

The Senate Finance Committee offered the following substitute to HB 325:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 20 and 48 of the Official Code of Georgia Annotated, relating, respectively,  
2 to education and revenue and taxation, so as to revise provisions relating to student  
3 scholarship organizations; to revise definitions; to revise requirements on student scholarship  
4 organizations; to provide for penalties; to revise and change certain provisions regarding the  
5 qualified education income tax credit; to provide for related matters; to provide for  
6 applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by  
10 revising Chapter 2A, relating to student scholarship organizations, as follows:

11 "CHAPTER 2A

12 20-2A-1.

13 As used in this chapter, the term:

14 (1) 'Eligible student' means a student who is a Georgia resident enrolled in a Georgia  
15 secondary or primary public school or eligible to enroll in a qualified first grade,  
16 kindergarten program, or pre-kindergarten program; provided, however, that if a student  
17 is deemed an eligible student pursuant to this paragraph, he or she shall continue to  
18 qualify as such until he or she graduates, reaches the age of 20, or returns to a public  
19 school, whichever occurs first.

20 (2) 'Qualified school or program' means a nonpublic pre-kindergarten program, primary  
21 school, or secondary school that:

22 (A) Is accredited or in the process of becoming accredited by one or more entities  
23 listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519; and

- 24 (B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of  
 25 1964, and satisfies the requirements prescribed by law for private schools in this state.  
 26 (3) 'Student scholarship organization' means a charitable organization in this state that:  
 27 (A) Is exempt from federal income taxation under Section 501(c)(3) of the Internal  
 28 Revenue Code and ~~allocates~~ obligates for scholarships or tuition grants at least 90  
 29 percent of its annual revenue received from donations for scholarships or tuition grants  
 30 to allow students to attend any qualified school of their parents' choice; and  
 31 (B) Provides educational scholarships or tuition grants to eligible students without  
 32 limiting availability to only students of one school.

33 20-2A-2.

34 Each student scholarship organization:

- 35 (1) Must obligate for scholarships or tuition grants at least 90 percent of its annual  
 36 revenue received from donations for scholarships or tuition grants; however, up to 25  
 37 percent of this amount may be carried forward for the next fiscal year. The maximum  
 38 scholarship amount given by the student scholarship organization in any given year shall  
 39 not exceed the total expenditures per student in fall enrollment in public elementary and  
 40 secondary education for this state, which may be determined using the most recently  
 41 available Digest of Education Statistics published by the National Center for Education  
 42 Statistics. The Department of Education shall determine and publish such amount  
 43 annually, no later than January 1. If the Department of Education does not publish such  
 44 updated amount by January 1, then the prior year's amount shall be increased by 5  
 45 percent;  
 46 (2) Must maintain separate accounts for scholarship funds and operating funds;  
 47 (3) Must have an independent board of directors with at least three members;  
 48 ~~(3)~~(4) May transfer funds to another student scholarship organization;  
 49 ~~(4)~~(5) Must conduct an audit of its accounts by an independent certified public  
 50 accountant within 120 days after the completion of the student scholarship organization's  
 51 fiscal year verifying that it obligated for scholarships or tuition grants at least 90 percent  
 52 of its annual revenue received from donations for scholarships or tuition grants and  
 53 provide such audit to the Department of Revenue in accordance with Code Section  
 54 20-2A-3; and  
 55 ~~(5)~~(6) Must annually submit notice to the Department of Education in accordance with  
 56 department guidelines of its participation as a student scholarship organization under this  
 57 chapter.

58 20-2A-3.

59 (a) Each student scholarship organization must report to the Department of Revenue, on  
60 a form provided by the Department of Revenue, by January 12 of each tax year the  
61 following:

62 (1) The total number and dollar value of individual contributions and tax credits  
63 approved. Individual contributions shall include contributions made by those filing  
64 income tax returns as a single individual or head of household and those filing joint  
65 returns; and

66 (2) The total number and dollar value of corporate contributions and tax credits  
67 approved;

68 (3) The total number and dollar value of scholarships awarded to eligible students; and  
69 ~~(2)~~(4) A list of donors, including the dollar value of each donation and the dollar value  
70 of each approved tax credit.

71 Such report shall also include a copy of the audit conducted pursuant to paragraph ~~(4)~~(5)  
72 of Code Section 20-2A-2. The Department of Revenue shall post on its website the  
73 information received by each student scholarship organization pursuant to paragraphs (1)  
74 through (4) of this subsection.

75 (b) The Department of Revenue shall not require any other information from student  
76 scholarship organizations, except as expressly authorized in this chapter. All information  
77 or reports provided by student scholarship organizations to the Department of Revenue  
78 shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60,  
79 and 48-7-61, whether it relates to the donor or the student scholarship organization.

80 20-2A-4.

81 The Department of Revenue shall provide a list of all student scholarship organizations  
82 receiving contributions from businesses and individuals granted a tax credit under Code  
83 Section 48-7-29.16 to the General Assembly by January 30 of each year.

84 20-2A-5.

85 The parent or guardian to whom a scholarship award is granted must restrictively endorse  
86 the scholarship award to the private school for deposit into the account of the private  
87 school. The parent or guardian may not designate any entity or individual associated with  
88 the participating private school as the parent's attorney in fact to endorse a scholarship  
89 ~~warrant~~ award. A participant who fails to comply with this Code section forfeits the  
90 scholarship.

91 20-2A-6.

92 The Department of Education shall maintain on its website a current list of all student  
 93 scholarship organizations which have provided notice pursuant to paragraph ~~(5)~~(6) of Code  
 94 Section 20-2A-2.

95 20-2A-7.

96 (a)(1) Any student scholarship organization that fails to comply with any requirements  
 97 under this chapter shall be given written notice by the Department of Revenue of such  
 98 failure to comply by certified mail and shall have 90 days from the receipt of such notice  
 99 to correct all deficiencies.

100 (2) Upon failure to correct all deficiencies within 90 days, such student scholarship  
 101 organization shall:

102 (A) Be immediately removed from the Department of Education list provided for in  
 103 Code Section 20-2A-6;

104 (B) Be required to cease all operations as a student scholarship organization and  
 105 transfer all scholarship account funds to a properly operating student scholarship  
 106 organization within 30 calendar days of receipt of notice from the Department of  
 107 Revenue of removal from the approved list; and

108 (C) Have all applications for preapproval of tax credits under Code Section 48-7-29.16  
 109 rejected by the Department of Revenue on or after the date the Department of  
 110 Education removes the student scholarship organization from its list provided for in  
 111 Code Section 20-2A-6.

112 (b) Any student scholarship organization that:

113 (1) Awards or restricts the award of a scholarship to a specific eligible student at the  
 114 request of a donor; or

115 (2) Encourages or facilitates taxpayers to engage in actions that are prohibited by law  
 116 shall be subject to paragraph (2) of subsection (a) of this Code section.

117 (c) Any officer or director of a student scholarship organization found to have actively  
 118 participated in a student scholarship organization's intentional violation of its obligations  
 119 under this chapter shall be guilty of a misdemeanor."

120 **SECTION 2.**

121 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
 122 imposition, rate, and computation of income taxes, is amended by revising Code Section  
 123 48-7-29.16, relating to qualified education tax credits, as follows:

124 "48-7-29.16.

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

126 (1) 'Qualified education expense' means the expenditure of funds by the taxpayer during  
127 the tax year for which a credit under this Code section is claimed and allowed to a student  
128 scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for  
129 tuition and fees for a qualified school or program.

130 (2) 'Qualified school or program' shall have the same meaning as in paragraph (2) of  
131 Code Section 20-2A-1.

132 (3) 'Student scholarship organization' shall have the same meaning as in paragraph (3)  
133 of Code Section 20-2A-1.

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

136 (1) In the case of a single individual or a head of household, the actual amount expended  
137 or \$1,000.00 per tax year, whichever is less; or

138 (2) In the case of a married couple filing a joint return, the actual amount expended or  
139 \$2,500.00 per tax year, whichever is less.

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

143 (d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified  
144 education expense for the direct benefit of any dependent of the taxpayer.

145 (e) In no event shall the total amount of the tax credit under this Code section for a taxable  
146 year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the  
147 taxpayer against the succeeding five years' tax liability. No such credit shall be allowed  
148 the taxpayer against prior years' tax liability.

149 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code  
150 section exceed \$50 million per tax year; provided, however, that this maximum amount  
151 shall be adjusted annually until January 1, 2017, which adjustment may be based on the  
152 most recent annual percentage change in the gross output of state and local governments  
153 as defined by the National Income and Product Accounts and determined by the United  
154 States Bureau of Economic Analysis.

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

156 (3) For the purposes of paragraph (1) of this subsection, a student scholarship  
157 organization shall notify a potential donor of the requirements of this Code section.  
158 Before making a contribution to a student scholarship organization, the taxpayer shall  
159 notify the department of the total amount of contributions that the taxpayer intends to  
160 make to the student scholarship organization. The commissioner shall preapprove or  
161 deny the requested amount within 30 days after receiving the request from the taxpayer  
162 and shall provide written notice to the taxpayer and the student scholarship organization

163 of such preapproval or denial which shall not require any signed release or notarized  
164 approval by the taxpayer. In order to receive a tax credit under this Code section, the  
165 taxpayer shall make the contribution to the student scholarship organization within ~~30~~ 60  
166 days after receiving notice from the department that the requested amount was  
167 preapproved. If the taxpayer does not comply with this paragraph, the commissioner  
168 shall not include this preapproved contribution amount when calculating the limit  
169 prescribed in paragraph (1) of this subsection. The department shall establish a  
170 web-based donation approval process to implement this subsection.

171 (4) Preapproval of contributions by the commissioner shall be based solely on the  
172 availability of tax credits subject to the aggregate total limit established under  
173 paragraph (1) of this subsection. The department shall maintain an ongoing, current list  
174 on its website of the amount of tax credits available under this Code section.

175 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse  
176 action against donors to student scholarship organizations if the commissioner  
177 preapproved a donation for a tax credit prior to the date the student scholarship  
178 organization is removed from the Department of Education list pursuant to Code Section  
179 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to  
180 the donor's compliance with paragraph (3) of this subsection.

181 (g) In order for the taxpayer to claim the student scholarship organization tax credit under  
182 this Code section, a letter of confirmation of donation issued by the student scholarship  
183 organization to which the contribution was made shall be attached to the taxpayer's tax  
184 return. However, in the event the taxpayer files an electronic return, such confirmation  
185 shall only be required to be electronically attached to the return if the Internal Revenue  
186 Service allows such attachments when the data is transmitted to the department. In the  
187 event the taxpayer files an electronic return and such confirmation is not attached because  
188 the Internal Revenue Service does not, at the time of such electronic filing, allow electronic  
189 attachments to the Georgia return, such confirmation shall be maintained by the taxpayer  
190 and made available upon request by the commissioner. The letter of confirmation of  
191 donation shall contain the taxpayer's name, address, tax identification number, the amount  
192 of the contribution, the date of the contribution, and the amount of the credit.

193 (h)(1) No credit shall be allowed under this Code section with respect to any amount  
194 deducted from taxable net income by the taxpayer as a charitable contribution to a bona  
195 fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue  
196 Code.

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

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

202 **SECTION 3.**

203 This Act shall be applicable to all taxable years beginning on or after January 1, 2011.

204 **SECTION 4.**

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