

1 SB261  
2 217896-1  
3 By Senators Roberts, Marsh and Givhan  
4 RFD: Finance and Taxation Education  
5 First Read: 23-FEB-22

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 100 percent of the tax  
19 liability of the taxpayer, not to exceed \$100,000  
20 per taxpayer or a cumulative amount of \$30,000,000  
21 annually.

22 Under current law, all scholarship granting  
23 organizations must ensure that scholarship funds on  
24 hand at the beginning of a calendar year are  
25 expended on educational scholarships by the end of  
26 the academic year ending within the next succeeding  
27 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 100 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; 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; and to  
20                   provide for a retroactive effective date.

21                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22                   Section 1. Section 16-6D-9 of the Code of Alabama  
23                   1975, is amended to read as follows:

24                   "§16-6D-9.

25                   "(a) (1) An individual taxpayer who files a state  
26                   income tax return and is not claimed as a dependent of another  
27                   taxpayer, a taxpayer subject to the corporate income tax

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

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

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

1 scholarships during the taxable year for which the credit is  
2 claimed, up to ~~50~~ 100 percent of the tax liability of the  
3 taxpayer.

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

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

1 of tax credits available for 2015. The Department of Revenue  
2 shall develop a procedure to ensure that this cap is not  
3 exceeded and shall also prescribe the various methods by which  
4 these credits are to be issued.

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

12 "(b) (1) ADMINISTRATIVE ACCOUNTABILITY STANDARDS. All  
13 scholarship granting organizations shall do all of the  
14 following:

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

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

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

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

1            "e. Ensure that all determinations with respect to  
2 the eligibility of a student to receive an educational  
3 scholarship shall be made by the scholarship granting  
4 organization. A scholarship granting organization shall not  
5 delegate any responsibility for determining the eligibility of  
6 a student for an educational scholarship or any other  
7 requirements it is subject to under this chapter to any  
8 qualifying school or an entity affiliated therewith.

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

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

1 State Department of Education in furtherance of support to  
2 underperforming schools.

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

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

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

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

22 "1. The name and address of the scholarship granting  
23 organization.

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

26 "3. The total number and total dollar amount of  
27 educational scholarships awarded and funded during the



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

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

12 "1. The total number of scholarships awarded and  
13 funded.

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

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

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

26 "m. Ensure that educational scholarships are not  
27 provided for eligible students to attend a school with paid

1 staff or board members, or relatives thereof, in common with  
2 the scholarship granting organization.

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

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

1 educational scholarship under this program, scholarship funds  
2 may be made available to the student for educational  
3 scholarships until the student graduates from high school or  
4 reaches 19 years of age, regardless of whether the student is  
5 zoned to attend a failing school, subject to the income  
6 eligibility requirements of paragraph b. of subdivision (4) of  
7 Section 16-6D-4.

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

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

23 "r. Submit to the Department of Revenue annual  
24 verification that none of its actions or policies restricts a  
25 parent's educational choice by limiting or prohibiting the  
26 enrollment of eligible students in a qualifying school if

1 those eligible students received educational scholarships from  
2 other scholarship granting organizations.

3 "(2) FINANCIAL ACCOUNTABILITY STANDARDS.

4 "a. All scholarship granting organizations shall  
5 demonstrate their financial accountability by doing all of the  
6 following:

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

12 "2. Having the auditor certify that the report is  
13 free of material misstatements.

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

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

24 "2. Filing with the scholarship granting  
25 organization prior to receipt of the first educational  
26 scholarship payment for that academic year financial

1 information that demonstrates the financial viability of the  
2 qualifying nonpublic school.

3 "(c) (1) Each scholarship granting organization shall  
4 annually collect and submit to the Department of Revenue with  
5 the annual report required by paragraph k. of subdivision (1)  
6 of subsection (b) written verification from qualifying  
7 nonpublic schools that accept its educational scholarship  
8 students that those schools do all of the following:

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

11 "b. Hold a valid occupancy permit if required by the  
12 municipality.

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

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

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

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

21 "(2) By August 1 of each year, each qualifying  
22 nonpublic school shall provide to each scholarship granting  
23 organization from which it receives educational scholarships  
24 verification that the qualifying nonpublic school is in  
25 compliance with the Alabama Child Protection Act of 1999,  
26 Chapter 22A of this title. Any qualifying nonpublic school  
27 failing to timely provide such annual verification shall be

1 prohibited from participating in the scholarship program. Each  
2 scholarship granting organization shall annually submit to the  
3 Department of Revenue with the annual report required by  
4 paragraph k. of subdivision (1) of subsection (b) copies of  
5 the written verifications it receives from each qualifying  
6 nonpublic school.

7 "(3) ACADEMIC ACCOUNTABILITY STANDARDS. There shall  
8 be sufficient information about the academic impact  
9 educational scholarship tax credits have on students  
10 participating in the tax credit scholarship program in order  
11 to allow parents and taxpayers to measure the achievements of  
12 the tax credit scholarship program, and therefore:

13 "a. Each scholarship granting organization shall  
14 ensure that qualifying schools that accept its educational  
15 scholarship students shall do all of the following:

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

1           "2. Allow the costs of the testing requirement to be  
2 covered by the educational scholarships distributed by the  
3 scholarship granting organizations.

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

7           "4. Provide the test results to the Department of  
8 Revenue on an annual basis, beginning with the first year of  
9 testing.

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

13          "6. Provide graduation rates of those students  
14 benefitting from ~~education~~ educational scholarships to the  
15 Department of Revenue or an organization chosen by the state  
16 in a manner consistent with nationally recognized standards.

17          "7. Ensure that a student who receives an  
18 educational scholarship conforms to the attendance  
19 requirements of the qualifying school. If a student fails to  
20 conform, the qualifying school shall immediately communicate  
21 the failure to the applicable scholarship granting  
22 organization.

23          "b.1. The Department of Revenue shall select an  
24 independent research organization, which may be a public or  
25 private entity or university, to analyze the results of the  
26 testing required by paragraph a. every other academic year.  
27 The cost of analyzing and reporting on the test results to the

1 Department of Revenue by the independent research organization  
2 shall be borne by all scholarship granting organizations in  
3 proportion to the total scholarship donations received for the  
4 two calendar years prior to the report being published.  
5 Scholarship granting organizations may receive and use funds  
6 from outside sources to pay for its share of the biennial  
7 report.

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

21 "3. The first report under this paragraph shall be  
22 submitted to the Department of Revenue by September 1, 2016.  
23 Each biennial report thereafter shall be submitted to the  
24 Department of Revenue on September 1 of the year the report is  
25 due. All biennial reports required by this paragraph shall be  
26 published on the website of the Department of Revenue.



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

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

16           "6. At the same time the biennial report under  
17 ~~paragraph 2~~ subparagraph 2. is submitted to the Department of  
18 Revenue, it shall be submitted to the Chair of the Senate  
19 Education Policy Committee and the Chair of the House  
20 Education Policy Committee.

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

23           "(2) The Department of Revenue shall provide a  
24 standardized format for a receipt to be issued by a  
25 scholarship granting organization to a taxpayer to indicate  
26 the value of a contribution received. The Department of

1 Revenue shall require a taxpayer to provide a copy of the  
2 receipt when claiming the tax credit pursuant to this section.

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

7 "(4) The Department of Revenue may conduct either a  
8 financial review or audit of a scholarship granting  
9 organization.

10 "(5) The Department of Revenue may bar a scholarship  
11 granting organization or a qualifying school from  
12 participating in the tax credit scholarship program if the  
13 Department of Revenue establishes that the scholarship  
14 granting organization or the qualifying school has  
15 intentionally and substantially failed to comply with the  
16 requirements in subsection (b) or subsection (c).

17 "(6) If the Department of Revenue decides to bar a  
18 scholarship granting organization or a qualifying school from  
19 the tax credit scholarship program, the Department of Revenue  
20 shall notify affected educational scholarship students and  
21 their parents of the decision as quickly as possible.

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

25 "(8) The Department of Revenue shall publish and  
26 make publicly available on its website all annual and  
27 quarterly reports required to be filed with it by scholarship

1 granting organizations under paragraphs k. and l. of  
2 subdivision (1) of subsection (b).

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

5 "(2) All schools participating in the tax credit  
6 scholarship program shall comply with all state laws that  
7 apply to public schools regarding criminal background checks  
8 for employees and exclude from employment any person not  
9 permitted by state law to work in a public school.

10 "(3) All qualifying nonpublic schools participating  
11 in the tax credit scholarship program shall maintain a website  
12 that describes the school, the instructional program of the  
13 school, and the tuition and mandatory fees charged by the  
14 school, updated prior to the beginning of each semester.

15 "(4) The amount of a scholarship awarded a student  
16 to attend a nonpublic school may not exceed the total sum of  
17 tuition and mandatory fees normally charged a student to  
18 attend the nonpublic school for the same attendance period.  
19 The amount of a scholarship awarded a student to attend a  
20 public school may not exceed the total state appropriation  
21 provided for a student to attend the public school for the  
22 same attendance period.

23 "(f) The tax credit provided in this section may be  
24 first claimed for the 2013 tax year, but may not be claimed  
25 for any tax year prior to the 2013 tax year.

26 "(g) (1) Nothing in this section shall be construed  
27 to force any public school, school system, or school district

1 or any nonpublic school, school system, or school district to  
2 enroll any student. No qualifying school may enter into any  
3 agreement, whether oral or written, with a scholarship  
4 granting organization that would prohibit or limit an eligible  
5 student from enrolling in the school based on the identity of  
6 the scholarship granting organization from which the eligible  
7 student received an educational scholarship.

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

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

23 "(h) Nothing in this chapter shall affect or change  
24 the athletic eligibility rules of student athletes governed by  
25 the Alabama High School Athletic Association or similar  
26 association."

1                   Section 2. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law, and shall apply  
4 retroactively to tax years or periods beginning after December  
5 31, 2021.