House Bill 517 (AS PASSED HOUSE AND SENATE)
By: Representatives Carson of the 46th, Knight of the 130th, Blackmon of the 146th, Newton of the 123rd, Belton of the 112th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student scholarship organizations, so as to provide for the inclusion of earned interest in the calculation of minimum revenue obligations for scholarships and tuition grants; to require that student scholarship organization audits are conducted in accordance with generally accepted auditing standards; to provide for the expansion of the scope of such audits; to provide for a deadline by which such audits shall be reported to the Department of Revenue; to require that student scholarship organizations immediately notify the Department of Education if the Department of Revenue ceases preapproving contributions to student scholarship organizations; to require student scholarship organizations to annually submit copies of Form 990s to the Department of Revenue; to provide that student scholarship organizations are solely responsible for verifying student eligibility; to provide for expansion of public reporting requirements; to amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from state income taxes, so as to provide for qualified education tax credits to be used by certain insurance companies against certain tax liability; to provide for conditions and limitations; to increase the limit available to individuals, heads of household, married couples filing joint returns, and individuals who are members of certain limited liability companies, shareholders of Subchapter "S" corporations, or partners in a partnership; to revise the aggregate annual

H. B. 517
- 1 -
limits of the tax credit and provide for increases contingent on the Governor's revenue estimates; to provide for annual determinations by the Office of Planning and Budget; to provide for related matters; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student scholarship organizations, is amended by revising Code Section 20-2A-2, relating to requirements for student scholarship organizations, as follows:

"20-2A-2. Each student scholarship organization:

(1) With respect to the first $1.5 million of its annual revenue received from donations for scholarships or tuition grants, must including interest earned on deposits and investments of scholarship funds or tuition grants, shall obligate at least 92 percent of such revenue for scholarships or tuition grants; with respect to its annual revenue received from donations for scholarships or tuition grants in excess of $1.5 million and up to and including $10 million, must including interest earned on deposits and investments of scholarship funds or tuition grants, shall obligate at least 94 percent of such revenue for scholarships and or tuition grants; with respect to its annual revenue received from donations for scholarships or tuition grants in excess of $10 million and up to and including $20 million, must including interest earned on deposits and investments of scholarship funds or tuition grants, shall obligate at least 95 percent of such revenue for scholarships and or tuition grants; and, with respect to its annual
revenue received from donations for scholarships or tuition grants in excess of $20 million, must including interest earned on deposits and investments of scholarship funds or tuition grants, shall obligate at least 96 percent of such revenue for scholarships and or tuition grants. On or before the end of the calendar year following the calendar year in which a student scholarship organization receives revenues from donations and obligates them for the awarding of scholarships or tuition grants, the student scholarship organization shall designate the obligated revenues for specific student recipients. Once the student scholarship organization designates obligated revenues for specific student recipients, in the case of multiyear scholarships or tuition grants, the student scholarship organization may distribute the entire obligated and designated revenues to a qualified school or program to be held in accordance with Department of Revenue rules for distribution to the specified recipients during the years in which the recipients are projected in writing by the private school to be enrolled at the qualified school or program. In making a multiyear distribution to a qualified school or program, the student scholarship organization shall require that if the designated student becomes ineligible or for any other reason the qualified school or program elects not to continue disbursement of the multiyear scholarship or tuition grant to the designated student for all the projected years, then the qualified school or program shall immediately return the remaining funds to the student scholarship organization. Once the student scholarship organization designates obligated revenues for specific student recipients, in the case of multiyear scholarships or tuition grants for which the student scholarship organization distributes the obligated and designated revenues to a qualified school or program annually rather than the entire amount, if the designated student becomes ineligible or for any other reason the student scholarship organization elects not to continue disbursement for all years, then the student scholarship organization shall designate any remaining previously obligated revenues for a new specific student recipient on or before the end of the following calendar year. The maximum scholarship amount given by the student
scholarship organization in any given year shall not exceed the average state and local expenditures per student in fall enrollment in public elementary and secondary education for this state. The Department of Education shall determine and publish such amount annually, no later than January 1;

(1.1) In awarding scholarships or tuition grants, shall consider financial needs of students based on all sources, including the federal adjusted gross income from the federal income tax return most recently filed by the parents or guardians of such students, as adjusted for family size. If the parents or guardians of a student have not filed a federal income tax return in either of the two calendar years immediately preceding the year of application, the student scholarship organization shall consider the financial need of the student based on proof of employment income of the parents or guardians from the 30 consecutive days closest to when the applicant submitted the scholarship application and on any other sources of income, including, but not limited to, unemployment benefits, social security benefits, and child support benefits;

(2) Shall Must maintain separate accounts for scholarship funds and operating funds. Until obligated revenues are designated for specific student recipients, the student scholarship organization shall hold the obligated revenues in a bank or investment account owned by the student scholarship organization and over which it has complete control; provided, however, that interest earned on deposits and investments of scholarship funds and tuition grants shall be included in the calculation of the minimum obligations provided for in paragraph (1) of this Code section;

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

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

(5) Within 120 days after the completion of the student scholarship organization's fiscal year, shall Must conduct an audit of its accounts by an independent certified public accountant within 120 days after the completion of the student scholarship organization's fiscal year in accordance with generally accepted auditing standards verifying that it the
student scholarship organization has complied with all requirements of this Code section chapter, including, but not limited to, scholarship fund management requirements, operational fund management requirements, other financial requirements, student eligibility requirements, school qualification requirements, and other scholarship management requirements. Each student scholarship organization shall also submit with each such audit a signed declaration certifying that it has complied and is in compliance with all legal and regulatory requirements imposed by state or federal law. Within 60 days of completion of such audit, each student scholarship organization shall provide a copy of such audit to the Department of Revenue in accordance with Code Section 20-2A-3. Notwithstanding Code Sections 20-2A-7, 48-2-15, 48-7-60, and 48-7-61, if the copy of the audit submitted fails to verify that the student scholarship organization obligated its annual revenue received from donations for scholarships or tuition grants, including interest earned on deposits and investments of such funds, as required under paragraph (1) of this Code section; that obligated revenues were designated for specific student recipients within the time frame required by paragraph (1) of this Code section; and that all obligated and designated revenue distributed to a qualified school or program for the funding of multiyear scholarships or tuition grants complied with all applicable Department of Revenue rules, then the Department of Revenue shall post on its website the details of such failure to verify. Until any such noncompliant student scholarship organization submits an amended audit, which, to the satisfaction of the Department of Revenue, contains the verifications required under this Code section, the Department of Revenue shall not preapprove any contributions to the noncompliant student scholarship organization;

(5.1) In addition to the audit required by paragraph (5) of this Code section, in 2023, the state auditor shall issue an economic analysis report on the performance of this tax credit to the chairpersons of the House Committee on Ways and Means and the Senate Finance
Committee. An economic analysis shall include, but not be limited to, a good faith estimate, on both a direct and indirect basis, as to the:

(A) Net change in state revenue;
(B) Net change in state expenditures, which shall include, but not be limited to, costs of administering the tax credit;
(C) Net change in economic activity; and
(D) Net change in public benefit; and

(6) Shall annually submit notice to the Department of Education in accordance with department guidelines of its participation as a student scholarship organization under this chapter; provided, however, that the student scholarship organization shall immediately notify the Department of Education if the Department of Revenue has temporarily or permanently ceased preapproving contributions to the student scholarship organization in accordance with the provisions of paragraph (5) of this Code section;

(7) Shall annually submit to the Department of Revenue a copy of its most recent Form 990 filed with the United States Internal Revenue Service; and

(8) Shall be solely responsible for verifying the eligibility of students for participation in the program provided for in this chapter."

SECTION 1-2.

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

"20-2A-3.

(a) Each student scholarship organization must report annually to the Department of Revenue, on a date determined by the Department of Revenue, subject to the time limits provided for in paragraph (5) of Code Section 20-2A-2, and on a form provided by the Department of Revenue, the following information:
(1) The total number and dollar value of individual contributions and tax credits approved. Individual contributions shall include contributions made by those filing income tax returns as a single individual or head of household and those filing joint returns;

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

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

(4) The total number of scholarship recipients whose family's adjusted gross income falls:

(A) Under 125 percent of the federal poverty level;

(B) Between 125 and 250 percent of the federal poverty level;

(C) Between 250 and 400 percent of the federal poverty level; and

(D) Above 400 percent of the federal poverty level;

(4.1) The total number of scholarship recipients and the average scholarship dollar amount by each county within which any scholarship recipient resides;

(5) The average scholarship dollar amount by adjusted gross income category as provided in paragraph (4) of this subsection; and

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

Such report shall also include a copy of the audit conducted pursuant to paragraph (5) of Code Section 20-2A-2. The Department of Revenue shall post on its website the information received from each student scholarship organization pursuant to paragraphs (1) through (5) of this subsection and the report of the student scholarship organization's most recent audit conducted pursuant to paragraph (5) of Code Section 20-2A-2, except that no information of confidential taxpayer information contained in such audit report shall be posted or otherwise disclosed to the public by the Department of Revenue.
(b) Except for the allowable information included in the report of the audit conducted pursuant to paragraph (5) of Code Section 20-2A-2 and the information reported pursuant to paragraphs (1) through (5) of subsection (a) of this Code section, all information or reports provided by student scholarship organizations to the Department of Revenue shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the student scholarship organization."

PART II

SECTION 2-1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from state income taxes, is amended by revising Code Section 48-7-29.16, relating to a qualified education tax credit, as follows:

"48-7-29.16.

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

(1) 'Business enterprise' means any insurance company or the headquarters of any insurance company required to pay the tax provided for in Code Section 33-8-4.

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

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

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

(5) 'Student scholarship organization' shall have the same meaning as in paragraph (3) of Code Section 20-2A-1.
(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified education expenses as follows:

(1) In the case of a single individual or a head of household, the actual amount expended or $1,000.00 - $2,500.00 per tax year, whichever is less;

(2) In the case of a married couple filing a joint return, the actual amount expended or $2,500.00 - $5,000.00 per tax year, whichever is less; or

(3) Anything to the contrary contained in paragraph (1) or (2) of this subsection notwithstanding, in the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter 'S' corporation, or a partner in a partnership, the amount expended or $10,000.00 - $25,000.00 per tax year, whichever is less; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a partnership.

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

c.1) A business enterprise shall be allowed a credit against the tax imposed by Code Section 33-8-4 in an amount equal to its qualified education expenses or 75 percent of the business enterprise's state insurance premium tax liability owed pursuant to Code Section 33-8-4, whichever is less; provided, however, that the amount of such credit shall not exceed $1 million.

d) The tax credit shall not be allowed if the taxpayer or business enterprise designates the taxpayer's its qualified education expense for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer or business enterprise.
(2) In soliciting contributions, a student scholarship organization shall not represent, or
direct a qualified private school to represent, that, in exchange for contributing to the
student scholarship organization, a taxpayer or business enterprise shall receive a
scholarship for the direct benefit of any particular individual, whether or not such
individual is a dependent of the taxpayer or business enterprise. The status as a student
scholarship organization shall be revoked for any such organization which violates this
paragraph.

(e) In no event shall the total amount of the tax credit allowed to any taxpayer or business
enterprise under this Code section for a taxable year exceed the such taxpayer's income tax
liability or such business enterprise's state insurance premium tax liability owed pursuant
to Code Section 33-8-4, provided that any—Any unused tax credit shall be allowed the
taxpayer or business enterprise against the up to its succeeding five years' tax liability. No
such credit shall be allowed the taxpayer or business enterprise against prior years' tax
liability.

(f)(1) The aggregate amount of tax credits allowed under this Code section shall not
exceed:

(A) Fifty-eight million dollars for the tax year ending on December 31, 2018;

(B) One hundred million dollars for tax years beginning on January 1, 2019, and
ending on December 31, 2028 For 2019 through 2022, $100 million per year; and

(C) Fifty-eight million dollars for the tax year beginning on January 1, 2029, and for
all subsequent tax years For 2023 and all subsequent years, $120 million per year.

(1.1) In no event shall the aggregate amount of tax credits allowed under this Code
section to all business enterprises for state insurance premium tax liability owed pursuant
to Code Section 33-8-4 exceed $6 million for any year.

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

(3) For the purposes of paragraph (1) of this subsection, a student scholarship
organization shall notify a potential donor of the requirements of this Code section.
Before making a contribution to a student scholarship organization, the taxpayer or business enterprise shall electronically notify the department, in a manner specified by the department, of the total amount of contributions that the taxpayer or business enterprise intends to make to the student scholarship organization. The commissioner shall preapprove, deny, or prorate the requested amount within 30 days after receiving the request from the taxpayer or business enterprise and shall provide notice to the taxpayer or business enterprise and the student scholarship organization of such preapproval, denial, or proration which shall not require any signed release or notarized approval by the taxpayer or business enterprise. In order to receive a tax credit under this Code section, the taxpayer or business enterprise shall make the contribution to the student scholarship organization within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer or business enterprise does not comply with this paragraph, the commissioner shall not include this preapproved contribution amount when calculating the limit prescribed in paragraph (1) of this subsection or the additional limitation specific to business enterprises prescribed in paragraph (1.2) of this subsection. The department shall establish a web based donation approval process to implement this subsection.

(4) Preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection or the additional limitation specific to business enterprises prescribed in paragraph (1.2) of this subsection. The department shall maintain an ongoing, current list on its website of the amount of tax credits available under this Code section.

(5) Notwithstanding any laws to the contrary, the department shall not take any adverse action against donors to student scholarship organizations if the commissioner preapproved a donation for a tax credit prior to the date the student scholarship organization is removed from the Department of Education list pursuant to Code Section
279 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with paragraph (3) of this subsection.
280
(6) In addition to the reporting requirements in Code Section 20-2A-3, each student scholarship organization shall file an annual report with the department showing any fees or assessments retained by the student scholarship organization during the calendar year.
284
(g)(1) In order for the taxpayer to claim the student scholarship organization tax credit under this Code section, a letter of confirmation of donation issued by the student scholarship organization to which the contribution was made shall be attached to the taxpayer's tax return or a business enterprise's tax return provided for in Code Section 33-8-6.
288
(2)(A) However, in the event the taxpayer files an electronic return permitted by this chapter, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner.
297
(B) With respect to a business enterprise's tax return provided for in Code Section 33-8-6, the Commissioner of Insurance is authorized to promulgate rules and regulations regarding the manner in which such letters of confirmation of donations shall be filed in the case of tax returns filed electronically.
301
(3) The letter of confirmation of donation shall contain the taxpayer's or business enterprise's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit.
304
(h)(1) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer or business enterprise as a charitable
contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

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

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

PART III

SECTION 3-1.

This Act shall become effective on July 1, 2022; provided, however, that Part II of this Act shall become effective on January 1, 2023, and shall be applicable to all taxable years beginning on or after January 1, 2023.

SECTION 3-2.

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