (B) The inability of an independent school to meet the  
27 requirements of this section constitutes a basis for the ineligibility  
28 of the independent school to participate in the scholarship program  
29 as determined by the Education Oversight Committee.

30  
31 Section 5963631. A student scholarship organization shall:

32 (1) allocate ninetyfive percent of its annual revenue for which  
33 scholarship receipts were issued for tax credit purposes to  
34 scholarships or tuition grants for qualifying students to attend  
35 independent schools;

36 (2) not have an owner or operator who in the last seven years  
37 has filed for personal bankruptcy or corporate bankruptcy in a  
38 corporation of which he or she owned more than twenty percent;

39 (3) not have an owner or operator who owns or operates an  
40 eligible independent school that participates in the scholarship  
41 program;

1 (4) provide scholarships, from eligible contributions, to  
2 qualifying students to defray the cost of tuition and fees for an  
3 eligible independent school located in South Carolina;

4 (5) not restrict or reserve scholarships for use at a single  
5 independent school or provide scholarships to a child of an owner  
6 or operator;

7 (6) verify the eligibility through transcripts and attendance  
8 records of a qualifying student who applies for a scholarship;

9 (7) not use more than five percent of eligible contributions  
10 received during the state fiscal year in which the contributions are  
11 collected, and for which scholarship receipts were issued for tax  
12 credit purposes, for administrative expenses. These administrative  
13 expenses must be reasonable and necessary for the organization's  
14 management and distribution of eligible contributions pursuant to  
15 this section. No more than onethird of the funds authorized for  
16 administrative expenses pursuant to this item may be used for  
17 expenses related to the recruitment of contributions from  
18 taxpayers;

19 (8) expend an amount equal to or greater ninetyfive percent of  
20 the net eligible contributions remaining after administrative  
21 expenses are expended for annual or partialyear scholarships  
22 during the state fiscal year in which these contributions are  
23 collected. No more than five percent of these net eligible  
24 contributions remaining after administrative expenses during the  
25 state fiscal year in which such contributions are collected may be  
26 carried forward to the following state fiscal year. Any amounts  
27 carried forward must be expended for annual or partialyear  
28 scholarships in the following state fiscal year. Net eligible  
29 contributions remaining on June thirtieth of each year that are in  
30 excess of the five percent that must be carried forward must be  
31 returned to the State Treasury for deposit in the general revenue  
32 fund;

33 (9) maintain separate accounts for scholarship funds and  
34 operating funds;

35 (10) provide to the Education Oversight Committee an annual  
36 financial and compliance audit of its accounts and records  
37 conducted by an independent certified public accountant and in  
38 compliance with generally accepted auditing standards. It also  
39 must include a report on financial statements presented in  
40 accordance with generally accepted accounting principles provided  
41 by the American Institute of Certified Public Accountants for  
42 notforprofit organizations and a determination of compliance with  
43 statutory eligibility and expenditure requirements provided in this

1 section. Audits must be provided to the Education Oversight  
2 Committee within one hundred eighty days after completion of the  
3 eligible nonprofit scholarship funding organization's fiscal year;

4 (11) prepare and submit quarterly reports to the Department of  
5 Education. In addition, an eligible nonprofit scholarship funding  
6 organization must submit in a timely manner any information  
7 requested by the Education Oversight Committee relating to the  
8 scholarship program;

9 (12) participate in the joint development, with independent  
10 schools associations and other student scholarship organizations,  
11 of procedures to be performed by an independent certified public  
12 accountant as required pursuant to Section 5963630(14) if the  
13 student scholarship organization provided the majority of the  
14 scholarship funds received by a receiving school. The procedures  
15 uniformly must apply to all independent schools and must  
16 determine, at a minimum, whether the independent school has  
17 been verified as eligible by the Department of Education pursuant  
18 to Section 5963661; has an adequate accounting system, system of  
19 financial controls, and process for deposit and classification of  
20 scholarship funds; and has properly expended scholarship funds  
21 for educationrelated expenses. During the development of the  
22 procedures, the participating scholarship funding organizations  
23 shall specify guidelines governing the materiality of exceptions  
24 that may be found during the accountant's performance of the  
25 procedures. The procedures and guidelines must be provided to  
26 independent schools and the Education Oversight Committee;

27 (13) participate in a joint review of the procedures and  
28 guidelines developed pursuant to Section 5963630(14) by August  
29 1, 2012, and biennially thereafter. If the procedures and guidelines  
30 are revised, the revisions must be provided to independent schools  
31 and the Education Oversight Committee by August 15, 2012, and  
32 biennially thereafter;

33 (14) monitor the compliance of an independent school with  
34 Section 5963630 if the scholarship funding organization provided  
35 the majority of the scholarship funding to the school. For each  
36 independent school subject to Section 5963630(14), the  
37 appropriate scholarship funding organization shall notify the  
38 Education Oversight Committee by August 15, 2012, and annually  
39 thereafter of:

40 (a) an independent school's failure to submit the report  
41 required pursuant to Section 5963630; or

42 (b) any material exceptions set forth in the report required  
43 pursuant to Section 5963630; and

1 (15) seek input from state recognized independent school  
2 accreditation organizations or other independent school  
3 associations when jointly developing the procedures and  
4 guidelines provided in Section 5963630 and conducting a review  
5 of those procedures and guidelines pursuant to Section 5963630.

6  
7 Section 5963633. To ensure that schools provide academic  
8 accountability to parents of students, receiving schools annually  
9 shall administer the Palmetto Assessment of State Standards  
10 (PASS) test or its equivalent or a nationally recognized norm  
11 referenced test including, but not limited to, the Stanford  
12 Achievement Test or the Iowa Test of Basic Skills or other test  
13 certified by any other state to meet public school testing  
14 requirements under federal law, in the areas of mathematics and  
15 language arts to each student participating in the program.  
16 Receiving schools publicly shall disclose the aggregate results of  
17 the tests by grade level, but only if the disclosure of the aggregate  
18 results complies with 20 U.S.C. Section 1232g, Family  
19 Educational Rights and Privacy Act of 1974, and shall provide the  
20 parents of each student with a copy of the results. Receiving  
21 schools also shall provide aggregate results by grade level to the  
22 Chairman of the House Education and Public Works Committee,  
23 the Senate Education Committee, the Education Oversight  
24 Committee, and the Governor no later than August thirtyfirst of the  
25 school year in which the tests are administered.

26  
27 Section 5963647. The department may promulgate regulations  
28 to aid in the performance and assessment of its duties pursuant to  
29 this article; however, its power does not extend to matters of  
30 school governance, curriculum, hiring or firing, or religious beliefs  
31 or practices.

32  
33 Section 5963648. The department may conduct examinations  
34 and investigations when it believes that the provisions of this  
35 article have been evaded or violated. All powers possessed by the  
36 department provided in Title 12 to conduct examinations and  
37 investigations apply to examinations and investigations conducted  
38 pursuant to this section.

39  
40 Section 5963650. (A) The State Budget and Control Board  
41 annually shall provide for the preparation of a report on the fiscal  
42 impact of the implementation of this article on school enrollment  
43 and state and local funding of public schools for the fiscal year



1 most recently completed. The report must include, but may not be  
2 limited to, an analysis of and statement on the:

3 (1) change in public school enrollment, by school district,  
4 attributable to this article;

5 (2) amount of funds the State would have had to expend for  
6 public schools under all education funding formulas in existence  
7 on or before the enactment of this article and the amount actually  
8 expended by the State in public schools;

9 (3) amount of all federal and locally raised revenue,  
10 calculated on a per student basis, retained by the local school  
11 district for each student participating in the scholarship program  
12 who is not attending a public school;

13 (4) impact of the provisions of this article on teacher/pupil  
14 ratios in schools in which students have transferred as well as the  
15 need for construction of new schools; and

16 (5) calculation of savings to the state general fund as a result  
17 of the implementation of this article according to the provisions of  
18 Section 5963623.

19 (B) The report must be submitted by December first of each  
20 year to the Governor, the Chairman of the Senate Finance  
21 Committee, the Chairman of the Senate Education Committee, the  
22 Chairman of the House Ways and Means Committee, the Chairman  
23 of the House Education and Public Works Committee, the Board of  
24 Economic Advisors, the Education Oversight Committee, and the  
25 School Choice Trust Fund.

26  
27 Section 5963655. (A)(1) The Legislative Audit Council, in  
28 conjunction with the Education Oversight Committee and the  
29 Department of Education, shall provide for a longterm evaluation  
30 of the impact of this article. The evaluation must be conducted by  
31 contract with one or more qualified persons or entities with  
32 previous experience evaluating school choice programs and must  
33 be conducted for a minimum of five years beginning on July 1,  
34 2016. The evaluation must include an assessment of the:

35 (a) level of satisfaction of parents of students participating  
36 in the scholarship program provided in this article;

37 (b) level of satisfaction of parents of students in failing  
38 public schools;

39 (c) academic performance of receiving independent  
40 schools and failing public schools;

41 (d) level of student satisfaction with the scholarship  
42 program provided in this article;

1 (e) level of student satisfaction for students attending  
2 failing public schools;

3 (f) impact of the provisions of this article on public  
4 school districts, public school students, independent schools, and  
5 independent school students;

6 (g) impact of the provisions of this article on independent  
7 school and public school capacity, availability, and quality; and

8 (h) cumulative savings to the state general fund as  
9 calculated pursuant to Section 5963624.

10 (2) The evaluation must be conducted using appropriate  
11 analytical and behavioral science methodologies and must protect  
12 the identity of participating schools and students by, at a minimum,  
13 keeping anonymous all disaggregated data other than that for the  
14 categories of grade, gender, race, and ethnicity. The evaluation of  
15 public and independent school students must compute the relative  
16 efficiency of public and independent schools, the value added to  
17 educational performance by independent schools relative to failing  
18 public schools, and a comparison of acceptance rates into college,  
19 while adjusting or controlling for student and family background.

20 (B) State and local government entities shall cooperate with the  
21 persons or entities conducting the evaluation provided in  
22 subsection (A). Cooperation includes providing available student  
23 assessment results and other information needed to complete the  
24 evaluation.

25 (C) By January thirtyfirst of each year, the State Budget and  
26 Control Board shall provide to each member of the General  
27 Assembly interim reports of the results of the evaluation. Upon  
28 completion of the evaluation, the State Budget and Control Board  
29 shall provide a final report to each member of the General  
30 Assembly. At the same time as the final report is made public, the  
31 persons or entities who conducted the evaluation must make their  
32 data and methodology available for public review and inspection,  
33 but only if the release of the data and methodology complies with  
34 20 U.S.C. Section 1232g, Family Educational Rights and Privacy  
35 Act of 1974.

36  
37 Section 5963660. The provisions of this article regarding  
38 independent schools and their relation to student scholarship  
39 organizations apply only to independent schools that choose to  
40 accept scholarship students.

41  
42 Section 5963661. The Education Oversight Committee shall:

1 (1) submit annually, by March fifteenth, a list of eligible  
2 nonprofit scholarship funding organizations that meet the  
3 requirements of Section 5963631;

4 (2) verify annually the eligibility of nonprofit scholarship  
5 funding organizations that meet the requirements of Section  
6 5963631;

7 (3) verify annually the eligibility of independent schools that  
8 meet the requirements of Section 5963630;

9 (4) verify annually the eligibility of expenditures as provided  
10 in Section 5963631 using the audit required by Section  
11 5963631(10);

12 (5) require an annual, notarized, sworn compliance statement  
13 by participating independent schools certifying compliance with  
14 state laws and retain those records;

15 (6) select an independent research organization, which may be  
16 a public or private entity or university, to which participating  
17 independent schools shall report the scores of participating  
18 students on the nationally normreferenced test administered by the  
19 independent school in grades three through ten;

20 (a) the independent research organization annually shall  
21 report to the Education Oversight Committee and the Department  
22 of Education on the yeartoyear learning gains of participating  
23 students:

24 (i) on a statewide basis, the report also must include, to  
25 the extent possible, a comparison of these learning gains to the  
26 statewide learning gains of public school students with  
27 socioeconomic backgrounds similar to those of students  
28 participating in the scholarship program; and

29 (ii) according to each participating independent school in  
30 which there are at least thirty participating students who have  
31 scores for tests administered during or after the 20112012 school  
32 year for two consecutive years at the independent school;

33 (b) the sharing and reporting of student learning gain data  
34 pursuant to this subitem must be in accordance with requirements  
35 of 20 U.S.C. 1232g, the Family Educational Rights and Privacy  
36 Act of 1974, and must be for the sole purpose of creating the  
37 annual report required by item (6)(a)(i). All parties must preserve  
38 the confidentiality of this information as required by law. The  
39 annual report may not disaggregate data to a level that will identify  
40 individual participating schools, except as required pursuant to  
41 item (6)(a)(ii), or disclose the academic level of individual  
42 students; and

1 (c) the annual report required in this item must be published  
2 by the Education Oversight Committee on its website.

3  
4 Section 5963662. The South Carolina Department of  
5 Education shall:

6 (1) crosscheck the list of participating independent schools  
7 with the public school enrollment lists to avoid duplication;

8 (2) notify an eligible nonprofit scholarship funding  
9 organization of any of the organization's identified students who  
10 are receiving tax credit scholarships from other eligible nonprofit  
11 scholarship funding organizations;

12 (3) establish a process by which individuals may notify the  
13 Department of Education of any violation by a parent, independent  
14 school, or school district of state laws relating to program  
15 participation. The Department of Education shall conduct an  
16 inquiry of any written complaint of a violation of this section, or  
17 make a referral to the appropriate agency for an investigation, if  
18 the complaint is signed by the complainant and is legally  
19 sufficient. A complaint is legally sufficient if it contains ultimate  
20 facts that show that a violation of this section or any rule adopted  
21 by the State Board of Education has occurred. In order to  
22 determine legal sufficiency, the Department of Education may  
23 require supporting information or documentation from the  
24 complainant;

25 (4) maintain a list of nationally normreferenced tests identified  
26 for purposes of satisfying the testing requirement in Section  
27 5963630(7). The tests must meet industry standards of quality in  
28 accordance with State Board of Education rule;

29 (5) require quarterly reports by an eligible nonprofit  
30 scholarship funding organization regarding the number of students  
31 participating in the scholarship program, the independent schools  
32 at which the students are enrolled, and other information deemed  
33 necessary by the Department of Education; and

34 (6) annually, by December fifteenth, report to the Governor,  
35 the President of the Senate, and the Speaker of the House of  
36 Representatives the actions of the Department of Education with  
37 respect to implementing accountability in the scholarship program  
38 pursuant to this section, any substantiated allegations or violations  
39 of law or rule by an eligible independent school under this  
40 program concerning the enrollment and attendance of students, the  
41 credentials of teachers, background screening of teachers, and the  
42 corrective action taken by the Department of Education.

1 Section 5963663. (A) A receiving independent school that  
2 accepts students benefiting from scholarships, grants, or tax credits  
3 is not an agent or arm of the state or federal government.

4 (B) Except as provided by this article, the Department of  
5 Education, Department of Revenue, State Budget and Control  
6 Board, or any other state agency may not regulate the educational  
7 program of a receiving independent school that accepts students  
8 pursuant to this article.”  
9

10 SECTION 4. Article 25, Chapter 6, Title 12 of the 1976 Code is  
11 amended by adding:  
12

13 “Section 1263383. An individual may claim an income tax  
14 credit for tuition paid for a child to attend a qualifying independent  
15 school pursuant to the terms and conditions provided in Article 6,  
16 Chapter 63, Title 59.”  
17

18 SECTION 5. If a section, subsection, paragraph, subparagraph,  
19 sentence, clause, phrase, or word of this act is for any reason held  
20 to be unconstitutional or invalid, this holding does not affect the  
21 constitutionality or the validity of the remaining portions of this  
22 act, the General Assembly hereby declaring that it would have  
23 passed this act, and each section, subsection, paragraph,  
24 subparagraph, sentence, clause, phrase, and word thereof,  
25 irrespective of the fact that any one or more other sections,  
26 subsections, paragraphs, subparagraphs, sentences, clauses,  
27 phrases, or words thereof may be declared to be unconstitutional,  
28 invalid, or otherwise ineffective.  
29

30 SECTION 6. This act takes effect upon approval by the Governor  
31 and applies at the start of the first school year beginning after  
32 approval of this act.  
33

34 XX  
35