

House Bill 140

By: Representatives Ehrhart of the 36th, Casas of the 107th, and Jasperse of the 11th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,
2 relating to local boards of education, so as to provide for teacher enrichment contributions
3 to public schools; to provide for requirements and limitations regarding such contributions;
4 to amend Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to
5 student scholarship organizations, so as to revise requirements for student scholarship
6 programs; to revise the requirements for a student to be eligible for a scholarship under the
7 program; to revise information required to be posted by the Department of Revenue; to
8 amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating
9 to the imposition, rate, and computation of income taxes, so as to add definitions regarding
10 qualified education tax credits; to revise the amount of the tax credit; to increase the cap; to
11 revise provisions relating to taxpayer corporations; to provide for an income tax credit for
12 contributions to public schools for certain purposes; to provide for conditions and limitations;
13 to provide for powers, duties, and authority of the state revenue commissioner with respect
14 to the tax credit; to provide for related matters; to provide for an effective date and
15 applicability; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Article 3 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to local
19 boards of education, is amended by adding a new Code section to read as follows:

20 "20-2-75.

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

22 (1) 'Public school' means any school in this state operated by a local board of education
23 or the State Board of Education and any charter school in this state.

24 (2) 'Teacher enrichment' means professional development for certified teaching staff or
25 salary enhancements or bonuses.

26 (3) 'Teacher enrichment contribution' means a cash contribution by a taxpayer to a public
 27 school for purposes of teacher enrichment for which the taxpayer receives a tax credit
 28 pursuant to Code Section 48-7-29.18.

29 (b) Any teacher enrichment contribution received by a public school may only be used by
 30 such school for purposes of teacher enrichment; provided, however, that the school may
 31 retain one percent of such contributions for administrative costs.

32 (c) Each public school which receives a teacher enrichment contribution shall maintain a
 33 separate account for the use of such funds. A public school may transfer funds received
 34 as teacher enrichment contributions to another public school.

35 (d) Each public school which receives a teacher enrichment contribution shall report to the
 36 Department of Revenue, on a form provided by the Department of Revenue, by January 12
 37 of each tax year the following:

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

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

44 (3) A list of contributions, including the dollar value of each contribution and the dollar
 45 value of each approved tax credit.

46 The Department of Revenue shall post on its website the information received from each
 47 public school pursuant to paragraphs (1) and (2) of this subsection.

48 (e) The Department of Revenue shall not require any other information from public
 49 schools with respect to teacher enrichment contributions, except as expressly authorized
 50 in this Code section. All information or reports provided by public schools to the
 51 Department of Revenue shall be confidential taxpayer information, governed by Code
 52 Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the contributor or to the public
 53 school.

54 (f) The Department of Revenue shall provide a list of all public schools receiving
 55 contributions from businesses and individuals granted a tax credit under Code Section
 56 48-7-29.18 to the General Assembly by January 30 of each year."

57 **SECTION 2.**

58 Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student
 59 scholarship organizations, is amended by revising paragraph (1) of Code Section 20-2A-1,
 60 relating to definitions, as follows:

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

67 **SECTION 3.**

68 Said chapter is further amended by revising Code Section 20-2A-2, relating to requirements
 69 for student scholarship organizations, as follows:

70 "20-2A-2.

71 Each student scholarship organization:

72 (1) Must obligate for scholarships or tuition grants at least 90 percent of its annual
 73 revenue received from donations for scholarships or tuition grants; ~~however, up to 25~~
 74 ~~percent of this amount may be carried forward for the next fiscal year.~~ On or before the
 75 end of the calendar year following the year in which a student scholarship organization
 76 receives revenues from donations and obligates them for the awarding of scholarships or
 77 tuition grants, the student scholarship organization shall designate the obligated revenues
 78 for specific student recipients. Once the student scholarship organization designates
 79 obligated revenues for specific student recipients, in the case of multiyear scholarships
 80 or tuition grants, the student scholarship organization may distribute the obligated and
 81 designated revenues to a qualified school or program to be held in accordance with
 82 Department of Revenue rules for distribution to the specified recipients during the years
 83 in which the recipients are projected in writing by the private school to be enrolled at the
 84 qualified school or program. The maximum scholarship amount given by the student
 85 scholarship organization in any given year shall not exceed the average state and local
 86 expenditures per student in fall enrollment in public elementary and secondary education
 87 for this state. The Department of Education shall determine and publish such amount
 88 annually, no later than January 1;

89 (2) Must maintain separate accounts for scholarship funds and operating funds. Until
 90 obligated revenues are designated for specific student recipients, the student scholarship
 91 organization shall hold the obligated revenues in a bank or investment account owned by
 92 the student scholarship organization and over which it has complete control;

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

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

95 (5) Must conduct an audit of its accounts by an independent certified public accountant
 96 within 120 days after the completion of the student scholarship organization's fiscal year

97 verifying that it obligated for scholarships or tuition grants at least 90 percent of its
 98 annual revenue received from donations for scholarships or tuition grants; that obligated
 99 revenues were designated for specific student recipients within the time frame required
 100 by paragraph (1) of this Code section; and that all obligated and designated revenues
 101 distributed to a qualified school or program for the funding of multiyear scholarships or
 102 tuition grants were held in accordance with applicable Department of Revenue rules.
 103 Each student scholarship organization shall provide a copy of ~~and provide~~ such audit to
 104 the Department of Revenue in accordance with Code Section 20-2A-3; and
 105 (6) Must annually submit notice to the Department of Education in accordance with
 106 department guidelines of its participation as a student scholarship organization under this
 107 chapter."

108 SECTION 4.

109 Said chapter is further amended by revising Code Section 20-2A-3, relating to taxation
 110 reporting requirements for student scholarship organizations, as follows:

111 "(a) Each student scholarship organization must report to the Department of Revenue, on
 112 a form provided by the Department of Revenue, by January 12 of each tax year the
 113 following:

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

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

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

121 (4) A list of donors, including the dollar value of each donation and the dollar value of
 122 each approved tax credit.

123 Such report shall also include a copy of the audit conducted pursuant to paragraph (5) of
 124 Code Section 20-2A-2. The Department of Revenue shall post on its website the
 125 information received ~~by~~ from each student scholarship organization pursuant to paragraphs
 126 (1) through ~~(4)~~(3) of this subsection.

127 (b) The Department of Revenue shall not require any other information from student
 128 scholarship organizations, except as expressly authorized in this chapter. Except for the
 129 information reported pursuant to paragraphs (1) through (3) of subsection (a) of this Code
 130 section, all ~~All~~ information or reports provided by student scholarship organizations to the
 131 Department of Revenue shall be confidential taxpayer information, governed by Code

132 Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the student
133 scholarship organization."

134 **SECTION 5.**

135 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
136 imposition, rate, and computation of income taxes, is amended by revising Code Section
137 48-7-29.16, relating to qualified education tax credits, as follows:

138 "48-7-29.16.

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

140 (1) 'Corporation' means a corporation as defined in paragraph (4) of Code Section
141 14-2-140 and also means a Subchapter 'S' corporation under Subchapter S of Chapter 1
142 of the Internal Revenue Code.

143 (2) 'Eligible student' shall have the same meaning as in paragraph (1) of Code Section
144 20-2A-1.

145 ~~(1)~~(3) 'Qualified education expense' means the expenditure of funds by the taxpayer
146 during the tax year for which a credit under this Code section is claimed and allowed to
147 a student scholarship organization operating pursuant to Chapter 2A of Title 20 which are
148 used for tuition and fees for a qualified school or program.

149 ~~(2)~~(4) 'Qualified school or program' shall have the same meaning as in paragraph (2) of
150 Code Section 20-2A-1.

151 ~~(3)~~(5) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
152 of Code Section 20-2A-1.

153 (b) ~~An individual~~ A taxpayer shall be allowed a credit against the tax imposed by this
154 chapter for qualified education expenses in the amount actually expended or 75 percent of
155 the taxpayer's state income tax liability, whichever is less. as follows:

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

158 ~~(2) In the case of a married couple filing a joint return, the actual amount expended or~~
159 ~~\$2,500.00 per tax year, whichever is less.~~

160 (c) ~~A corporation or other entity shall be allowed a credit against the tax imposed by this~~
161 ~~chapter for qualified education expenses in an amount not to exceed the actual amount~~
162 ~~expended or 75 percent of the corporation's income tax liability, whichever is less. For a~~
163 ~~taxpayer that is a corporation, if the corporation has other state tax liabilities, such as a tax~~
164 ~~liability for the sale of alcoholic beverages or tax liability based on insurance premiums,~~
165 ~~the credit against the tax imposed by this chapter for qualified education expenses may be~~
166 ~~used to offset those liabilities; provided, however, that the credit shall only be credited once~~
167 ~~in any taxable year.~~

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

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

174 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code
175 section exceed ~~\$50~~ \$80 million per tax year; provided, however, that any unused tax
176 credits from the previous year shall be carried forward to the following year and added
177 to such amount; and provided, further, that this total maximum amount shall be adjusted
178 annually until January 1, ~~2018~~ 2023, and the adjustment, which adjustment may be based
179 on the most recent annual percentage change in the ~~Consumer Price Index for All Urban~~
180 ~~Consumers, U.S. City Average All Items Index, published by the Bureau of Labor~~
181 ~~Statistics of the United States Department of Labor, as determined by the department~~
182 gross output of state and local governments as defined by the National Income and
183 Product Accounts and determined by the United States Bureau of Economic Analysis.
184 In no event shall the maximum amount be adjusted downward.

185 (2) The commissioner shall allow the tax credits on a first come, first served basis;
186 provided, however, that the aggregate amount of tax credits for taxpayers that are
187 corporations shall not exceed 25 percent of the total aggregate amount of tax credits
188 allowed under paragraph (1) of this subsection.

189 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
190 organization shall notify a potential donor of the requirements of this Code section.
191 Before making a contribution to a student scholarship organization, the taxpayer shall
192 notify the department of the total amount of contributions that the taxpayer intends to
193 make to the student scholarship organization. The commissioner shall preapprove or
194 deny the requested amount within 30 days after receiving the request from the taxpayer
195 and shall provide written notice to the taxpayer and the student scholarship organization
196 of such preapproval or denial which shall not require any signed release or notarized
197 approval by the taxpayer. In order to receive a tax credit under this Code section, the
198 taxpayer shall make the contribution to the student scholarship organization within 60
199 days after receiving notice from the department that the requested amount was
200 preapproved. If the taxpayer does not comply with this paragraph, the commissioner
201 shall not include this preapproved contribution amount when calculating the limit
202 prescribed in paragraph (1) of this subsection. The department shall establish a
203 ~~web-based~~ web based donation approval process to implement this subsection.

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

208 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
 209 action against donors to student scholarship organizations if the commissioner
 210 preapproved a donation for a tax credit prior to the date the student scholarship
 211 organization is removed from the Department of Education list pursuant to Code Section
 212 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to
 213 the donor's compliance with paragraph (3) of this subsection.

214 (g) In order for the taxpayer to claim the student scholarship organization tax credit under
 215 this Code section, a letter of confirmation of donation issued by the student scholarship
 216 organization to which the contribution was made shall be attached to the taxpayer's tax
 217 return. However, in the event the taxpayer files an electronic return, such confirmation
 218 shall only be required to be electronically attached to the return if the Internal Revenue
 219 Service allows such attachments when the data is transmitted to the department. In the
 220 event the taxpayer files an electronic return and such confirmation is not attached because
 221 the Internal Revenue Service does not, at the time of such electronic filing, allow electronic
 222 attachments to the Georgia return, such confirmation shall be maintained by the taxpayer
 223 and made available upon request by the commissioner. The letter of confirmation of
 224 donation shall contain the taxpayer's name, address, tax identification number, the amount
 225 of the contribution, the date of the contribution, and the amount of the credit.

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

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

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

235 **SECTION 6.**

236 Said article is further amended by adding a new Code section to read as follows:

237 "48-7-29.18.

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

239 (1) 'Corporation' means a corporation as defined in paragraph (4) of Code Section
 240 14-2-140 and also means a Subchapter 'S' corporation under Subchapter S of Chapter 1
 241 of the Internal Revenue Code.

242 (2) 'Public school' means any school in this state operated by a local board of education
 243 or the State Board of Education and any charter school in this state.

244 (3) 'Teacher enrichment' means professional development for certified teaching staff or
 245 salary enhancements or bonuses.

246 (4) 'Teacher enrichment contribution' means a cash contribution by a taxpayer to a public
 247 school for purposes of teacher enrichment.

248 (b) A taxpayer shall be allowed a credit against the tax imposed by this chapter for teacher
 249 enrichment contributions in an amount not to exceed the actual amount contributed or 75
 250 percent of the taxpayer's state income tax liability, whichever is less.

251 (c) For a taxpayer that is a corporation, if the corporation has other state tax liabilities,
 252 such as a tax liability for the sale of alcoholic beverages or tax liability based on insurance
 253 premiums, the credit against the tax imposed by this chapter for teacher enrichment
 254 contributions may be used to offset those liabilities; provided, however, that the credit shall
 255 only be credited once in any taxable year.

256 (d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's
 257 contribution for the direct benefit of any dependent of the taxpayer.

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

262 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code
 263 section exceed \$100 million per tax year; provided, however, that any unused tax credits
 264 from the previous year shall be carried forward to the following year and added to such
 265 amount; and provided, further, that this total amount shall be adjusted annually until
 266 January 1, 2023, and the adjustment may be based on the most recent annual percentage
 267 change in the gross output of state and local governments as defined by the National
 268 Income and Product Accounts and determined by the United States Bureau of Economic
 269 Analysis. In no event shall the maximum amount be adjusted downward.

270 (2) The commissioner shall allow the tax credits on a first come, first served basis;
 271 provided, however, that the aggregate amount of tax credits for taxpayers that are
 272 corporations shall not exceed 25 percent of the total aggregate amount of tax credits
 273 allowed under paragraph (1) of this subsection.

274 (3) For the purposes of paragraph (1) of this subsection, a public school shall notify a
 275 potential contributor of the requirements of this Code section. Before making a

276 contribution, the taxpayer shall notify the department of the total amount of contributions
277 that the taxpayer intends to make to a public school or schools. The commissioner shall
278 preapprove or deny the requested amount within 30 days after receiving the request from
279 the taxpayer and shall provide written notice to the taxpayer and the public school or
280 schools of such preapproval or denial which shall not require any signed release or
281 notarized approval by the taxpayer. In order to receive a tax credit under this Code
282 section, the taxpayer shall make the contribution to the public school or schools within
283 60 days after receiving notice from the department that the requested contribution amount
284 was preapproved. If the taxpayer does not comply with this paragraph, the commissioner
285 shall not include this preapproved contribution amount when calculating the limit
286 prescribed in paragraph (1) of this subsection. The department shall establish a web
287 based contribution approval process to implement this subsection.

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

292 (g) In order for the taxpayer to claim the tax credit under this Code section, a letter of
293 confirmation of contribution issued by the public school to which the contribution was
294 made shall be attached to the taxpayer's tax return. However, in the event the taxpayer files
295 an electronic return, such confirmation shall only be required to be electronically attached
296 to the return if the Internal Revenue Service allows such attachments when the data is
297 transmitted to the department. In the event the taxpayer files an electronic return and such
298 confirmation is not attached because the Internal Revenue Service does not, at the time of
299 such electronic filing, allow electronic attachments to the Georgia return, such confirmation
300 shall be maintained by the taxpayer and made available upon request by the commissioner.
301 The letter of confirmation of contribution shall contain the taxpayer's name, address, tax
302 identification number, the amount of the contribution, the date of the contribution, and the
303 amount of the credit.

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

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

310

SECTION 7.

311 This Act shall become effective upon its approval by the Governor or upon its becoming law
312 without such approval and shall be applicable to all taxable years beginning on or after
313 January 1, 2013.

314

SECTION 8.

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