

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

4

HOUSE BILL 344
Committee Substitute Favorable 6/3/11
Committee Substitute #2 Favorable 6/7/11
Fourth Edition Engrossed 6/7/11

Short Title: Tax Credits for Children with Disabilities.

(Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INDIVIDUAL INCOME TAX CREDIT FOR CHILDREN WITH
DISABILITIES WHO REQUIRE SPECIAL EDUCATION AND TO CREATE A FUND
FOR SPECIAL EDUCATION AND RELATED SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended
by adding a new section to read:

"§ 105-151.33. Education expenses credit.

(a) Credit. – A taxpayer is allowed a credit against the tax imposed by this Part for each of the taxpayer's eligible dependent children who is a resident of this State and who for one or two semesters during the taxable year is enrolled in grades kindergarten through 12 in a nonpublic school or in a public school at which tuition is charged in accordance with G.S. 115C-366.1. As used in this section, the term 'eligible dependent child' means a child who meets all of the following criteria:

- (1) Is a child with a disability as defined by G.S. 115C-106.3(1).
- (2) Was determined to require an individualized education program as defined by G.S. 115C-106.3(8).
- (3) Receives special education or related services on a daily basis.
- (4) Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

For the initial eligibility for the tax credit, for at least the preceding two semesters, the eligible dependent child shall have been either (i) enrolled in a public school or (ii) receiving special education or related services through the public schools as a preschool child with a disability as defined by G.S. 115C-106.3(17). An eligible dependent child shall be reevaluated every three years by the local educational agency in order to verify that the child continues to be a child with a disability as defined by G.S. 115C-106.3(1).

(b) Amount. – The credit is equal to the amount the taxpayer paid for tuition and special education and related services expenses, not to exceed three thousand dollars (\$3,000) per semester. For home schools, as defined in G.S. 115C-563(a), the credit is equal to the amount the taxpayer paid for special education and related services expenses, not to exceed three thousand dollars (\$3,000) per semester.

(c) Semesters. – For the purposes of this section, there are two semesters during each taxable year. The spring semester is the first six months of the taxable year, and the fall semester is the second six months of the taxable year. An eligible dependent child is enrolled in



1 a school for a semester if the eligible dependent child is enrolled in that school for more than 70
2 days during that semester.

3 (d) Disqualification. – A taxpayer may not qualify for a credit for any semester during
4 which the taxpayer's eligible dependent child for whom the credit would otherwise be claimed
5 met any of the following conditions:

6 (1) Was placed in a nonpublic school or facility by a public agency at public
7 expense.

8 (2) Spent any time enrolled as a full-time student taking at least 12 hours of
9 academic credit in a postsecondary educational institution.

10 (3) Was 22 years or older during the entire semester.

11 (4) Graduated from high school prior to the end of the semester.

12 (e) Reduction of Credit. – The amount of the credit is reduced for any semester in
13 which the eligible dependent child spent any time enrolled in a public school. The amount of
14 the reduction is a percentage equal to the percentage of the semester that the eligible dependent
15 child spent enrolled in a public school.

16 (f) Information. – In order to claim the credit allowed by this section, the taxpayer shall
17 provide, when requested, the following to the Secretary:

18 (1) The name, address, and social security number of each eligible dependent
19 child for whom the credit is claimed and the name and address of the school
20 or schools in which the eligible dependent child was enrolled for more than
21 70 days each semester.

22 (2) The taxpayer's certification that the eligible dependent child did not meet
23 any of the disqualifying conditions set out in this section.

24 (3) The name of the local school administrative unit in which the eligible
25 dependent child resides.

26 (4) The amount of tuition paid to a public school at which tuition is charged in
27 accordance with G.S. 115C-366.1 for each semester the eligible dependent
28 child for whom the credit is claimed was enrolled in the school.

29 (5) The eligibility determination that the eligible dependent child is a child with
30 a disability who requires special education and related services.

31 (6) A listing of the tuition and special education and related services expenses
32 on which the amount of the credit is based.

33 (7) For home schools as defined in G.S. 115C-563(a), a listing of the special
34 education and related services expenses on which the amount of the credit is
35 based.

36 (g) Carryforward. – The credit allowed under this section may not exceed the amount of
37 tax imposed by this Part reduced by the sum of all credits allowed against the tax, except
38 payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be
39 carried forward for the succeeding three years.

40 (h) Transfer. – At the end of each fiscal year, the Secretary shall transfer to the Fund for
41 Special Education and Related Services established under G.S. 115C-472.15 from the net
42 individual income tax collections under G.S. 105-134.2 an amount equal to two thousand
43 dollars (\$2,000) multiplied by the number of credits taken under this section during the fiscal
44 year.

45 (i) Definitions. – The following definitions apply in this section:

46 (1) "Special education" means specially designed instruction to meet the unique
47 needs of a child with a disability. The term includes instruction in physical
48 education and instruction conducted in a classroom, the home, a hospital, or
49 institution, and other settings.

(2) "Related services" is as defined in The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under this act."

SECTION 2. G.S. 105-151.33(a), as enacted by Section 1 of this act, reads as rewritten:

"(a) Credit. – A taxpayer is allowed a credit against the tax imposed by this Part for each of the taxpayer's eligible dependent children who is a resident of this State and who for one or two semesters during the taxable year, is enrolled in grades kindergarten through 12 in a nonpublic school or in a public school at which tuition is charged in accordance with G.S. 115C-366.1. As used in this section, the term 'eligible dependent child' means a child who meets all of the following criteria:

- (1) Is a child with a disability as defined by G.S. 115C-106.3(1).
- (2) Was determined to require an individualized education program as defined by G.S. 115C-106.3(8).
- (3) Receives special education or related services on a daily basis.
- (4) Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

For the initial eligibility for the tax credit, for at least the preceding ~~two semesters,~~ semester, the eligible dependent child shall have been either: (i) enrolled in a public school, or (ii) receiving special education or related services through the public schools as a preschool child with a disability as defined by G.S. 115C-106.3(17). An eligible dependent child shall be reevaluated every three years by the local educational agency in order to verify that the child continues to be a child with a disability as defined by G.S. 115C-106.3(1)."

SECTION 3. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 32D.

"Fund for Special Education and Related Services.

"§ 115C-472.15. Fund for Special Education and Related Services.

(a) The Fund for Special Education and Related Services is established as a special revenue fund under the control and direction of the State Board of Education. Interest and other investment income earned by the Fund accrue to it, and revenue in the Fund does not revert. The Fund consists of money credited to it under G.S. 105-151.33.

(b) The State Board of Education shall use the revenue in the Fund only for special educational and related services for children with disabilities. In addition, the State Board of Education shall use revenues in the Fund to reimburse local educational agencies for conducting reevaluations for continued eligibility and developing revised individualized education programs pursuant to G.S. 105-151.33(a)(1)."

SECTION 4. The Department of Revenue shall report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of G.S. 105-151.33, as enacted by Section 1 of this act. The report is due by October 1, 2013, and shall include the following:

- (1) The number and amount of credits taken under G.S. 105-151.33.
- (2) Any concerns relating to the administration of G.S. 105-151.33 or taxpayer compliance with the requirements of that section.
- (3) Any other matter with respect to G.S. 105-151.33 the Department wishes to address.

SECTION 4A. If House Bill 200, 2011 Regular Session, becomes law, then Section 2.1 of that act reads as rewritten:

"**SECTION 2.1.** Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

	2011-2012	2012-2013
Current Operations – General Fund		
EDUCATION		
Community Colleges System Office	\$ 985,000,000	\$ 985,000,000
Department of Public Instruction	7,464,492,057	<u>7,450,000,000</u> <u>7,425,064,000</u>
University of North Carolina – Board of Governors		
Appalachian State University	145,563,319	145,680,676
East Carolina University		
Academic Affairs	247,397,807	247,397,807
Health Affairs	65,196,439	65,196,439
Elizabeth City State University	38,226,042	38,398,361
Fayetteville State University	56,925,951	56,925,951
NC A&T State University	105,355,805	105,794,754
NC Central University	94,342,683	94,342,683
NC State University		
Academic Affairs	434,563,241	434,677,423
Agricultural Research	59,239,461	59,239,461
Agricultural Extension	43,539,609	43,539,609
UNC-Asheville	42,004,444	42,004,444
UNC-Chapel Hill		
Academic Affairs	309,481,584	312,843,120
Health Affairs	219,507,009	222,570,732
AHEC	49,747,851	49,747,851
UNC-Charlotte	216,455,073	217,471,216
UNC-Greensboro	173,180,926	173,180,926
UNC-Pembroke	61,534,005	62,277,254
UNC-School of the Arts	27,796,473	27,796,473
UNC-Wilmington	105,943,181	107,138,757
Western Carolina University	90,591,556	91,070,460
Winston-Salem State University	76,496,951	76,496,950
General Administration	38,186,863	27,628,722
University Institution Programs	(375,153,400)	(383,808,914)
Related Educational Programs	85,679,060	115,272,420
UNC Financial Aid Private Colleges	91,635,664	86,534,065
NC School of Science & Math	18,937,535	18,937,535
UNC Hospitals	18,000,000	18,000,000
Total University of North Carolina – Board of Governors	\$ 2,540,375,132	\$ 2,551,672,698
HEALTH AND HUMAN SERVICES		
Department of Health and Human Services		
Division of Central Management and Support	\$ 50,177,377	\$ 44,577,987
Division of Aging and Adult Services	37,019,667	37,019,667
Division of Services for Blind/Deaf/Hard of Hearing	8,389,110	8,372,886
Division of Child Development	266,102,933	266,102,933

1	Division of Health Service Regulation	16,133,031	16,133,031
2	Division of Medical Assistance	2,958,388,184	2,907,276,302
3	Division of Mental Health,		
4	Developmental Disabilities, and		
5	Substance Abuse Services	665,712,232	710,712,232
6	NC Health Choice	79,452,317	83,717,865
7	Division of Public Health	190,443,245	157,538,834
8	Division of Social Services	186,183,068	186,183,068
9	Division of Vocational Rehabilitation	37,125,788	37,528,128
10	Total Health and Human Services	\$ 4,495,126,952	\$ 4,455,162,933
11			
12	NATURAL AND ECONOMIC RESOURCES		
13			
14	Department of Agriculture and Consumer Services	\$ 65,460,864	\$ 62,198,634
15			
16	Department of Commerce		
17	Commerce	50,852,340	33,250,463
18	Commerce State-Aid	32,851,025	30,151,984
19	NC Biotechnology Center	17,551,710	17,551,710
20	Rural Economic Development Center	25,376,729	25,376,729
21			
22	Department of Environment and Natural Resources	165,784,887	148,148,105
23			
24	DENR Clean Water Management Trust Fund	11,250,000	11,250,000
25			
26	Department of Labor	15,836,887	15,836,887
27			
28	Wildlife Resources Commission	18,000,000	17,221,179
29			
30	JUSTICE AND PUBLIC SAFETY		
31			
32	Department of Correction	\$ 1,337,816,346	\$ 1,348,410,793
33			
34	Department of Crime Control and Public Safety	225,258,795	215,164,518
35			
36	Judicial Department	438,920,048	435,141,107
37	Judicial Department – Indigent Defense	110,091,526	112,748,733
38			
39	Department of Justice	80,704,013	80,864,138
40			
41	Department of Juvenile Justice and Delinquency Prevention	135,593,692	131,140,565
42			
43	GENERAL GOVERNMENT		
44			
45	Department of Administration	\$ 63,607,330	\$ 65,511,460
46			
47	Department of State Auditor	11,857,574	10,676,035
48			
49	Office of State Controller	28,368,957	28,368,957
50			
51	Department of Cultural Resources		

General Assembly Of North Carolina**Session 2011**

1	Cultural Resources	63,524,857	61,697,001
2	Roanoke Island Commission	1,805,236	1,203,491
3			
4	State Board of Elections	5,186,603	5,126,603
5			
6	General Assembly	53,259,495	50,104,208
7			
8	Office of the Governor		
9	Office of the Governor	4,741,157	4,741,157
10	Office of State Budget and Management	5,848,663	5,848,663
11	OSBM – Reserve for Special Appropriations	1,940,612	440,612
12	Housing Finance Agency	9,673,051	9,673,051
13			
14	Department of Insurance		
15	Insurance	36,393,921	36,393,921
16	Insurance – Volunteer Safety Workers' Compensation	2,294,000	2,623,654
17			
18	Office of Lieutenant Governor	695,324	695,324
19			
20	Office of Administrative Hearings	4,983,871	4,983,871
21			
22	Department of Revenue	78,199,538	78,199,538
23			
24	Department of Secretary of State	10,654,563	10,654,563
25			
26	Department of State Treasurer		
27	State Treasurer	6,657,031	6,621,750
28	State Treasurer –		
29	Retirement for Fire and Rescue Squad Workers	17,812,114	17,812,114
30			
31	RESERVES, ADJUSTMENTS, AND DEBT SERVICE		
32			
33	Contingency and Emergency Fund	\$ 5,000,000	\$ 5,000,000
34			
35	State Retirement System Contribution	248,100,000	336,000,000
36			
37	Judicial Retirement System Contribution	6,800,000	7,800,000
38			
39	Firemen's & Rescue Squad Workers' Pension Fund	4,318,042	5,366,928
40			
41	State Health Plan	7,119,541	102,151,104
42			
43	Information Technology Fund	4,458,142	6,158,142
44			
45	Reserve for Job Development Investment Grants (JDIG)	15,400,000	27,400,000
46			
47	Continuation Review Reserve	0	35,576,758
48			
49	Comprehensive Review of Compensation Plans	2,000,000	0
50			
51	Compensation Adjustment and Performance Pay Reserve	0	121,105,840

1			
2	Severance Expenditure Reserve	69,000,000	0
3			
4	Automated Fraud Detection Development	1,000,000	7,000,000
5			
6	Controller – Fraud Detection Development	500,000	500,000
7			
8	Debt Service		
9	General Debt Service	688,957,188	759,984,974
10	Federal Reimbursement	1,616,380	1,616,380
11			
12	TOTAL CURRENT OPERATIONS –		
13	GENERAL FUND	\$ 19,678,116,193	<u>\$ 19,943,327,275</u>
14			<u>\$ 19,918,391,275"</u>
15			

16 **SECTION 5.(a)** If House Bill 200, 2011 Regular Session, becomes law, then
17 Section 2.2(a) of that act reads as rewritten:

18 **"SECTION 2.2(a)** The General Fund availability used in developing the 2011-2013
19 biennial budget is shown below.

		FY 2011-2012	FY 2012-2013
20			
21	Unappropriated Balance Remaining	\$ 0	\$ 13,980,015
22	Ending Unreserved Fund Balance for FY 2009-2010	236,902,394	0
23	Anticipated Reversions for FY 2010-2011	537,740,799	0
24	Anticipated Over-collections from FY 2010-2011	180,800,000	0
25	Repayment of Medicaid Receipts in FY 2010-2011	(125,000,000)	0
26			
27	Statutory Earmarks:		
28	Savings Reserve Account	(185,000,000)	(172,700,000) 0
29	Repairs and Renovations Reserve Account	(125,000,000)	0
30			
31	Beginning Unreserved Fund Balance	\$ 520,443,193	\$ 13,980,015
32			
33	Revenues Based on Existing Tax Structure	\$ 18,129,800,000	\$ 19,181,900,000
34			
35	Nontax Revenues		
36	Investment Income	\$ 59,400,000	\$ 76,700,000
37	Judicial Fees	217,800,000	217,800,000
38	Disproportionate Share	100,000,000	100,000,000
39	Insurance	71,400,000	73,500,000
40	Other Nontax Revenues	182,500,000	182,500,000
41	Highway Trust Fund/Use Tax Reimbursement Transfer	41,500,000	27,600,000
42	Highway Fund Transfer	20,230,000	24,080,000
43	Subtotal Nontax Revenues	\$ 692,830,000	\$ 702,180,000
44			
45	Total General Fund Availability	<u>\$ 19,343,073,193</u>	\$ 19,898,060,015
46			<u>\$ 19,355,373,193</u>
47			
48	Adjustments to Availability: 2011 Session		
49	Loss of Estate Tax	\$ (57,100,000)	\$ (72,200,000)
50	Small Business Tax Relief Package	(131,600,000)	(335,600,000)
51	Repeal Wildlife Resources Commission Sales Tax		

1	Earmark	22,970,000	23,920,000
2	Suspend Corporate Income Tax Earmark (Public School		
3	Construction)	72,110,000	74,750,000
4	Increase in Judicial Fees	61,765,715	61,765,715
5	Increase Investment Company Notice Filing Fee	1,600,000	1,600,000
6	Increase Parking Fees for Visitors	550,000	550,000
7	Loss of Revenue from the Town of Butner	(1,213,235)	(1,213,235)
8	Transfer from E-Commerce Reserve Fund	4,483,526	0
9	Divert Funds from Parks & Recreation Trust Fund	8,435,000	0
10	Divert Funds from Recreational/Natural Heritage		
11	Trust Fund	8,000,000	0
12	Transfer from Highway Fund for State Highway		
13	Patrol	196,849,542	188,209,049
14	Transfer Additional Funds from Highway Trust Fund	35,223,642	0
15	Transfer from Mercury Prevention Pollution Fund	250,000	0
16	Transfer from Commerce – Enterprise Fund	500,000	0
17	Divert Funds from Scrap Tire Disposal Account	2,268,989	0
18	Divert Funds from White Goods Management Account	1,951,465	0
19	Diversion of Golden LEAF Funds	17,563,760	17,563,760
20	Master Settlement Agreement Funds	24,668,720	25,580,772
21	Transfer Health and Wellness Trust Funds to Public Health	32,904,411	0
22	Department of Revenue – Accounts Receivable Program	25,000,000	25,000,000
23	Medicaid Disproportionate Share Receipts	15,000,000	15,000,000
24	Adjust Transfer from Insurance Regulatory Fund	(742,348)	(742,348)
25	Adjust Transfer from Treasurer's Office	(3,881,172)	(3,916,453)
26	Transfer from NC Flex FICA Funds	1,000,000	0
27	Proceeds from the Sale of State Assets	15,000,000	25,000,000
28	<u>Children with Disabilities Tax Credit</u>	<u>(12,300,000)</u>	<u>(24,936,000)</u>
29	Subtotal Adjustments to Availability:		
30	2011 Session	\$ 353,558,015	\$45,267,260
31		<u>341,258,015</u>	<u>20,331,260</u>
32			
33	Revised General Fund Availability	\$ 19,696,631,208	\$ <u>19,943,327,275</u>
34			<u>\$ 19,918,391,275</u>
35			
36	Less General Fund Appropriations	\$ (19,682,651,193)	\$ <u>(19,943,327,275)</u>
37			<u>\$ (19,918,391,275)</u>
38			
39	Unappropriated Balance Remaining	\$ 13,980,015	\$ 0"

41 **SECTION 5.(b)** If House Bill 200, 2011 Regular Session, becomes law, then
 42 Section 2.2(m) of that act reads as rewritten:

43 "**SECTION 2.2.(m)** Notwithstanding G.S. 143C-4-2, the State Controller shall transfer
 44 only one hundred ~~eighty-five million dollars (\$185,000,000)~~ seventy-two million seven
 45 hundred thousand dollars (\$172,700,000) from the unreserved fund balance to the Savings
 46 Reserve Account on June 30, 2011. This is not an 'appropriation made by law,' as that phrase is
 47 used in Section 7(1) of Article V of the North Carolina Constitution. This subsection becomes
 48 effective June 30, 2011."

49 **SECTION 5A.** If House Bill 200, 2011 Regular Session, becomes law, then that
 50 act is amended by adding the following new section to read:

51 "**ADM ADJUSTMENT**

1 **SECTION 7.31.** Notwithstanding any other provision of this act, the funds
2 appropriated for the average daily membership (ADM) adjustment for public schools shall be
3 adjusted to provide fifty-five million eight hundred eighty-two thousand six hundred fifty-one
4 dollars (\$55,882,651) in the 2011-2012 fiscal year and one hundred eighteen million one
5 hundred fifty-one thousand four hundred fourteen dollars (\$118,151,414) in the 2012-2013
6 fiscal year. The funds appropriated for the ADM adjustment shall be distributed to modify
7 allotments to charter schools and local school administrative units, reflecting changes in ADM
8 due to population growth and other changes in State law."

9 **SECTION 6.** Sections 1, 3, 4, and 4A of this act are effective for taxable years
10 beginning on or after January 1, 2011, and apply to semesters for which the credit is claimed
11 beginning on or after July 1, 2011, except that transfers under G.S. 105-151.33(h) shall not be
12 made before the 2012-2013 fiscal year. Section 2 of this act is effective for taxable years
13 beginning on or after January 1, 2016, and applies to semesters for which the credit is claimed
14 beginning on or after July 1, 2016. The remainder of this act is effective when it becomes law.