

1 HB559
2 211976-1
3 By Representatives Meadows, Holmes, Wood (D), Ingram and
4 Collins
5 RFD: Ways and Means Education
6 First Read: 18-MAR-21

8 SYNOPSIS: Under current law, a taxpayer may claim a
9 tax credit in an amount equal to 100 percent of the
10 total contributions the taxpayer made to a
11 scholarship granting organization for educational
12 scholarships during the taxable year for which the
13 credit is claimed, up to 50 percent of the tax
14 liability of the taxpayer, not to exceed \$50,000
15 per taxpayer or a cumulative amount of \$30,000,000
16 annually.

17 This bill would allow a taxpayer to claim a
18 tax credit of up to 75 percent of the tax liability
19 of the taxpayer, not to exceed \$75,000 per taxpayer
20 or a cumulative amount of \$30,000,000 annually.

21 Under current law, all scholarship granting
22 organizations must ensure that scholarship funds on
23 hand at the beginning of a calendar year are
24 expended on educational scholarships by the end of
25 the academic year ending within the next succeeding
26 calendar year.

1 This bill would require all scholarship
2 granting organizations to ensure that scholarship
3 funds on hand at the beginning of a calendar year
4 are expended on educational scholarships within
5 three calendar years.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to scholarship granting organizations; to
12 amend Section 16-6D-9 of the Code of Alabama 1975, to allow a
13 taxpayer to claim a tax credit of up to 75 percent of the tax
14 liability of the taxpayer, not to exceed a specified amount,
15 for contributions made to a scholarship granting organization
16 for educational scholarships; and to require a scholarship
17 granting organization to ensure that scholarship funds on hand
18 at the beginning of a calendar year are expended on
19 educational scholarships within three calendar years.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 16-6D-9 of the Code of Alabama
22 1975, is amended to read as follows:

23 "§16-6D-9.

24 "(a) (1) An individual taxpayer who files a state
25 income tax return and is not claimed as a dependent of another
26 taxpayer, a taxpayer subject to the corporate income tax
27 levied by Chapter 18 of Title 40, an Alabama S corporation as

1 defined in Section 40-18-160, or a Subchapter K entity as
2 defined in Section 40-18-1 may claim a credit for a
3 contribution made to a scholarship granting organization. If
4 the credit is claimed by an Alabama S corporation or
5 Subchapter K entity, the credit shall pass through to and may
6 be claimed by any taxpayer eligible to claim a credit under
7 this subdivision who is a shareholder, partner, or member
8 thereof, based on the taxpayer's pro rata or distributive
9 share, respectively, of the credit.

10 "(2) The tax credit may be claimed by an individual
11 taxpayer or a married couple filing jointly in an amount equal
12 to 100 percent of the total contributions the taxpayer made to
13 a scholarship granting organization for educational
14 scholarships during the taxable year for which the credit is
15 claimed, up to ~~50~~ 75 percent of the tax liability of the
16 individual taxpayer, not to exceed ~~fifty thousand dollars~~
17 ~~(\$50,000)~~ seventy-five thousand dollars (\$75,000) per
18 individual taxpayer or married couple filing jointly. For
19 purposes of this section, an individual taxpayer includes an
20 individual who is a shareholder of an Alabama S corporation or
21 a partner or member of a Subchapter K entity that made a
22 contribution to a scholarship granting organization.

23 "(3) The tax credit may be claimed by a taxpayer
24 subject to the Alabama corporate income tax in an amount equal
25 to 100 percent of the total contributions the taxpayer made to
26 a scholarship granting organization for educational
27 scholarships during the taxable year for which the credit is

1 claimed, up to ~~50~~ 75 percent of the tax liability of the
2 taxpayer.

3 "(4) A taxpayer subject to the Alabama corporate
4 income tax, an individual taxpayer, or a married couple filing
5 jointly may carry forward a tax credit earned under the tax
6 credit scholarship program for up to three taxable years.

7 "(5) The cumulative amount of tax credits issued
8 pursuant to subdivision (2) and subdivision (3) shall not
9 exceed thirty million dollars (\$30,000,000) annually, based on
10 the calendar year. A taxpayer making one or more otherwise
11 tax-creditable contributions before the due date, with
12 extensions, of a timely filed 2014 tax return may elect to
13 treat all or a portion of such contributions as applying to
14 and creditable against its 2014 Alabama income tax liability,
15 if the taxpayer properly reserves the credit on the website of
16 the Department of Revenue or another method provided by the
17 Department of Revenue. The amount creditable against the
18 taxpayer's 2014 income tax liability shall be limited to the
19 lesser of the amount so designated or the remaining balance,
20 if any, of the cumulative amount of the twenty-five million
21 dollars (\$25,000,000) of tax credits available for the 2014
22 calendar year. No such contribution and election by a taxpayer
23 to reserve tax credits against the remaining balance of the
24 cumulative amount of tax credits available for 2014 shall
25 preclude the taxpayer from making additional contributions in
26 2015 and reserving those amounts against the cumulative amount
27 of tax credits available for 2015. The Department of Revenue

1 shall develop a procedure to ensure that this cap is not
2 exceeded and shall also prescribe the various methods by which
3 these credits are to be issued.

4 "(6) No credit may be claimed for a contribution
5 made to a scholarship granting organization if the
6 contribution is restricted or conditioned in any way by the
7 donor including, but not limited to, requiring the scholarship
8 granting organization to direct all or part of the
9 contribution to a particular qualifying school or to grant an
10 educational scholarship to a particular eligible student.

11 "(b) (1) Administrative accountability standards. All
12 scholarship granting organizations shall do all of the
13 following:

14 "a. Notify the Department of Revenue of their intent
15 to provide educational scholarships to eligible students.

16 "b. Demonstrate to the Department of Revenue that
17 they have been granted exemption from the federal income tax
18 as an organization described in Section 501(c) (3) of the
19 Internal Revenue Code, as in effect from time to time.

20 "c. Distribute periodic educational scholarship
21 payments as checks made out and mailed to or directly
22 deposited with the school where the student is enrolled.

23 "d. Provide a Department of Revenue approved receipt
24 to taxpayers for contributions made to the scholarship
25 granting organization.

26 "e. Ensure that all determinations with respect to
27 the eligibility of a student to receive an educational

1 scholarship shall be made by the scholarship granting
2 organization. A scholarship granting organization shall not
3 delegate any responsibility for determining the eligibility of
4 a student for an educational scholarship or any other
5 requirements it is subject to under this chapter to any
6 qualifying school or an entity affiliated therewith.

7 "f. Ensure that at least 95 percent of their revenue
8 from donations is expended on educational scholarships, and
9 that all revenue from interest or investments is expended on
10 educational scholarships. A scholarship granting organization
11 may expend up to five percent of its revenue from donations on
12 administrative and operating expenses in the calendar year of
13 the donation or in any subsequent calendar year.

14 "g. Ensure that scholarship funds on hand at the
15 beginning of a calendar year are expended on educational
16 scholarships ~~by the end of the academic year ending within the~~
17 ~~next succeeding calendar year~~ within three calendar years. Any
18 scholarship funds on hand at the beginning of a calendar year
19 that are not expended on educational scholarships ~~by the end~~
20 ~~of the academic year ending within the next succeeding~~
21 ~~calendar year~~ within three calendar years shall be turned over
22 to and deposited with the State Department of Education for
23 the benefit of its At-Risk Student Program to be distributed
24 to local boards of education on the basis determined by the
25 State Department of Education in furtherance of support to
26 underperforming schools.

1 "h. Ensure that at least 75 percent of first-time
2 recipients of educational scholarships were not continuously
3 enrolled in a private school during the previous academic
4 year.

5 "i. Cooperate with the Department of Revenue to
6 conduct criminal background checks on all of their employees
7 and board members and exclude from employment or governance
8 any individual who may reasonably pose a risk to the
9 appropriate use of contributed funds.

10 "j. Ensure that educational scholarships are
11 portable during the academic year and can be used at any
12 qualifying school that accepts the eligible student according
13 to the wishes of the parent. If an eligible student transfers
14 to another qualifying school during an academic year, the
15 educational scholarship amount may be prorated.

16 "k. Publicly report to the Department of Revenue by
17 September 1 of each year all of the following information
18 prepared by a certified public accountant regarding their
19 educational scholarships funded in the previous academic year:

20 "1. The name and address of the scholarship granting
21 organization.

22 "2. The total number and total dollar amount of
23 contributions received during the previous academic year.

24 "3. The total number and total dollar amount of
25 educational scholarships awarded and funded during the
26 previous academic year, the total number and total dollar
27 amount of educational scholarships awarded and funded during

1 the previous academic year for students qualifying for the
2 federal free and reduced-price lunch program, and the
3 percentage of first-time recipients of educational
4 scholarships who were enrolled in a public school during the
5 previous academic year.

6 "1. Publicly report to the Department of Revenue, by
7 the 15th day after the close of each calendar quarter, all of
8 the following information about educational scholarships
9 granted during the quarter:

10 "1. The total number of scholarships awarded and
11 funded.

12 "2. The names of the qualifying schools that
13 received funding for educational scholarships, the total
14 amount of funds paid to each qualifying school, and the total
15 number of scholarship recipients enrolled in each qualifying
16 school.

17 "3. The total number of eligible students zoned to
18 attend a failing school who received educational scholarships
19 from the scholarship granting organization.

20 "4. The total number of first time scholarship
21 recipients who were continuously enrolled in a nonpublic
22 school prior to receiving an educational scholarship from that
23 scholarship granting organization.

24 "m. Ensure that educational scholarships are not
25 provided for eligible students to attend a school with paid
26 staff or board members, or relatives thereof, in common with
27 the scholarship granting organization.

1 "n. Ensure that educational scholarships are
2 provided in a manner that does not discriminate based on the
3 gender, race, or disability status of the scholarship
4 applicant or his or her parent.

5 "o. Ensure that educational scholarships are
6 provided only to eligible students who are zoned to attend a
7 failing school so that the eligible student can attend a
8 qualifying school. To ensure compliance with the immediately
9 preceding sentence, the local board of education for the
10 county or municipality in which an eligible student applying
11 for an educational scholarship resides, upon written request
12 by a parent, shall provide written verification that a
13 particular address is in the attendance zone of a specified
14 public school. The State Department of Education shall provide
15 written verification of enrollment in a failing school under
16 this chapter. With respect to first time educational
17 scholarship recipients, scholarship granting organizations
18 shall give priority to eligible students zoned to attend
19 failing schools over eligible students not zoned to attend
20 failing schools. Any scholarship funds unaccounted for on July
21 31st of each calendar year may be made available to eligible
22 students to defray the costs of attending a qualifying school,
23 whether or not the student is zoned to attend a failing
24 school. Any provision of this section to the contrary
25 notwithstanding, once an eligible student receives an
26 educational scholarship under this program, scholarship funds
27 may be made available to the student for educational

1 scholarships until the student graduates from high school or
2 reaches 19 years of age, regardless of whether the student is
3 zoned to attend a failing school, subject to the income
4 eligibility requirements of paragraph b. of subdivision (4) of
5 Section 16-6D-4.

6 "p. Ensure that no donations are directly made to
7 benefit specifically designated scholarship recipients or to
8 particular qualifying schools.

9 "q. Submit to the Department of Revenue annual
10 verification of the scholarship granting organization's
11 policies and procedures used to determine scholarship
12 eligibility. The verification shall confirm that the
13 scholarship granting organization, and not one or more
14 qualifying schools accepting educational scholarship
15 recipients or scholarship funds, is determining whether
16 scholarship applicants are eligible to receive educational
17 scholarships. The verification shall also confirm that the
18 scholarship granting organization is giving priority to
19 receive an educational scholarship to eligible students zoned
20 to attend failing schools.

21 "r. Submit to the Department of Revenue annual
22 verification that none of its actions or policies restricts a
23 parent's educational choice by limiting or prohibiting the
24 enrollment of eligible students in a qualifying school if
25 those eligible students received educational scholarships from
26 other scholarship granting organizations.

27 "(2) Financial accountability standards.

1 "a. All scholarship granting organizations shall
2 demonstrate their financial accountability by doing all of the
3 following:

4 "1. Annually submitting to the Department of Revenue
5 a financial information report for the scholarship granting
6 organization that complies with uniform financial accounting
7 standards established by the Department of Revenue and
8 conducted by a certified public accountant.

9 "2. Having the auditor certify that the report is
10 free of material misstatements.

11 "b. All qualifying nonpublic schools shall
12 demonstrate financial viability, if they are to receive
13 donations of fifty thousand dollars (\$50,000) or more during
14 the academic year, by doing either of the following:

15 "1. Filing with the scholarship granting
16 organization prior to receipt of the first educational
17 scholarship payment for that academic year a surety bond
18 payable to the scholarship granting organization in an amount
19 equal to the aggregate amount of scholarship funds expected to
20 be received during the academic year.

21 "2. Filing with the scholarship granting
22 organization prior to receipt of the first educational
23 scholarship payment for that academic year financial
24 information that demonstrates the financial viability of the
25 qualifying nonpublic school.

26 "(c) (1) Each scholarship granting organization shall
27 annually collect and submit to the Department of Revenue with

1 the annual report required by paragraph k. of subdivision (1)
2 of subsection (b) written verification from qualifying
3 nonpublic schools that accept its educational scholarship
4 students that those schools do all of the following:

5 "a. Comply with all health and safety laws or codes
6 that otherwise apply to nonpublic schools.

7 "b. Hold a valid occupancy permit if required by the
8 municipality.

9 "c. Certify compliance with nondiscrimination
10 policies set forth in 42 U.S.C. 1981.

11 "d. Conduct criminal background checks on employees
12 and then do all of the following:

13 "1. Exclude from employment any person not permitted
14 by state law to work in a public school.

15 "2. Exclude from employment any person who may
16 reasonably pose a threat to the safety of students.

17 "(2) By August 1 of each year, each qualifying
18 nonpublic school shall provide to each scholarship granting
19 organization from which it receives educational scholarships
20 verification that the qualifying nonpublic school is in
21 compliance with the Alabama Child Protection Act of 1999,
22 Chapter 22A of this title. Any qualifying nonpublic school
23 failing to timely provide such annual verification shall be
24 prohibited from participating in the scholarship program. Each
25 scholarship granting organization shall annually submit to the
26 Department of Revenue with the annual report required by
27 paragraph k. of subdivision (1) of subsection (b) copies of

1 the written verifications it receives from each qualifying
2 nonpublic school.

3 "(3) Academic accountability standards. There shall
4 be sufficient information about the academic impact
5 educational scholarship tax credits have on students
6 participating in the tax credit scholarship program in order
7 to allow parents and taxpayers to measure the achievements of
8 the tax credit scholarship program, and therefore:

9 "a. Each scholarship granting organization shall
10 ensure that qualifying schools that accept its educational
11 scholarship students shall do all of the following:

12 "1. Annually administer either the state achievement
13 tests or nationally recognized norm-referenced tests that
14 measure learning gains in math and language arts to all
15 students receiving an educational scholarship in grades that
16 require testing under the accountability testing laws of the
17 state for public schools, in order that the state can compare
18 the academic achievement and learning gains of students
19 receiving educational scholarships with students of the same
20 socioeconomic and educational backgrounds who are taking the
21 state achievement tests or nationally norm-referenced tests.

22 "2. Allow the costs of the testing requirement to be
23 covered by the educational scholarships distributed by the
24 scholarship granting organizations.

25 "3. Provide the parents of each student who was
26 tested with a copy of the results of the tests on an annual
27 basis, beginning with the first year of testing.

1 "4. Provide the test results to the Department of
2 Revenue on an annual basis, beginning with the first year of
3 testing.

4 "5. Report student information that allows the state
5 to aggregate data by grade level, gender, family income level,
6 and race.

7 "6. Provide graduation rates of those students
8 benefitting from education scholarships to the Department of
9 Revenue or an organization chosen by the state in a manner
10 consistent with nationally recognized standards.

11 "7. Ensure that a student who receives an
12 educational scholarship conforms to the attendance
13 requirements of the qualifying school. If a student fails to
14 conform, the qualifying school shall immediately communicate
15 the failure to the applicable scholarship granting
16 organization.

17 "b.1. The Department of Revenue shall select an
18 independent research organization, which may be a public or
19 private entity or university, to analyze the results of the
20 testing required by paragraph a. every other academic year.
21 The cost of analyzing and reporting on the test results to the
22 Department of Revenue by the independent research organization
23 shall be borne by all scholarship granting organizations in
24 proportion to the total scholarship donations received for the
25 two calendar years prior to the report being published.
26 Scholarship granting organizations may receive and use funds

1 from outside sources to pay for its share of the biennial
2 report.

3 "2. The independent research organization shall
4 report to the Department of Revenue every other year on the
5 learning gains of students receiving educational scholarships
6 and the report shall be aggregated by the grade level, gender,
7 family income level, number of years of participation in the
8 tax credit scholarship program, and race of the student
9 receiving an educational scholarship. The report shall also
10 include, to the extent possible, a comparison of the learning
11 gains of students participating in the tax credit scholarship
12 program to the statewide learning gains of public school
13 students with socioeconomic and educational backgrounds
14 similar to those students participating in the tax credit
15 scholarship program.

16 "3. The first report under this paragraph shall be
17 submitted to the Department of Revenue by September 1, 2016.
18 Each biennial report thereafter shall be submitted to the
19 Department of Revenue on September 1 of the year the report is
20 due. All biennial reports required by this paragraph shall be
21 published on the website of the Department of Revenue.

22 "4. Each scholarship granting organization shall
23 collect all test results from qualifying schools accepting its
24 scholarship recipients and turn over such test results to the
25 independent research organization described in this paragraph
26 by August 15 of each calendar year.

1 "5. The sharing and reporting of student learning
2 gain data under this paragraph shall conform to the
3 requirements of the Family Educational Rights and Privacy Act,
4 20 U.S.C. § 1232g., and shall be for the sole purpose of
5 creating the biennial report required by this paragraph. All
6 parties shall preserve the confidentiality of such information
7 as required by law. The biennial report shall not disaggregate
8 data to a level that could identify qualifying schools
9 participating in the tax credit scholarship program or
10 disclose the academic level of individual students.

11 "6. At the same time the biennial report under
12 paragraph 2 is submitted to the Department of Revenue, it
13 shall be submitted to the Chair of the Senate Education Policy
14 Committee and the Chair of the House Education Policy
15 Committee.

16 "(d) (1) The Department of Revenue shall adopt rules
17 and procedures consistent with this section as necessary.

18 "(2) The Department of Revenue shall provide a
19 standardized format for a receipt to be issued by a
20 scholarship granting organization to a taxpayer to indicate
21 the value of a contribution received. The Department of
22 Revenue shall require a taxpayer to provide a copy of the
23 receipt when claiming the tax credit pursuant to this section.

24 "(3) The Department of Revenue shall provide a
25 standardized format for a scholarship granting organization to
26 report the information required in paragraphs k. and l. of
27 subdivision (1) of subsection (b).

1 "(4) The Department of Revenue may conduct either a
2 financial review or audit of a scholarship granting
3 organization.

4 "(5) The Department of Revenue may bar a scholarship
5 granting organization or a qualifying school from
6 participating in the tax credit scholarship program if the
7 Department of Revenue establishes that the scholarship
8 granting organization or the qualifying school has
9 intentionally and substantially failed to comply with the
10 requirements in subsection (b) or subsection (c).

11 "(6) If the Department of Revenue decides to bar a
12 scholarship granting organization or a qualifying school from
13 the tax credit scholarship program, the Department of Revenue
14 shall notify affected educational scholarship students and
15 their parents of the decision as quickly as possible.

16 "(7) The Department of Revenue shall publish and
17 routinely update, on the website of the department, a list of
18 scholarship granting organizations in the state, by county.

19 "(8) The Department of Revenue shall publish and
20 make publicly available on its website all annual and
21 quarterly reports required to be filed with it by scholarship
22 granting organizations under paragraphs k. and l. of
23 subdivision (1) of subsection (b).

24 "(e) (1) All schools participating in the tax credit
25 scholarship program shall be required to operate in Alabama.

26 "(2) All schools participating in the tax credit
27 scholarship program shall comply with all state laws that

1 apply to public schools regarding criminal background checks
2 for employees and exclude from employment any person not
3 permitted by state law to work in a public school.

4 "(3) All qualifying nonpublic schools participating
5 in the tax credit scholarship program shall maintain a website
6 that describes the school, the instructional program of the
7 school, and the tuition and mandatory fees charged by the
8 school, updated prior to the beginning of each semester.

9 "(4) The amount of a scholarship awarded a student
10 to attend a nonpublic school may not exceed the total sum of
11 tuition and mandatory fees normally charged a student to
12 attend the nonpublic school for the same attendance period.
13 The amount of a scholarship awarded a student to attend a
14 public school may not exceed the total state appropriation
15 provided for a student to attend the public school for the
16 same attendance period.

17 "(f) The tax credit provided in this section may be
18 first claimed for the 2013 tax year but may not be claimed for
19 any tax year prior to the 2013 tax year.

20 "(g) (1) Nothing in this section shall be construed
21 to force any public school, school system, or school district
22 or any nonpublic school, school system, or school district to
23 enroll any student. No qualifying school may enter into any
24 agreement, whether oral or written, with a scholarship
25 granting organization that would prohibit or limit an eligible
26 student from enrolling in the school based on the identity of

1 the scholarship granting organization from which the eligible
2 student received an educational scholarship.

3 "(2) A public school, school system, or school
4 district or any nonpublic school, school system, or school
5 district may develop the terms and conditions under which it
6 will allow a student who receives a scholarship from a
7 scholarship granting organization pursuant to this section to
8 be enrolled, but such terms and conditions may not
9 discriminate on the basis of the race, gender, religion,
10 color, disability status, or ethnicity of the student or of
11 the student's parent.

12 "(3) Nothing in this section shall be construed to
13 authorize the violation of or supersede the authority of any
14 court ruling that applies to the public school, school system,
15 or school district, specifically any federal court order
16 related to the desegregation of the local school system's
17 student population.

18 "(h) Nothing in this chapter shall affect or change
19 the athletic eligibility rules of student athletes governed by
20 the Alabama High School Athletic Association or similar
21 association."

22 Section 2. This act shall become effective on
23 January 1, 2022, following its passage and approval by the
24 Governor, or its otherwise becoming law.