

2022

HB 517: Amendments Relating to Student Scholarship Organizations

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REVENUE AND TAXATION

Income Taxes: 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; Require that Student Scholarship Organization Audits are Conducted in Accordance with Generally Accepted Auditing Standards; Provide for the Expansion of the Scope of Such Audits; Provide for a Deadline by which Such Audits Shall be Reported to the Department of Revenue; Require that Student Scholarship Organizations Immediately Notify the Department of Education if the Department of Revenue Ceases Preapproving Contributions to Student Scholarship Organizations; Require Student Scholarship Organizations to Annually Submit Copies of Form 990s to the Department of Revenue; Provide that Student Scholarship Organizations are Solely Responsible for Verifying Student Eligibility; Provide for Expansion of Public Reporting Requirements; 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; Provide for Conditions and Limitations; 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; Revise the Aggregate Annual Limits of the Tax Credit and Provide for Increases Contingent on the Governor's Revenue Estimates; Provide for Annual Determinations by the Office of Planning and Budget; Provide for Related Matters; Provide for Effective Dates and Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 20-2A-2, -3 (amended);
48-7-29.16 (amended)
BILL NUMBER: HB 517

ACT NUMBER:	722
GEORGIA LAWS:	2022 Ga. Laws 150
EFFECTIVE DATES:	O.C.G.A. §§ 20-2A-2, -3, July 1, 2022; § 48-7-29.16, January 1, 2023
SUMMARY:	The Act extends the annual revenue received by student scholarship organizations to include interest earned on deposits and investments of scholarship funds or tuition grants. The Act expands the scope of auditing that student scholarship organizations are subjected to and compels the organizations to submit Form 990 to the Department of Revenue. Further, the Act allows certain insurance companies to partake in the tax program and increases the tax credit available to participating taxpayers. Lastly, the Act increases the aggregate amount of tax credits allowed per year to \$120 million.

History

In 2008, “Georgia lawmakers passed one of the most free-market tuition tax credit laws” in the United States.¹ The Georgia House of Representatives introduced House Bill (HB) 1133, the Qualified Education Expense (QEE) Tax Credit bill, and Governor Sonny Perdue (R) signed it into law.² HB 1133 added a new chapter to Title 20 of the Georgia Code to allow for the creation, operation, and governance of student scholarship organizations (SSOs).³ The bill

1. *Program Legislation*, GA. GOAL SCHOLARSHIP PROGRAM, INC., <https://www.goalscholarship.org/advocacy/page/program-legislation> [https://perma.cc/5MED-PHTM].

2. *Frequently Asked Questions*, GA. GOAL SCHOLARSHIP PROGRAM, INC., https://www.goalscholarship.org/about_goal/page/frequently-asked-questions [https://perma.cc/W725-BAME] (June 6, 2022).

3. *Gaddy v. Ga. Dep’t of Revenue*, 301 Ga. 552, 552, 802 S.E.2d 225, 227 (2017); 2008 Ga. Laws 1108, § 1, at 1108–10.

permitted “Georgia taxpayers to take a dollar-for-dollar credit against their Georgia income tax liability for donations to SSOs.”⁴

The bill allowed taxpayers’ contributions to become scholarships for public school students in kindergarten through twelfth grade and permitted the students to attend a private school of their parents’ choosing.⁵ Any student enrolled in one of Georgia’s public schools is eligible.⁶ A taxpayer interested in contributing to an SSO must be pre-approved by the Georgia Department of Revenue.⁷ The taxpayer submits their tax credit application to the SSO, which then submits the taxpayer’s request to the department of revenue.⁸ All Georgia state tax payers can participate.⁹

The bill’s purpose was to provide a choice of schools to Georgia parents and students that could not afford private school and wanted to leave “underperforming public schools.”¹⁰ HB 1133’s proponents cited a study by Friedman Foundation for Educational Choice of Indianapolis that suggested the program would “improve public schools without costing taxpayers more money.”¹¹ Proponents argued that HB 1133 “would save Georgia’s state and local governments a combined total of nearly \$100 million annually based on the transfer of almost 15,000 students” to private schools.¹² Representative David Casas (R-107th) stated that “thousands of students would take these privately funded scholarships and transfer to private schools, leaving a host of tax money available for public schools to improve their performance.”¹³

4. *Gaddy*, 301 Ga. at 552, 802 S.E.2d at 227; see 2008 Ga. Laws 1108, § 2, at 1110–11.

5. *Gaddy*, at 553, 802 S.E.2d at 228; see 2008 Ga. Laws 1108, § 1, at 1109.

6. 2008 Ga. Laws 1108, § 1, at 1109 (codified at O.C.G.A. § 20-2A-1 (2008)).

7. 2008 Ga. Laws 1108, § 2, at 1111 (codified at § 48-7-29.16(f)(3)); *Frequently Asked Questions*, *supra* note 2.

8. 2008 Ga. Laws 1108, § 2, at 1111 (codified at § 48-7-29.16(f)(3)); 2008 Ga. Laws 1108, § 1, at 1109–10 (codified at § 20-2A-3); *Frequently Asked Questions*, *supra* note 2.

9. *Frequently Asked Questions*, *supra* note 2.

10. STEVE SUITTS & KATHERINE DUNN, THE S. EDU. FOUND., A FAILED EXPERIMENT: GEORGIA’S TAX CREDIT SCHOLARSHIPS FOR PRIVATE SCHOOLS 8 (Cynthia Blakeley ed., 2009), <https://files.eric.ed.gov/fulltext/ED535565.pdf> [<https://perma.cc/V5VH-S9MN>]; see 2008 Ga. Laws 1108.

11. SUITTS & DUNN, *supra* note 10.

12. *Id.*

13. *Id.*

Under HB 1133, the maximum amount of credits available was set at \$50 million per year, and the SSOs were required to allocate at least 90% of contributions to scholarships.¹⁴ In 2011, Georgia House Bill 325 amended the QEE Tax Credit Law.¹⁵ The amendment provided for (1) the inclusion of a Consumer Price Index (CPI) escalator on the annual cap, with a sunset in 2018,¹⁶ (2) the clarification of student eligibility,¹⁷ (3) requirements for greater transparency and accountability for SSOs,¹⁸ and (4) the imposition of the first-ever maximum annual award limit for individual students.¹⁹

In 2013, Georgia House Bill (HB) 283 provided an additional amendment to the QEE Tax Credit law.²⁰ The amendment raised the annual cap to \$58 million, removed the sunset on the credit cap, and reduced the administration fees that the SSO may charge.²¹ It also changed the eligibility requirements by insisting upon six weeks of public-school attendance for second grade and above.²² Further, the bill required SSOs to award the scholarships to eligible students within one year and to consider the financial needs of students based on all available sources of income.²³ HB 283 added two prohibitions: first, scholarships cannot be awarded to any individual designated by the donor, and second, scholarships cannot be promised in exchange for contributions.²⁴ Lastly, HB 283 allowed for a tax credit up to \$10,000 for individuals with ownership in a pass-through entity, such as

14. 2008 Ga. Laws 1108, §§ 1–2, at 1109, 1111 (codified at O.C.G.A. § 48-7-29.16(f)(1) (2008) and O.C.G.A. § 20-2A-1(3)(A) (2016)).

15. *Program Legislation*, *supra* note 1; *see* 2011 Ga. Laws 529.

16. 2011 Ga. Laws 529, § 2, at 533 (formerly found at O.C.G.A. § 48-7-29.16(f)(1) (2011); *see Consumer Price Index*, U.S. BUREAU OF LAB. STATS., <https://www.bls.gov/cpi/factsheets/escalation.htm> [<https://perma.cc/997C-P8LD>] (Nov. 25, 2020) (“Escalation agreements often use the CPI—the most widely used measure of price change—to adjust payments for changes in prices.”).

17. 2011 Ga. Laws 529, § 1, at 529–30 (codified at O.C.G.A. § 20-2A-1(1) (2011)).

18. 2011 Ga. Laws 529, § 1, at 531 (codified at § 20-2A-3(a)).

19. 2011 Ga. Laws 529, § 1, at 530 (codified at § 20-2A-2(1)).

20. 2013 Ga. Laws 1061; *see also Program Legislation*, *supra* note 1.

21. 2013 Ga. Laws 1061, § 33D, at 1089 (codified at O.C.G.A. § 48-7-29.16(f)(1) (2013)). *See generally* 2013 Ga. Laws 1061, § 33B, at 1086–88 (codified at § 20-2A-2).

22. 2013 Ga. Laws 1061, § 33A, at 1085 (codified at § 20-2A-1(1)).

23. 2013 Ga. Laws 1061, § 33B, at 1086–87 (codified at § 20-2A-2(1)–(1.1)). “All sources” includes the most recently reported federal adjusted gross income as adjusted for family size, or if unavailable, proof of all sources of parental income within the last 30 days. § 20-2A-2(1.1).

24. 2013 Ga. Laws 1061, § 33D, at 1089 (codified at § 48-7-29.16(d)).

partnerships and S corporations, that elect to pay state income tax at the entity level, which effectively raised the cap for entity owners.²⁵

In 2018, the Georgia General Assembly introduced House Bill (HB) 217, another amendment to the QEE Tax Credit law.²⁶ The amendment raised the annual cap to \$100 million for the next decade and reduced the amount of fees that SSOs can retain.²⁷ HB 217 also clarified and improved the SSO reporting process to the department of revenue and required state auditors to evaluate the program in 2023 to determine the overall financial and economic impact on the state.²⁸

Finally, the latest amendment, House Bill (HB) 517, was introduced by Representative John Carson (R-46th) following a comprehensive review of the program by the Georgia Department of Audits and Accounts.²⁹ The audit found that the program needs to take steps to improve transparency, accountability, and oversight.³⁰ The bill raised the annual cap to \$120 million beginning in 2023.³¹ It increased taxpayer contribution limits to \$2,500 for single filers, \$5,000 for joint filers, and \$25,000 for owners of pass-through businesses.³² The bill caps the aggregate annual tax credits for insurance companies that pay state insurance premium taxes at \$6 million.³³ HB 517 also enhanced

25. See 2013 Ga. Laws 1061, § 33D, at 1089 (codified at § 48-7-29.16(b)); *Understanding Georgia's New Pass-Through Entity Tax Law*, BJM DULUTH, <https://www.bjmco.com/blog/2022/03/08/understanding-georgias-new-pass-through-entity-tax-law/> [<https://perma.cc/VKN2-BYVZ>] (“As you probably know, the Tax Cuts and Jobs Act of 2017 limited the itemized deduction for state and local taxes (SALT) to \$10,000 per year. Numerous states (particularly those with high income and property taxes) have tried various workarounds to help business owners avoid the \$10,000 cap. The IRS finally blessed one approach, allowing pass-through entities (PTEs) such as partnerships and S corporations to elect to pay state income tax at the entity level, effectively removing the limitation for the entity owners and (perhaps accidentally) enabling those deductions for nonitemizers.”).

26. 2018 Ga. Laws 644.

27. 2018 Ga. Laws 644, § 1, at 645 (codified at O.C.G.A. § 48-7-29.16(f)(1)(B) (2018)); see 2018 Ga. Laws 644, § 2, at 647 (codified at § 20-2A-2(5)).

28. See 2018 Ga. Laws 644, § 2, at 647–48 (codified at § 20-2A-2(5)–(5.1)).

29. Georgia General Assembly, HB 517, Bill Tracking [hereinafter HB 517, Bill Tracking], <https://www.legis.ga.gov/legislation/59811> [<https://perma.cc/3D3N-FX4N>]; PRO. ASS'N OF GA. EDUCATORS, HB 517 BILL SUMMARY 1 [hereinafter HB 517 BILL SUMMARY], https://www.pagelegislative.org/_files/ugd/bd220f_29b73fb2e190404da202e477537666bd.pdf [<https://perma.cc/9GZ6-XH65>].

30. GA. DEP'T OF AUDITS & ACCTS., PERFORMANCE AUDIT DIV., QUALIFIED EDUCATION EXPENSE CREDIT AND STUDENT SCHOLARSHIP PROGRAM (2021) [hereinafter GA. DEP'T OF AUDITS & ACCTS.], https://www.audits.ga.gov/PAO/files/20-12_1PGSum.pdf [<https://perma.cc/NS24-7758>].

31. 2022 Ga. Laws 150, § 2-1, at 156 (codified at O.C.G.A. § 48-7-29.16(f)(1)(C) (2022)).

32. 2022 Ga. Laws 150, § 2-1, at 155 (codified at § 48-7-29.16(b)).

33. 2022 Ga. Laws 150, § 2-1, at 155 (codified at § 48-7-29.16(f)(1.1)).

the SSO reporting requirements based on recommendations from the Georgia Department of Audits and Accounts.³⁴

There is widespread debate about the purpose and true benefit of the scholarship program. HB 517 contains some of the key action steps outlined in the 2021 program audit, but some claim it fails to take other steps that should be undertaken by the department of revenue, the General Assembly, or the SSOs.³⁵ For example, HB 517 requires that audits be conducted “in accordance with generally acceptable auditing standards” and creates a deadline for audits to be reported to the department of revenue.³⁶ But HB 517 does not require SSOs to report data that would help verify the accuracy of reports, nor does it permit state agencies to access SSO data.³⁷ Further, public school advocates have long argued that such legislation is harmful because the SSOs redirect funds to private schools that could be used to benefit public education.³⁸ However, HB 517’s opponents recognize that the bill takes several much-needed steps toward transparency for Georgia’s program by increasing auditing requirements, requiring SSOs to verify student eligibility, and expanding public reporting requirements.³⁹

Bill Tracking of HB 517

Consideration and Passage by the House 2021

Representative John Carson (R-46th) sponsored HB 517 in the House with Representative David Knight (R-130th), Representative Shaw Blackmon (R-146th), Representative Mark Newton (R-123rd), Representative Dave Belton (R-112th), and Representative Ed Setzler (R-35th) cosponsoring.⁴⁰ The bill was first placed in the hopper on

34. 2022 Ga. Laws 150, § 1-1, at 152–53 (codified at § 20-2A-2(5)).

35. HB 517 BILL SUMMARY, *supra* note 29; *see* 2022 Ga. Laws. 150.

36. 2022 Ga. Laws 150, § 1-1, at 152–53 (codified at § 20-2A-2(5)).

37. HB 517 BILL SUMMARY, *supra* note 29, at 2.

38. Ty Tagami, *Georgia House Votes to Expand Subsidies for Private School Tuition*, ATLANTA J.-CONST., <https://www.ajc.com/education/georgia-house-votes-to-expand-subsidies-for-private-school-tuition/VWQHGXRONNCQHKTGM4E4WJIQMA/> [<https://perma.cc/X6YH-H8S2>] (Mar. 3, 2022).

39. *See* 2022 Ga. Laws. 150; *Private School Voucher Advocacy Resources*, PROF. ASS’N OF GA. EDUCATORS, <https://www.pagelegislative.org/vouchers> [<https://perma.cc/GV8S-YKF6>]; HB 517 BILL SUMMARY, *supra* note 29.

40. HB 517, Bill Tracking, *supra* note 29.

February 17, 2021, and the House first read it on February 18, 2021.⁴¹ The House read the bill for a second time on February 22, 2021.⁴² The House Committee on Education favorably reported the bill by substitute on March 3, 2021.⁴³ The substitute revised the aggregate tax credit annual limit to \$58 million for 2018, \$100 million for 2019 through 2031, and \$58 million for 2032 and beyond.⁴⁴ The Rules Committee Substitute, however, repealed the House Committee on Education’s amendments, reverting the bill back to its original language.⁴⁵

The House read the bill for the third time on March 8, 2021.⁴⁶ The same day, the House passed and adopted by substitute HB 517 by a vote of 98 to 71.⁴⁷

Consideration and Passage by the Senate 2021

Senator Chuck Payne (R-54) sponsored HB 517 in the Senate.⁴⁸ The Senate first read the bill on March 9, 2021, and referred the bill to the Senate Committee on Finance.⁴⁹ The Committee favorably reported the bill by substitute on March 25, 2021.⁵⁰ The substitute included a number of lengthy and important changes to the bill.⁵¹

First, the substitute defined “business enterprise” and “qualified education expense” (QEE) to allow certain insurance companies to qualify for tax credit.⁵² Next, the substitute specified that participating

41. *Id.*; State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

42. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

43. HB 517, Bill Tracking, *supra* note 29; State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

44. HB 517 (HCS) § 2-1, p. 8, ll. 190–94, 2021 Ga. Gen. Assemb.

45. *Compare id.*, with HB 517 (HRCS), § 2-1, 2021 Ga. Gen. Assemb.

46. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

47. *Id.*; Georgia House of Representatives Voting Record, HB 517, #206 (Mar. 8, 2021).

48. HB 517, Bill Tracking, *supra* note 29.

49. *Id.*; State of Georgia Final Composite Sheet, HB 517, May 19, 2022.

50. HB 517, Bill Tracking, *supra* note 29; State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

51. *See* HB 517 (SCS), 2021 Ga. Gen. Assemb.

52. *Id.* § 2-1, p. 8, ll. 179–86. “‘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.” *Id.* § 2-1, p. 8, ll. 179–80. The substitute amended the definition of “qualified education expense” to mean “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[n] [SSO] operating pursuant to Chapter 2A of Title 20 which are used for tuition and fees for a qualified school or program.” *Id.* § 2-1, p. 8, ll. 183–86.

corporations and other entities shall receive a tax credit for QEEs not to exceed the actual amount expended or 75% of the corporation's income tax liability, whichever is less.⁵³ Similarly, participating business enterprises can receive a tax credit, capped at \$1 million, "in an amount equal to its [QEEs] or 75[%] of the business enterprise's state insurance premium tax liability owed."⁵⁴ Further, the substitute provided regulations and limitations for the direction, solicitation, and representation of taxpayers and SSOs.⁵⁵

Next, the substitute capped the amount of tax credit allowed to "any taxpayer or business enterprise" at either the "taxpayer's income tax liability" or the "business enterprise's state insurance premium tax liability" for a taxable year.⁵⁶ The substitute added an additional subsection to Code section 48-7-29.16 to restrict the tax credit available to business enterprises to 5% of the respective annual cap for any year.⁵⁷ Finally, the substitute specified the procedural steps taxpayers, including business enterprises, must follow to assure they are awarded the correct tax credit and comply with all terms.⁵⁸

The Senate read the bill for the second time on March 25, 2021.⁵⁹ The Senate engrossed the amendments made by the Senate Finance Committee on March 29, 2021, by a vote of 36 to 16.⁶⁰ The same day, the Senate tabled the bill.⁶¹ On March 31, 2021, however, the bill was taken from the table and read for the third time.⁶² On that same day, the Senate passed and adopted the bill by substitute with a vote of 30 to 18.⁶³

53. *Id.* § 2-1, p. 9, ll. 205–07.

54. *Id.* § 2-1, p. 9, ll. 208–12.

55. *Id.* § 2-1, p. 9, ll. 217–23.

56. *Id.* § 2-1, p. 10, ll. 224–30.

57. HB 517 (SCS), § 2-1, p. 10, ll. 238–41, 2021 Ga. Gen. Assemb.

58. *Id.* § 2-1, p. 10, l. 245–93.

59. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

60. HB 517, Bill Tracking, *supra* note 29; Georgia Senate Voting Record, HB 517, #298 (Mar. 29, 2021); State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

61. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

62. *Id.*

63. *Id.*; Georgia Senate Voting Record, HB 517, #387 (Mar. 31, 2021).

Consideration and Passage by the House 2022

Almost a year later, on March 3, 2022, the House agreed to the Senate substitute as amended by the House by a vote of 94 to 66.⁶⁴ The amendments by the House mirrored previous amendments by limiting the aggregate annual tax credits.⁶⁵ The amendments specified the cap on the aggregate amount of tax credits per year.⁶⁶ On March 3, 2022, the House immediately transmitted the bill to the Senate by a vote 94 to 63.⁶⁷

On March 11, 2022, the Senate disagreed with the House Amendments to the Senate substitute.⁶⁸ On March 30, 2022, the House insisted on the amendments, and the Senate and House appointed Conference Committee members.⁶⁹ The Committees on Conference Substitute to HB 517 added a requirement that each SSO must submit, along with its audit, a signed declaration of its compliance with state and federal law.⁷⁰ Further, annual reports must include “the total number of scholarship recipients and the average scholarship dollar amount by each county within which any scholarship recipient resides.”⁷¹

The Conference Substitute’s most prominent change was the limitation of the allowable aggregate amount of tax credits.⁷² The Conference Substitute capped the aggregate amounts of tax credit “[f]or 2019 through 2022 [at] \$100 million per year; and [f]or 2023 and all subsequent years [at] \$120 million per year.”⁷³ Lastly, the aggregate amount of tax credits permitted to all business enterprises cannot exceed \$6 million each year.⁷⁴

64. HB 517, Bill Tracking, *supra* note 29; Georgia House of Representatives Voting Record, HB 517, #591 (Mar. 3, 2022); State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

65. HB 517 (HFA) (AM 43 0209), pp. 1–2, ll. 6–26, 2022 Ga. Gen. Assemb.

66. *Id.*

67. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022; Georgia House of Representatives Voting Record, HB 517, #592 (Mar. 3, 2022).

68. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

69. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022. Senate conferees included senators from the 18th, 52nd, and 54th districts. *Id.* House conferees included representatives from the 28th, 29th, and 46th districts. *Id.*

70. HB 517 (CCA), § 1-1, p. 5, ll. 101–03, 2022 Ga. Gen. Assemb.

71. *Id.* § 1-2, p. 7, ll. 161–62.

72. *Id.* § 2-1, p. 10, ll. 239–41.

73. *Id.* § 2-1, p. 10, ll. 242–45.

74. *Id.* § 2-1, p. 10, ll. 246–48.

On April 4, 2022, the Conference Committee report lost by a Senate vote of 28 to 20.⁷⁵ But after a successful motion to reconsider, the Senate Conference Committee report was adopted by the Senate by a vote of 30 to 21.⁷⁶ The same day, the House Conference Committee report was adopted by a House vote of 98 to 68.⁷⁷

The House sent the bill to Governor Brian Kemp (R) on April 8, 2022, and he signed the bill into law as Act 722 on April 28, 2022.⁷⁸ The Act, with regards to Code sections 20-2A-2 and 20-2A-3, became effective on July 1, 2022.⁷⁹ The changes to Code section 48-7-29.16, however, become effective on January 1, 2023.⁸⁰

The Act

The Act amends Chapter 2A of Title 20 “to provide for the inclusion of earned interest in the calculation of minimum revenue obligations for scholarships and tuition grants; to require that [SSO] audits are conducted in accordance with generally accepted auditing standards” and to expand the scope of such audits; to update the information that SSOs must report to the department of revenue; to provide that the SSOs alone are responsible for verifying student eligibility; and to expand the public reporting requirements.⁸¹ The Act permits insurance companies to have access to certain qualified education tax credits and increases the individual and the aggregate limits of those tax credits.⁸² Additionally, the Act provides effective dates and applicability, repeals conflicting laws, and provides for other general purposes.⁸³

75. HB 517, Bill Tracking, *supra* note 29; Georgia Senate Voting Record, HB 517, #863 (Apr. 4, 2022); State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

76. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022; HB 517, Bill Tracking, *supra* note 29; Georgia Senate Voting Record, HB 517, #864 (Apr. 4, 2022); Georgia Senate Voting Record, HB 517, #865 (Apr. 4, 2022).

77. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022; Georgia House of Representatives Voting Record, HB 517, #903 (Apr. 4, 2022).

78. State of Georgia Final Composite Status Sheet, HB 517, May 19, 2022.

79. 2022 Ga. Laws 150, § 3-1, at 158.

80. *Id.*

81. 2022 Ga. Laws 150.

82. 2022 Ga. Laws 150, § 2-1, at 155–56 (codified at O.C.G.A. § 48-7-29.16 (2022)).

83. 2022 Ga. Laws 150.

Part I—Section 1-1

Section 1-1 requires the SSOs to obligate a certain percentage of their annual revenue, “including interest earned on deposits and investments of scholarship funds or tuition grants,” to be paid out in scholarships or tuition grants each year.⁸⁴ The Section further clarified that each SSO must have an independent board of directors with at least three members.⁸⁵

Additionally, Section 1-1 requires that within 120 days after the end of the fiscal year, the SSO “shall conduct an audit of its accounts by an independent certified public accountant in accordance with generally accepted auditing standards verifying that the [SSO] has complied with all requirements of this chapter.”⁸⁶ The Act’s requirements with which the SSO must comply include “scholarship fund management requirements, operational fund management requirements, other financial requirements, student eligibility requirements, school qualification requirements, and other scholarship management requirements.”⁸⁷

Further, each SSO shall submit a signed declaration certifying that it is in compliance with all requirements imposed by state and federal law, and the organization must provide a copy of the audit to the department of revenue within sixty days of its completion.⁸⁸ The department of revenue will not preapprove any contributions to an SSO if the audit fails to verify that, among other qualifications, the SSO included in its minimum obligations interest earned on deposits and investments of annual revenue received from donations.⁸⁹ If the department of revenue temporarily or permanently ceases preapproving contributions to the organizations, the Georgia Department of Education must be immediately notified.⁹⁰

The Act provides that each SSO must annually submit a most recent copy of its Form 990 to the United States Internal Revenue Service.⁹¹

84. 2022 Ga. Laws 150, § 1-1, at 151 (codified at § 20-2A-2(1)).

85. 2022 Ga. Laws 150, § 1-1, at 152 (codified at § 20-2A-2(3)).

86. 2022 Ga. Laws 150, § 1-1, at 152–53 (codified at § 20-2A-2(5)).

87. *Id.*

88. § 20-2A-2(5).

89. *Id.*

90. § 20-2A-2(6).

91. 2022 Ga. Laws 150, § 1-1, at 153 (codified at § 20-2A-2(7)).

Finally, the SSO is solely responsible for verifying the eligibility of students participating in the program.⁹²

Part I—Section 1-2

Section 1-2 amends Code section 20-2A-3 regarding the reporting requirements for SSOs.⁹³ In addition to the existing requirements, the Act requires each SSO to annually report to the department of revenue the “total number of scholarship recipients and the average scholarship dollar amount by each county within which any scholarship recipient resides.”⁹⁴ The department of revenue must report the SSOs’ most recent audits, excluding confidential taxpayer information, on its website.⁹⁵

Part II—Section 2-1

Section 2-1 defines “business enterprise” as “any insurance company or the headquarters of any insurance company required to pay the tax provided for in Code [s]ection 33-8-4.”⁹⁶ The section also adds the new term “business enterprise” to the definition of “qualified education expense.”⁹⁷ Further, the section increases the allowable tax credit for QEEs to \$2,500 per tax year for individuals and heads of households, \$5,000 per tax year for a married couple filing jointly, and \$25,000 for individuals who are members of a limited liability company, a shareholder of a Subchapter S corporation, or a partner in a partnership.⁹⁸

Under the Act, business enterprises are allowed a tax credit against the tax imposed by Code section 33-8-4 that is “equal to its [QEEs] or

92. § 20-2A-2(8).

93. 2022 Ga. Laws 150, § 1-2, at 154.

94. *Id.* (codified at § 20-2A-3(a)(4.1)).

95. § 20-2A-3(a). All information or reports that SSOs provide to the department of revenue are considered confidential taxpayer information, except for the allowable information included in the audit report. § 20-2A-3(b).

96. 2022 Ga. Laws 150, § 2-1, at 155 (codified at § 48-7-29.16(a)(1)).

97. *Id.* (codified at § 48-7-29.16(a)(3)).

98. *Id.* (codified at § 48-7-29.16(b)).

75[%] of [their] state insurance premium tax liability,” whichever is less.⁹⁹ However, the amount of their credit cannot exceed \$1 million.¹⁰⁰

Section 2-1 also provides for the increase in the aggregate amount of tax credits allowed.¹⁰¹ From 2019 through 2022, aggregate tax credits are now capped at \$100 million, followed by an increase to \$120 million in 2023 and beyond.¹⁰² The previous limits were \$100 million per year through 2028 and \$58 million for 2029 and beyond.¹⁰³ The section also caps the tax credits provided to business enterprises for their state insurance premium tax liability at \$6 million per year.¹⁰⁴

Overall, the section incorporates “business enterprise” into all prior provisions.¹⁰⁵ With respect to electronic returns filed by business enterprises, “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.”¹⁰⁶

Analysis

Constitutionality

Georgia citizens can be assured of the constitutionality of the program and its continued growth.¹⁰⁷ In 2017, in *Gaddy v. Georgia Department of Revenue*, four Georgia taxpayers sued the Georgia Department of Revenue claiming that the SSO program violated a provision in the Georgia Constitution which states, “No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.”¹⁰⁸ The taxpayers argued for standing by alleging the

99. 2022 Ga. Laws 150, § 2-1, at 155–56 (codified at § 48-7-29.16(c.1)).

100. § 48-7-29.16(c.1).

101. 2022 Ga. Laws 150, § 2-1, at 156 (codified at § 48-7-29.16(f)(1)).

102. § 48-7-29.16(f)(1).

103. *Compare id.*, with O.C.G.A. § 48-7-29.16(f)(1) (2018).

104. 2022 Ga. Laws 150, § 2-1, at 156 (codified at O.C.G.A. § 48-7-29.16(f)(1.1) (2022)).

105. 2022 Ga. Laws 150, § 2-1, at 155–58 (codified at § 48-7-29.16).

106. § 48-7-29.16(g).

107. *Foundation Welcomes Ga. High Court Ruling on Tax Credit Scholarships*, GA. PUB. POL’Y FOUND. (June 26, 2017) [hereinafter *Foundation Welcomes*], <https://www.georgiapolicy.org/news/foundation-welcomes-ga-high-court-ruling-tax-credit-scholarships/> [<https://perma.cc/X2KW-3D7B>].

108. *Id.*; *Gaddy v. Ga. Dep’t of Revenue*, 301 Ga. 552, 553–54, 802 S.E.2d 225, 228 (2017).

program harms them by granting tax credits to other taxpayers, thereby increasing their tax burden.¹⁰⁹

The Supreme Court of Georgia found that the taxpayers had no standing to challenge the program's constitutionality and were not harmed by the program.¹¹⁰ The court held that the money donated to SSOs is not taken from the public treasury, and therefore, the donated dollars are private, not public, dollars.¹¹¹ The court held that "[b]ecause each of the constitutional provisions relied upon by plaintiffs involve the expenditure of public funds, and the statutes that establish the Program demonstrate that no public funds are used in the Program, plaintiffs lack standing as taxpayers to assert these claims."¹¹²

Georgians viewed the court's decision as validating the SSO program.¹¹³ The ruling aligned with similar federal and state court decisions, establishing the program's continued constitutionality.¹¹⁴

Unresolved Issues

The overall program cap amount ended up being a determinative factor in the Act's success.¹¹⁵ In the final weeks of the 2022 Legislative Session, the Act was amended to raise the cap by \$100 million; however, after the Senate rejected this amount and the Act went to the Conference Committee, the members compromised with a cap increase of \$20 million.¹¹⁶ HB 517's proponents urged legislators to continue increasing this cap and were disappointed by the Conference Committee's compromise.¹¹⁷ Vice President of Public Policy for the Georgia Center for Opportunity, Buzz Brockway, stated that he "would have preferred the cap be raised by \$100 million, but in politics, you rarely get everything you want."¹¹⁸ Although proponents

109. *Gaddy*, 310 Ga. at 555–56, 802 S.E.2d at 229–30.

110. *Id.* at 558, 802 S.E.2d at 231.

111. *Id.* at 557–58, 802 S.E.2d at 231.

112. *Id.*

113. *Foundation Welcomes*, *supra* note 107.

114. *See id.*

115. Electronic Mail Interview with Buzz Brockway, Vice President of Public Policy, Georgia Center for Opportunity (June 9, 2022) [hereinafter Brockway Interview] (on file with the Georgia State University Law Review).

116. *Id.*

117. *Id.*

118. *Id.*

are pleased with any increase, they will continue reaching for a higher cap to “benefit students and families across Georgia.”¹¹⁹

Opponents of HB 517 promote new legislation from the General Assembly and advocate for modifications to existing laws.¹²⁰ Opponents are focused on the lack of transparency and accountability placed on the participating schools and taxpayers.¹²¹ The scholarship program differs from true vouchers by “draw[ing] funds directly from taxpayers who get a credit off their state taxes equal to their contribution.”¹²²

Opponents suggests legislation that includes “[a] [department of revenue] requirement that taxpayers identify the pass-through entities from which they are claiming income,” “a reliable ratio of administrative revenues to administrative expenses to be calculated by SSOs,” and a requirement that “data reported by SSOs [] be attested to so that [the data] is independently verified.”¹²³ These proposed pieces of legislation stemmed from the Georgia Department of Audits and Accounts’ 2021 Report which suggested that the SSO program needed “[a]dditional measures [] to improve transparency and accountability.”¹²⁴

Most opponents adamantly demand that schools be required to report information about students participating in the SSO program.¹²⁵ There is currently no provision in the Act that requires a report of participating students’ success.¹²⁶ Additionally, “[n]o state agency . . . is charged with collecting and verifying student eligibility data.”¹²⁷ Opponents of HB 517 are quick to question whether the program produces the benefits it claims to, or if it is simply an “attempt

119. *Id.*

120. HB 517 BILL SUMMARY, *supra* note 29.

121. *Id.*

122. Tagami, *supra* note 38 (“[T]he state Supreme Court ruled five years ago that [SSO program tax credits] differ[] from classic vouchers because the money does not go through the government.”).

123. HB 517 BILL SUMMARY, *supra* note 29.

124. GA. DEP’T OF AUDITS & ACCTS., *supra* note 30.

125. CLAIRE SUGGS, PRO. ASS’N OF GA. EDUCATORS, PUSHING PUBLIC DOLLARS TO PRIVATE SCHOOLS: VOUCHERS IN GEORGIA 6, <https://www.pageinc.org/wp-content/uploads/2017/05/Pushing-Public-Dollars-to-Private-Schools-Vouchers-in-Georgia.pdf> [<https://perma.cc/F7SB-RWZG>].

126. *Id.*

127. *Id.*

to dress up the transfer of value from public schools to private schools.”¹²⁸

Public Policy: School Choice

The heart of HB 517 rests on the choice-of-school policy and its surrounding controversy from either side of the aisle.¹²⁹ Proponents of HB 517 “believe the Tax Credit Scholarship program is an important tool in Georgia’s education toolbox.”¹³⁰ Contrarily, opponents believe it “syphon[s] away tax dollars from public education in order to direct those dollars to private schools.”¹³¹

On its face, school choice is the process of allowing families to choose where their child enrolls in school for kindergarten through twelfth grade.¹³² The program is presented as a beneficial way to tend to individual students’ learning styles and unique educational desires.¹³³ Brockway explains that “[f]or some students, the traditional public school doesn’t meet their specific needs and this program provides those students with options that may better meet their educational needs.”¹³⁴ The Act uses the dollar-for-dollar credit against state income tax liability as a platform to allow “public education funds to follow students to the schools or services that best fit their needs.”¹³⁵

Proponents of the Act believe it is a huge victory because it will provide millions of dollars in scholarships for Georgia’s students.¹³⁶ The increased tax credit cap is anticipated to expand the program to

128. Telephone Interview with Rep. Josh McLaurin (D-51st) (June 1, 2022) [hereinafter McLaurin Interview] (on file with the Georgia State University Law Review).

129. See Nyamekye Daniel, *House Approves Expansion of Georgia School Voucher Program*, CTR. SQUARE (Mar. 4, 2022), https://www.thecentersquare.com/georgia/house-approves-expansion-of-georgia-school-voucherprogram/article_ec9a692c-9bef-11ec-a24b-17fd2e33e2d.html [https://perma.cc/3UQG-M4T7].

130. Brockway Interview, *supra* note 115.

131. McLaurin Interview, *supra* note 128.

132. *What Is School Choice?*, EDCHOICE, <https://www.edchoice.org/school-choice/what-is-school-choice/> [https://perma.cc/WR9M-KC7F].

133. *Id.*

134. Brockway Interview, *supra* note 115.

135. *What Is School Choice?*, *supra* note 132; see 2022 Ga. Laws 150, § 2-1, at 155–56.

136. *School Choice Victory for Georgia Students*, ARETE SCHOLARS, <https://www.aretescholars.org/news/school-choice-policy-victory-for-georgia-students> [https://perma.cc/AFC6-R4ZU] (Apr. 28, 2022).

allow an additional 4,000 students to participate.¹³⁷ Additionally, a report released in November 2021 found that the SSO program “saved Georgia taxpayers \$1.1 billion in fiscal [year] 2018.”¹³⁸

Participating schools advertise these programs on their websites as not having a “catch” and as something beneficial for all students because the scholarship funds collected from the SSO program leaves the general scholarship funds available for other enhancements to the school and students.¹³⁹

Although 6,193 Georgia students received scholarships through the SSO program in 2020, HB 517’s opponents view school choice through a different lens.¹⁴⁰ First, opponents generally find public schools valuable because they integrate various socioeconomic groups, races, and life experiences.¹⁴¹ Further, like any other public good that the “government participates in providing, it is not just about the individual.”¹⁴² Allowing families to make choices that benefit their individual child without considering broader effects on the school negatively impacts public education across society.¹⁴³

Finally, participating students’ performance is never assessed, thus leaving no data to show whether this program is having a beneficial, or any, effect.¹⁴⁴ Opponents argue that SSO programs are founded on the “disproven assumption” that private schools will undoubtedly outperform public schools, merely because they are private.¹⁴⁵

Challengers are specifically opposed to HB 517 because it reduces Georgia taxpayers’ state tax liability and diverts that money from state tax revenue.¹⁴⁶ From 2008 to 2010, \$72.1 million was “diverted from Georgia’s state revenues as a result of . . . tax credits for scholarships to private schools.”¹⁴⁷ People “picking up their tax dollars that would

137. *Georgia Education Legislation Signed Thursday*, ALLONGEORGIA (Apr. 28, 2022), <https://allongeorgia.com/georgia-state-politics/georgia-education-legislation-signed-thursday/> [<https://perma.cc/6KC8-DJWX>].

138. Daniel, *supra* note 129.

139. See, e.g., *ALEF Fund*, CMCH ELEMENTARY & MIDDLE SCH., <https://www.cmchatlanta.org/sso-program> [<https://perma.cc/79GT-H9ZU>].

140. Daniel, *supra* note 129.

141. McLaurin Interview, *supra* note 128.

142. *Id.*

143. *Id.*

144. SUITTS & DUNN, *supra* note 10, at 23.

145. *Id.* at 26.

146. *Id.* at 6.

147. *Id.*

[have] otherwise [been] put into public schools” disinvests in the integrated public school system.¹⁴⁸

HB 517’s opponents are also concerned about the scholarship amounts awarded to students in the program and the demographics of students awarded scholarships.¹⁴⁹ In 2020, the average scholarship was worth \$4,464.¹⁵⁰ As of 2022, however, the average annual cost of a private school in Georgia is around \$11,000.¹⁵¹ The remaining tuition after the scholarship is applied leaves low-income families unable to afford private schools even after receiving scholarship funds.¹⁵² “[T]he added costs of transportation, afterschool care, and extracurricular activities” present additional obstacles for low-income families.¹⁵³ The Southern Education Foundation (SEF) reported that “[w]hen carefully analyzed, every available data indicates that . . . Georgia’s tax credit scholarships have not changed [the] fact” that “private schools . . . are heavily populated with students from high income household[s].”¹⁵⁴ The scholarships provided through the SSO program are not required to be given to students of specific demographics, and there have been suspicions of misuse of funds in schools’ scholarship distributions.¹⁵⁵

148. McLaurin Interview, *supra* note 128.

149. SUITTS & DUNN, *supra* note 10, at 28–35, 36–40.

150. Daniel, *supra* note 129.

151. *Georgia Private Schools by Tuition Cost*, PRIV. SCH. REV., <https://www.privateschoolreview.com/tuition-stats/georgia> [https://perma.cc/WW69-Y2AU]. “The average private school tuition in Georgia is \$11,243 per year (2022).” *Id.* The average annual private school tuition in Georgia varies per grade with preschools having the lowest annual average at \$9,932 and high schools costing an average of \$12,161 per year. *Id.*

152. SUITTS & DUNN, *supra* note 10, at 33–35.

153. *Id.* at 34.

154. *Id.* at 35.

155. *Id.* at 31–32, 35; McLaurin Interview, *supra* note 128; Daniel, *supra* note 129.

Conclusion

Fourteen years after the initial creation of Georgia SSO programs and their related tax credits, Georgia legislation continues to expand school choice. Despite the growing controversy surrounding taxpayers directly funding private schools, HB 517 increased the tax credit cap by \$20 million and proponents will likely continue to advocate for a higher cap in future legislative sessions.

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