

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**HOUSE BILL 344
RATIFIED BILL**

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

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

- (1) Was placed in a nonpublic school or facility by a public agency at public expense.
- (2) Spent any time enrolled as a full-time student taking at least 12 hours of academic credit in a postsecondary educational institution.
- (3) Was 22 years or older during the entire semester.
- (4) Graduated from high school prior to the end of the semester.

(e) Reduction of Credit. – The amount of the credit is reduced for any semester in which the eligible dependent child spent any time enrolled in a public school. The amount of



the reduction is a percentage equal to the percentage of the semester that the eligible dependent child spent enrolled in a public school.

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

- (1) The name, address, and social security number of each eligible dependent child for whom the credit is claimed and the name and address of the school or schools in which the eligible dependent child was enrolled for more than 70 days each semester.
- (2) The taxpayer's certification that the eligible dependent child did not meet any of the disqualifying conditions set out in this section.
- (3) The name of the local school administrative unit in which the eligible dependent child resides.
- (4) The amount of tuition paid to a public school at which tuition is charged in accordance with G.S. 115C-366.1 for each semester the eligible dependent child for whom the credit is claimed was enrolled in the school.
- (5) The eligibility determination that the eligible dependent child is a child with a disability who requires special education and related services.
- (6) A listing of the tuition and special education and related services expenses on which the amount of the credit is based.
- (7) For home schools as defined in G.S. 115C-563(a), a listing of the special education and related services expenses on which the amount of the credit is based.

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

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

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

- (1) "Special education" means specially designed instruction to meet the unique needs of a child with a disability. The term includes instruction in physical education and instruction conducted in a classroom, the home, a hospital, or 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:

| Current Operations – General Fund | 2011-2012 | 2012-2013 |
|---|------------------|---|
| EDUCATION | | |
| Community Colleges System Office | \$ 985,000,000 | \$ 985,000,000 |
| Department of Public Instruction | 7,464,492,057 | 7,450,000,000 7,444,122,100 |
| 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 |
| Division of Health Service Regulation | 16,133,031 | 16,133,031 |
| Division of Medical Assistance | 2,958,388,184 | 2,907,276,302 |
| Division of Mental Health, Developmental Disabilities, and Substance Abuse Services | 665,712,232 | 710,712,232 |
| NC Health Choice | 79,452,317 | 83,717,865 |
| Division of Public Health | 190,443,245 | 157,538,834 |
| Division of Social Services | 186,183,068 | 186,183,068 |
| Division of Vocational Rehabilitation | 37,125,788 | 37,528,128 |
| Total Health and Human Services | \$ 4,495,126,952 | \$ 4,455,162,933 |

NATURAL AND ECONOMIC RESOURCES

| | | |
|---|---------------|---------------|
| Department of Agriculture and Consumer Services | \$ 65,460,864 | \$ 62,198,634 |
| Department of Commerce | | |
| Commerce | 50,852,340 | 33,250,463 |
| Commerce State-Aid | 32,851,025 | 30,151,984 |
| NC Biotechnology Center | 17,551,710 | 17,551,710 |
| Rural Economic Development Center | 25,376,729 | 25,376,729 |
| Department of Environment and Natural Resources | 165,784,887 | 148,148,105 |
| DENR Clean Water Management Trust Fund | 11,250,000 | 11,250,000 |
| Department of Labor | 15,836,887 | 15,836,887 |
| Wildlife Resources Commission | 18,000,000 | 17,221,179 |

JUSTICE AND PUBLIC SAFETY

| | | |
|---|------------------|------------------|
| Department of Correction | \$ 1,337,816,346 | \$ 1,348,410,793 |
| Department of Crime Control and Public Safety | 225,258,795 | 215,164,518 |
| Judicial Department | 438,920,048 | 435,141,107 |
| Judicial Department – Indigent Defense | 110,091,526 | 112,748,733 |
| Department of Justice | 80,704,013 | 80,864,138 |

| | | |
|---|---------------|---------------|
| Department of Juvenile Justice and Delinquency Prevention | 135,593,692 | 131,140,565 |
| GENERAL GOVERNMENT | | |
| Department of Administration | \$ 63,607,330 | \$ 65,511,460 |
| Department of State Auditor | 11,857,574 | 10,676,035 |
| Office of State Controller | 28,368,957 | 28,368,957 |
| Department of Cultural Resources | | |
| Cultural Resources | 63,524,857 | 61,697,001 |
| Roanoke Island Commission | 1,805,236 | 1,203,491 |
| State Board of Elections | 5,186,603 | 5,126,603 |
| General Assembly | 53,259,495 | 50,104,208 |
| Office of the Governor | | |
| Office of the Governor | 4,741,157 | 4,741,157 |
| Office of State Budget and Management | 5,848,663 | 5,848,663 |
| OSBM – Reserve for Special Appropriations | 1,940,612 | 440,612 |
| Housing Finance Agency | 9,673,051 | 9,673,051 |
| Department of Insurance | | |
| Insurance | 36,393,921 | 36,393,921 |
| Insurance – Volunteer Safety Workers' Compensation | 2,294,000 | 2,623,654 |
| Office of Lieutenant Governor | 695,324 | 695,324 |
| Office of Administrative Hearings | 4,983,871 | 4,983,871 |
| Department of Revenue | 78,199,538 | 78,199,538 |
| Department of Secretary of State | 10,654,563 | 10,654,563 |
| Department of State Treasurer | | |
| State Treasurer | 6,657,031 | 6,621,750 |
| State Treasurer – Retirement for Fire and Rescue Squad Workers | 17,812,114 | 17,812,114 |
| RESERVES, ADJUSTMENTS, AND DEBT SERVICE | | |
| Contingency and Emergency Fund | \$ 5,000,000 | \$ 5,000,000 |
| State Retirement System Contribution | 248,100,000 | 336,000,000 |
| Judicial Retirement System Contribution | 6,800,000 | 7,800,000 |
| Firemen's & Rescue Squad Workers' Pension Fund | 4,318,042 | 5,366,928 |
| State Health Plan | 7,119,541 | 102,151,104 |
| Information Technology Fund | 4,458,142 | 6,158,142 |
| Reserve for Job Development Investment Grants (JDIG) | 15,400,000 | 27,400,000 |
| Continuation Review Reserve | 0 | 35,576,758 |

| | | |
|---|--------------------------|----------------------------------|
| Comprehensive Review of Compensation Plans | 2,000,000 | 0 |
| Compensation Adjustment and Performance Pay Reserve | 0 | 121,105,840 |
| Severance Expenditure Reserve | 69,000,000 | 0 |
| Automated Fraud Detection Development | 1,000,000 | 7,000,000 |
| Controller – Fraud Detection Development | 500,000 | 500,000 |
| Debt Service | | |
| General Debt Service | 688,957,188 | 759,984,974 |
| Federal Reimbursement | 1,616,380 | 1,616,380 |
| TOTAL CURRENT OPERATIONS – | | |
| GENERAL FUND | \$ 19,678,116,193 | \$ 19,943,327,275 |
| | | <u>\$ 19,937,449,375"</u> |

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

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

| | FY 2011-2012 | FY 2012-2013 |
|---|---|--------------------------|
| Unappropriated Balance Remaining | \$ 0 | \$ 13,980,015 |
| Ending Unreserved Fund Balance for FY 2009-2010 | 236,902,394 | 0 |
| Anticipated Reversions for FY 2010-2011 | 537,740,799 | 0 |
| Anticipated Over-collections from FY 2010-2011 | 180,800,000 | 0 |
| Repayment of Medicaid Receipts in FY 2010-2011 | (125,000,000) | 0 |
| Statutory Earmarks: | | |
| Savings Reserve Account | (185,000,000) | <u>(183,650,000)</u> |
| Repairs and Renovations Reserve Account | (125,000,000) | 0 |
| Beginning Unreserved Fund Balance | \$ 520,443,193 <u>521,793,193</u> | \$ 13,980,015 |
| Revenues Based on Existing Tax Structure | \$ 18,129,800,000 | \$ 19,181,900,000 |
| Nontax Revenues | | |
| Investment Income | \$ 59,400,000 | \$ 76,700,000 |
| Judicial Fees | 217,800,000 | 217,800,000 |
| Disproportionate Share | 100,000,000 | 100,000,000 |
| Insurance | 71,400,000 | 73,500,000 |
| Other Nontax Revenues | 182,500,000 | 182,500,000 |
| Highway Trust Fund/Use Tax Reimbursement Transfer | 41,500,000 | 27,600,000 |
| Highway Fund Transfer | 20,230,000 | 24,080,000 |
| Subtotal Nontax Revenues | \$ 692,830,000 | \$ 702,180,000 |
| Total General Fund Availability | <u>\$ 19,343,073,193</u> | \$ 19,898,060,015 |
| | <u>\$ 19,344,423,193</u> | |
| Adjustments to Availability: 2011 Session | | |
| Loss of Estate Tax | \$ (57,100,000) | \$ (72,200,000) |
| Small Business Tax Relief Package | (131,600,000) | (335,600,000) |
| Repeal Wildlife Resources Commission Sales Tax Earmark | 22,970,000 | 23,920,000 |
| Suspend Corporate Income Tax Earmark (Public School Construction) | 72,110,000 | 74,750,000 |
| Increase in Judicial Fees | 61,765,715 | 61,765,715 |

| | | |
|--|-----------------------|--------------------------|
| Increase Investment Company Notice Filing Fee | 1,600,000 | 1,600,000 |
| Increase Parking Fees for Visitors | 550,000 | 550,000 |
| Loss of Revenue from the Town of Butner | (1,213,235) | (1,213,235) |
| Transfer from E-Commerce Reserve Fund | 4,483,526 | 0 |
| Divert Funds from Parks & Recreation Trust Fund | 8,435,000 | 0 |
| Divert Funds from Recreational/Natural Heritage Trust Fund | 8,000,000 | 0 |
| Transfer from Highway Fund for State Highway Patrol | 196,849,542 | 188,209,049 |
| Transfer Additional Funds from Highway Trust Fund | 35,223,642 | 0 |
| Transfer from Mercury Prevention Pollution Fund | 250,000 | 0 |
| Transfer from Commerce – Enterprise Fund | 500,000 | 0 |
| Divert Funds from Scrap Tire Disposal Account | 2,268,989 | 0 |
| Divert Funds from White Goods Management Account | 1,951,465 | 0 |
| Diversion of Golden LEAF Funds | 17,563,760 | 17,563,760 |
| Master Settlement Agreement Funds | 24,668,720 | 25,580,772 |
| Transfer Health and Wellness Trust Funds to Public Health | 32,904,411 | 0 |
| Department of Revenue – Accounts Receivable Program | 25,000,000 | 25,000,000 |
| Medicaid Disproportionate Share Receipts | 15,000,000 | 15,000,000 |
| Adjust Transfer from Insurance Regulatory Fund | (742,348) | (742,348) |
| Adjust Transfer from Treasurer's Office | (3,881,172) | (3,916,453) |
| Transfer from NC Flex FICA Funds | 1,000,000 | 0 |
| Proceeds from the Sale of State Assets | 15,000,000 | 25,000,000 |
| <u>Children with Disabilities Tax Credit</u> | <u>(1,350,000)</u> | <u>(5,877,900)</u> |
| Subtotal Adjustments to Availability: | | |
| 2011 Session | \$ 353,558,015 | \$ 352,208,015 |
| | | \$ 45,267,260 |
| | | <u>39,389,360</u> |

| | | |
|--|----------------------------|---------------------------------------|
| Revised General Fund Availability | \$ 19,696,631,208 | \$ 19,943,327,275 |
| | | <u>\$ 19,937,449,375</u> |
| Less General Fund Appropriations | \$ (19,682,651,193) | \$ (19,943,327,275) |
| | | <u>\$ (19,937,449,375)</u> |
| Unappropriated Balance Remaining | \$ 13,980,015 | \$ 0" |

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

"**SECTION 2.2.(m)** Notwithstanding G.S. 143C-4-2, the State Controller shall transfer only one hundred ~~eighty-five million dollars (\$185,000,000)~~ eighty-three million six hundred fifty thousand dollars (\$183,650,000) from the unreserved fund balance to the Savings Reserve Account on June 30, 2011. This is not an 'appropriation made by law,' as that phrase is used in Section 7(1) of Article V of the North Carolina Constitution. This subsection becomes effective June 30, 2011."

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

"ADM ADJUSTMENT

"**SECTION 7.31.** Notwithstanding any other provision of this act, the funds appropriated for the average daily membership (ADM) adjustment for public schools shall be adjusted to provide fifty-five million eight hundred eighty-two thousand six hundred fifty-one dollars (\$55,882,651) in the 2011-2012 fiscal year and one hundred thirty-seven million two hundred nine thousand five hundred fourteen dollars (\$137,209,514) in the 2012-2013 fiscal year. The funds appropriated for the ADM adjustment shall be distributed to modify allotments to charter schools and local school administrative units, reflecting changes in ADM due to population growth and other changes in State law."

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

In the General Assembly read three times and ratified this the 17th day of June, 2011.

Walter H. Dalton
President of the Senate

Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____m. this _____ day of _____, 2011