

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 344  
Committee Substitute Favorable 6/3/11  
Committee Substitute #2 Favorable 6/7/11  
Fourth Edition Engrossed 6/7/11  
PROPOSED SENATE COMMITTEE SUBSTITUTE H344-PCS70257-RQ-26

Short Title: Tax Credits for Children with Disabilities.

(Public)

Sponsors:

Referred to:

March 15, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW AN INDIVIDUAL INCOME TAX CREDIT FOR CHILDREN WITH  
3 DISABILITIES WHO REQUIRE SPECIAL EDUCATION AND TO CREATE A FUND  
4 FOR SPECIAL EDUCATION AND RELATED SERVICES.

5 The General Assembly of North Carolina enacts:

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

8 "**§ 105-151.33. Education expenses credit.**

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

15 (1) Is a child with a disability as defined by G.S. 115C-106.3(1).

16 (2) Was determined to require an individualized education program as defined  
17 by G.S. 115C-106.3(8).

18 (3) Receives special education or related services on a daily basis.

19 (4) Is a child for whom the taxpayer is entitled to deduct a personal exemption  
20 under section 151(c) of the Code for the taxable year.

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

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



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1 the taxpayer paid for special education and related services expenses, not to exceed three  
2 thousand dollars (\$3,000) per semester.

3 (c) Semesters. – For the purposes of this section, there are two semesters during each  
4 taxable year. The spring semester is the first six months of the taxable year, and the fall  
5 semester is the second six months of the taxable year. An eligible dependent child is enrolled in  
6 a school for a semester if the eligible dependent child is enrolled in that school for more than 70  
7 days during that semester.

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

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

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

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

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

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

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

23 (1) The name, address, and social security number of each eligible dependent  
24 child for whom the credit is claimed and the name and address of the school  
25 or schools in which the eligible dependent child was enrolled for more than  
26 70 days each semester.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30   "Article 32D.

31   "Fund for Special Education and Related Services.

32         **§ 115C-472.15. Fund for Special Education and Related Services.**

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

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

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

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

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

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

7 <b>Current Operations – General Fund</b>	8 <b>2011-2012</b>	9 <b>2012-2013</b>
10 <b>EDUCATION</b>		
11 Community Colleges System Office	\$ 985,000,000	\$ 985,000,000
12 Department of Public Instruction	7,464,492,057	<u>7,450,000,000</u> <u>7,444,122,100</u>
13 University of North Carolina – Board of Governors		
14 Appalachian State University	145,563,319	145,680,676
15 East Carolina University		
16     Academic Affairs	247,397,807	247,397,807
17     Health Affairs	65,196,439	65,196,439
18 Elizabeth City State University	38,226,042	38,398,361
19 Fayetteville State University	56,925,951	56,925,951
20 NC A&T State University	105,355,805	105,794,754
21 NC Central University	94,342,683	94,342,683
22 NC State University		
23     Academic Affairs	434,563,241	434,677,423
24     Agricultural Research	59,239,461	59,239,461
25     Agricultural Extension	43,539,609	43,539,609
26 UNC-Asheville	42,004,444	42,004,444
27 UNC-Chapel Hill		
28     Academic Affairs	309,481,584	312,843,120
29     Health Affairs	219,507,009	222,570,732
30     AHEC	49,747,851	49,747,851
31 UNC-Charlotte	216,455,073	217,471,216
32 UNC-Greensboro	173,180,926	173,180,926
33 UNC-Pembroke	61,534,005	62,277,254
34 UNC-School of the Arts	27,796,473	27,796,473
35 UNC-Wilmington	105,943,181	107,138,757
36 Western Carolina University	90,591,556	91,070,460
37 Winston-Salem State University	76,496,951	76,496,950
38 General Administration	38,186,863	27,628,722
39     University Institution Programs	(375,153,400)	(383,808,914)
40     Related Educational Programs	85,679,060	115,272,420
41     UNC Financial Aid Private Colleges	91,635,664	86,534,065
42     NC School of Science & Math	18,937,535	18,937,535
43     UNC Hospitals	18,000,000	18,000,000
44 Total University of North Carolina –		
45     Board of Governors	\$ 2,540,375,132	\$ 2,551,672,698

46 **HEALTH AND HUMAN SERVICES**

1	Department of Health and Human Services		
2	Division of Central Management and Support	\$ 50,177,377	\$ 44,577,987
3	Division of Aging and Adult Services	37,019,667	37,019,667
4	Division of Services for Blind/Deaf/Hard of Hearing	8,389,110	8,372,886
5	Division of Child Development	266,102,933	266,102,933
6	Division of Health Service Regulation	16,133,031	16,133,031
7	Division of Medical Assistance	2,958,388,184	2,907,276,302
8	Division of Mental Health,		
9	Developmental Disabilities, and		
10	Substance Abuse Services	665,712,232	710,712,232
11	NC Health Choice	79,452,317	83,717,865
12	Division of Public Health	190,443,245	157,538,834
13	Division of Social Services	186,183,068	186,183,068
14	Division of Vocational Rehabilitation	37,125,788	37,528,128
15	Total Health and Human Services	\$ 4,495,126,952	\$ 4,455,162,933
16			
17	<b>NATURAL AND ECONOMIC RESOURCES</b>		
18			
19	Department of Agriculture and Consumer Services	\$ 65,460,864	\$ 62,198,634
20			
21	Department of Commerce		
22	Commerce	50,852,340	33,250,463
23	Commerce State-Aid	32,851,025	30,151,984
24	NC Biotechnology Center	17,551,710	17,551,710
25	Rural Economic Development Center	25,376,729	25,376,729
26			
27	Department of Environment and Natural Resources	165,784,887	148,148,105
28			
29	DENR Clean Water Management Trust Fund	11,250,000	11,250,000
30			
31	Department of Labor	15,836,887	15,836,887
32			
33	Wildlife Resources Commission	18,000,000	17,221,179
34			
35	<b>JUSTICE AND PUBLIC SAFETY</b>		
36			
37	Department of Correction	\$ 1,337,816,346	\$ 1,348,410,793
38			
39	Department of Crime Control and Public Safety	225,258,795	215,164,518
40			
41	Judicial Department	438,920,048	435,141,107
42	Judicial Department – Indigent Defense	110,091,526	112,748,733
43			
44	Department of Justice	80,704,013	80,864,138
45			
46	Department of Juvenile Justice and Delinquency Prevention	135,593,692	131,140,565
47			
48	<b>GENERAL GOVERNMENT</b>		
49			
50	Department of Administration	\$ 63,607,330	\$ 65,511,460
51			

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1	Department of State Auditor	11,857,574	10,676,035
2			
3	Office of State Controller	28,368,957	28,368,957
4			
5	Department of Cultural Resources		
6	Cultural Resources	63,524,857	61,697,001
7	Roanoke Island Commission	1,805,236	1,203,491
8			
9	State Board of Elections	5,186,603	5,126,603
10			
11	General Assembly	53,259,495	50,104,208
12			
13	Office of the Governor		
14	Office of the Governor	4,741,157	4,741,157
15	Office of State Budget and Management	5,848,663	5,848,663
16	OSBM – Reserve for Special Appropriations	1,940,612	440,612
17	Housing Finance Agency	9,673,051	9,673,051
18			
19	Department of Insurance		
20	Insurance	36,393,921	36,393,921
21	Insurance – Volunteer Safety Workers' Compensation	2,294,000	2,623,654
22			
23	Office of Lieutenant Governor	695,324	695,324
24			
25	Office of Administrative Hearings	4,983,871	4,983,871
26			
27	Department of Revenue	78,199,538	78,199,538
28			
29	Department of Secretary of State	10,654,563	10,654,563
30			
31	Department of State Treasurer		
32	State Treasurer	6,657,031	6,621,750
33	State Treasurer –		
34	Retirement for Fire and Rescue Squad Workers	17,812,114	17,812,114
35			
36	<b>RESERVES, ADJUSTMENTS, AND DEBT SERVICE</b>		
37			
38	Contingency and Emergency Fund	\$ 5,000,000	\$ 5,000,000
39			
40	State Retirement System Contribution	248,100,000	336,000,000
41			
42	Judicial Retirement System Contribution	6,800,000	7,800,000
43			
44	Firemen's & Rescue Squad Workers' Pension Fund	4,318,042	5,366,928
45			
46	State Health Plan	7,119,541	102,151,104
47			
48	Information Technology Fund	4,458,142	6,158,142
49			
50	Reserve for Job Development Investment Grants (JDIG)	15,400,000	27,400,000
51			

**General Assembly Of North Carolina**

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1	Continuation Review Reserve	0	35,576,758
2			
3	Comprehensive Review of Compensation Plans	2,000,000	0
4			
5	Compensation Adjustment and Performance Pay Reserve	0	121,105,840
6			
7	Severance Expenditure Reserve	69,000,000	0
8			
9	Automated Fraud Detection Development	1,000,000	7,000,000
10			
11	Controller – Fraud Detection Development	500,000	500,000
12			
13	Debt Service		
14	General Debt Service	688,957,188	759,984,974
15	Federal Reimbursement	1,616,380	1,616,380
16			
17	<b>TOTAL CURRENT OPERATIONS –</b>		
18	<b>GENERAL FUND</b>	<b>\$ 19,678,116,193</b>	<b>\$ 19,943,327,275</b>
19			<b><u>\$ 19,937,449,375"</u></b>

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

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

		<b>FY 2011-2012</b>	<b>FY 2012-2013</b>
26	Unappropriated Balance Remaining	\$ 0	\$ 13,980,015
27	Ending Unreserved Fund Balance for FY 2009-2010	236,902,394	0
28	Anticipated Reversions for FY 2010-2011	537,740,799	0
29	Anticipated Over-collections from FY 2010-2011	180,800,000	0
30	Repayment of Medicaid Receipts in FY 2010-2011	(125,000,000)	0
31			
32	<b>Statutory Earmarks:</b>		
33	Savings Reserve Account	<del>(185,000,000)</del>	<del>(183,650,000)</del> 0
34	Repairs and Renovations Reserve Account	(125,000,000)	0
35			
36	<b>Beginning Unreserved Fund Balance</b>	<b>\$ 520,443,193</b>	<b>\$ 13,980,015</b>
37			
38	<b>Revenues Based on Existing Tax Structure</b>	<b>\$ 18,129,800,000</b>	<b>\$ 19,181,900,000</b>
39			
40	<b>Nontax Revenues</b>		
41	Investment Income	\$ 59,400,000	\$ 76,700,000
42	Judicial Fees	217,800,000	217,800,000
43	Disproportionate Share	100,000,000	100,000,000
44	Insurance	71,400,000	73,500,000
45	Other Nontax Revenues	182,500,000	182,500,000
46	Highway Trust Fund/Use Tax Reimbursement Transfer	41,500,000	27,600,000
47	Highway Fund Transfer	20,230,000	24,080,000
48	<b>Subtotal Nontax Revenues</b>	<b>\$ 692,830,000</b>	<b>\$ 702,180,000</b>
49			
50	<b>Total General Fund Availability</b>	<b><u>\$ 19,343,073,193</u></b>	<b>\$ 19,898,060,015</b>
51		<b><u>\$ 19,344,423,193</u></b>	

1			
2	<b>Adjustments to Availability: 2011 Session</b>		
3	Loss of Estate Tax	\$ (57,100,000)	\$ (72,200,000)
4	Small Business Tax Relief Package	(131,600,000)	(335,600,000)
5	Repeal Wildlife Resources Commission Sales Tax		
6	Earmark	22,970,000	23,920,000
7	Suspend Corporate Income Tax Earmark (Public School		
8	Construction)	72,110,000	74,750,000
9	Increase in Judicial Fees	61,765,715	61,765,715
10	Increase Investment Company Notice Filing Fee	1,600,000	1,600,000
11	Increase Parking Fees for Visitors	550,000	550,000
12	Loss of Revenue from the Town of Butner	(1,213,235)	(1,213,235)
13	Transfer from E-Commerce Reserve Fund	4,483,526	0
14	Divert Funds from Parks & Recreation Trust Fund	8,435,000	0
15	Divert Funds from Recreational/Natural Heritage		
16	Trust Fund	8,000,000	0
17	Transfer from Highway Fund for State Highway		
18	Patrol	196,849,542	188,209,049
19	Transfer Additional Funds from Highway Trust Fund	35,223,642	0
20	Transfer from Mercury Prevention Pollution Fund	250,000	0
21	Transfer from Commerce – Enterprise Fund	500,000	0
22	Divert Funds from Scrap Tire Disposal Account	2,268,989	0
23	Divert Funds from White Goods Management Account	1,951,465	0
24	Diversion of Golden LEAF Funds	17,563,760	17,563,760
25	Master Settlement Agreement Funds	24,668,720	25,580,772
26	Transfer Health and Wellness Trust Funds to Public Health	32,904,411	0
27	Department of Revenue – Accounts Receivable Program	25,000,000	25,000,000
28	Medicaid Disproportionate Share Receipts	15,000,000	15,000,000
29	Adjust Transfer from Insurance Regulatory Fund	(742,348)	(742,348)
30	Adjust Transfer from Treasurer's Office	(3,881,172)	(3,916,453)
31	Transfer from NC Flex FICA Funds	1,000,000	0
32	Proceeds from the Sale of State Assets	15,000,000	25,000,000
33	<u>Children with Disabilities Tax Credit</u>	<u>(1,350,000)</u>	<u>(5,877,900)</u>
34	<b>Subtotal Adjustments to Availability:</b>		
35	<b>2011 Session</b>	<b>\$ 353,558,015</b>	<b>\$352,208,015</b>
36			<b><u>\$45,267,260</u></b>
37			<b><u>39,389,360</u></b>
38	<b>Revised General Fund Availability</b>	<b>\$ 19,696,631,208</b>	<b>\$ 19,943,327,275</b>
39			<b><u>\$ 19,937,449,375</u></b>
40			
41	<b>Less General Fund Appropriations</b>	<b>\$ (19,682,651,193)</b>	<b>\$ (19,943,327,275)</b>
42			<b><u>\$ (19,937,449,375)</u></b>
43			
44	<b>Unappropriated Balance Remaining</b>	<b>\$ 13,980,015</b>	<b>\$ 0"</b>
45			

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



1 Section 7(1) of Article V of the North Carolina Constitution. This subsection becomes effective  
2 June 30, 2011."

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

5 **"ADM ADJUSTMENT**

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

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