COMMITTEE AMENDMENT ADOPTED

March 19, 2013

**S. 313**

Introduced by Senators Hayes, Courson, Setzler, Matthews, Lourie, Hutto, Jackson, Rankin, L. Martin and O’Dell

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Read the first time January 30, 2013.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 62 TO TITLE 59 SO AS TO ESTABLISH A SCHOOL DISTRICT CHOICE PROGRAM AND OPEN ENROLLMENT PROGRAM WITHIN THE PUBLIC SCHOOL SYSTEM OF THIS STATE, TO PROVIDE FOR A VOLUNTARY PILOT TESTING OF THE PROGRAM BEFORE FULL IMPLEMENTATION, TO DEFINE CERTAIN TERMS, TO PROVIDE FOR AN APPLICATION PROCESS FOR STUDENTS WISHING TO TRANSFER, TO PROVIDE RESPONSIBILITIES, STANDARDS, AND CRITERIA CONCERNING SENDING AND RECEIVING SCHOOLS AND SCHOOL DISTRICTS, TO PROVIDE STANDARDS OF APPROVAL, PRIORITIES FOR ACCEPTING STUDENTS AND CRITERIA FOR DENYING STUDENTS, TO PROVIDE THAT WITH CERTAIN EXCEPTIONS THE PARENT IS RESPONSIBLE FOR TRANSPORTING THE STUDENT TO SCHOOL, TO PROVIDE THAT DISTRICTS SHALL RECEIVE ONE HUNDRED PERCENT OF THE BASE STUDENT COST FROM THE STATE FOR NONRESIDENT STUDENTS ENROLLED PURSUANT TO THIS CHAPTER, TO PROVIDE THAT A STUDENT GENERALLY MAY NOT PARTICIPATE IN INTERSCHOLASTIC ATHLETIC CONTESTS AND COMPETITIONS FOR ONE YEAR AFTER HIS DATE OF ENROLLMENT, TO PROVIDE THAT A RECEIVING DISTRICT SHALL ACCEPT CERTAIN CREDITS TOWARD A STUDENT’S REQUIREMENTS FOR GRADUATION AND SHALL AWARD A DIPLOMA TO A NONRESIDENT STUDENT WHO MEETS ALL REQUIREMENTS FOR GRADUATION, TO PROVIDE THAT A SCHOOL DISTRICT MAY CONTRACT WITH CERTAIN ENTITIES FOR THE PROVISION OF SERVICES, TO PROVIDE THAT THE STATE DEPARTMENT OF EDUCATION ANNUALLY SHALL SURVEY SCHOOL DISTRICTS TO DETERMINE PARTICIPATION IN THE OPEN ENROLLMENT PROGRAM AND PROVIDE CERTAIN DELETED REPORTS ON THE PROGRAM TO THE GENERAL ASSEMBLY, TO PROVIDE A DISTRICT MAY RECEIVE CERTAIN WAIVERS CONCERNING THE IMPLEMENTATION OF THIS ACT, AND TO PROVIDE THAT IMPLEMENTATION OF THIS PROGRAM EACH FISCAL YEAR IS CONTINGENT UPON THE APPROPRIATION OF ADEQUATE FUNDING BY THE GENERAL ASSEMBLY.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 62

South Carolina Public School Choice Programs

Section 59‑62‑10. (A) There is established a School District Choice Program and an Open Enrollment Program within the public school system of this State.

(B) In establishing these programs, it is the objective of the General Assembly to promote student achievement by making the South Carolina public school system the most choice‑driven public school system in the nation by increasing student participation in, and student access to, public school educational opportunities both within and outside of their resident school district, regardless of where they live or their socioeconomic status. It is therefore the intent of the General Assembly that this chapter be construed broadly to maximize parental choice options and student access to public school educational opportunities presently unavailable to their children.

Section 59‑62‑20. As used in this chapter:

(1) ‘School District Choice Programs’ means a public education delivery system that requires school districts to provide for student programs of choice offered within the district, which may include, but not be limited to, public charter schools, virtual school programs, extended day or school year programs, flexible school scheduling programs, Montessori programs, single‑gender programs, learning team programs, magnet school programs, arts programs, and school‑within‑a‑school programs, and to provide for school assignments to these programs using parents’ indicated preferential choice as a significant factor for assigning students within the district.

(2) ‘Open Enrollment’ means a public education delivery system that requires school districts to allow for school assignments of students outside of the students’ district of residence using parents’ indicated preferential choice as a significant factor. (3) ‘Attendance zone’ means the geographic area used to determine a particular school assignment for students in the district of residence.

(4) ‘Capacity’ as established by the local board of trustees means individual school capacities to include any district projections for each school for the school year impacted by a transfer pursuant to this chapter. However, when defining capacity, only permanent building structures may be included in the calculation of capacity and must not include transfers permitted by federal law.

(5) ‘District of residence’ means a school district in which the parent or guardian of a student resides.

(6) ‘Feeder pattern’ means the schools to which students are assigned upon the completion of the highest grade level of their previous school.

(7) ‘Good cause’ means a change in a child’s residence due to a change in parents’ or guardian’s residence, a change in a child’s parent’s marital status, a change caused by a guardianship or custody proceeding, placement of a child in foster care, adoption, participation by a child in an approved foreign exchange program, or participation by a child in a substance abuse or mental health treatment program, revocation of a charter school contract, or a set of circumstances consistent with this definition of ‘good cause’.

(8) ‘Parent’ means the parent or legal guardian of a student of the State.

(9) ‘Receiving district’ means a school district other than the district of residence in which a student seeks to enroll. Where the district of residence includes more than one school providing instruction at a given grade level, and a parent of a child entering the grade level applies to enroll his child in a public school in the district of residence other than the program in which the child would normally be assigned to attend based on the child’s place of residence, the district of residence also must be considered to be the receiving district for purposes of this chapter.

(10) ‘Siblings’ means all children residing in the same household on a permanent basis who have the same mother or father or guardian.

(11) ‘Working days’ means working days as determined by a school district’s administrative calendar.

(12) ‘Department’ means the South Carolina Department of Education.

Section 59‑62‑30. (A) The department shall provide school districts with information on various school choice programs, best practice information, staff development, assistance in planning for transportation needs, and technical assistance for developing and implementing Public School Choice and Open Enrollment Programs throughout the State.

(B) In conjunction with a series of town meetings held throughout the State, the department shall conduct a statewide inventory designed to determine the public’s knowledge and understanding of Public School Choice. The inventory also must collect information on district growth projections, choice programs available in districts, and choice options parents would like to see implemented in their district of residence. With the information received from the statewide inventory, the department shall compile and disseminate the results to the school districts of the State and members of the General Assembly.

(C) In the 2013‑2014 school year, with funds appropriated by the General Assembly, the department shall establish a School District Choice and an Open Enrollment pilot program. Participation of districts must be voluntary. The School District Choice pilot program must be designed to pair districts currently offering multiple student choice options with districts where student choice options are limited or do not exist, for the purpose of offering guidance, technical assistance, and staff development. The Open Enrollment pilot program must be designed to provide nontuition choice options for students between adjacent school districts. The department shall offer technical assistance to the pilot districts in developing and implementing Open Enrollment Choice Programs.

(D) Throughout the pilot year, the department shall provide information to all school districts regarding obstacles that have the potential of interfering with the implementation of quality school choice and Open Enrollment programs and shall make recommendations for overcoming and avoiding those obstacles. The information provided also shall include costs associated with the implementation of both Pilot Programs.

(E) The State Board of Education shall promulgate regulations that list factors to be considered in determining school capacity. In developing these regulations, a task force must be established with membership to include, but not be limited to, school board members, superintendents, principals, parents, and business and community leaders. The membership of the task force must reflect urban and rural areas of the State.

(F)(1) Subject to item (2), during the 2013‑2014 school year, each school district of the State shall convene a School Choice Committee. The committee shall include, but not be limited to, members representing parents, community and business leaders, teachers, and students. The committee membership shall represent the ethnicity and geographic diversity of the district. With information obtained from the statewide survey, the School Choice Committee shall develop an action plan incorporated in the school renewal plan for providing parents and students choice options within the district and shall include a timeline and budget proposal for implementation of the identified options. Each district shall submit their plan to the department for review, and if necessary the department shall provide recommendations.

(2) The requirements of item (1) do not apply to a school district that had a School Choice Plan in place during the 2012‑2013 school year that provided parents and students choice options within the district. A school district exempt from the provisions of item (1) must submit information to the department detailing the School Choice Plan in place during the 2012‑2013 school year.

Section 59‑62‑40. (A) Beginning in the 2014‑2015 school year and succeeding school years, each school district of the State shall begin implementation of its School Choice Plans with innovation funds appropriated by the General Assembly. At a minimum, each district shall begin by providing a choice option for students at the elementary, middle, and high school levels. With approval from the department, districts may use technical assistance funds provided in Section 59‑18‑1590 to assist in the implementation of School Choice Plans.

(B) During the 2014‑2015 school year, the School Choice Committee, established pursuant to Section 59‑62‑30(F), and school district administration shall develop plans to implement an Open Enrollment Choice Program as outlined in this chapter. However, nothing in this chapter may prohibit a school district from implementing the Open Enrollment Choice Program before the 2015‑2016 school year.

(C) Based on the findings obtained from the Pilot Programs established in Section 59‑62‑30(C) and the implementation of district choice programs, the department shall issue a report to the General Assembly by January 1, 2015. The report must include, but not be limited to, districts participating in the Pilot Programs and number of students participating in new choice options, types of choice options being implemented in each school district, number of students participating in school district choice options, and recommended changes to this chapter, including the basis for such recommendations.

Section 59‑62‑50. (A) Beginning with the 2015‑2016 school year and each succeeding school year, a parent residing in this State may enroll his child in a public school in any school district without the requirement of payment of tuition in the manner provided in this chapter.

(B)(1) Each school district of the State shall participate in public school Open Enrollment consistent with this chapter.

(2) A parent of a school age child may apply to enroll his child in a school in a receiving district by submitting a written application, on a form provided to districts by the department, to the receiving district and to the district of residence postmarked not later than March first for enrollment during the following school year for grades kindergarten through twelve. The application should identify the reason for seeking enrollment in the receiving district. The parent shall request a particular school or program as part of the application. However, the assignment of the student must be determined by the receiving school district based on capacity.

(3) If a parent desires to transfer a child to a school within the parent and child’s district of residence but not within the child’s attendance area or zone, the parent shall apply for this transfer in the same manner provided in this chapter for interdistrict transfers, or shall use the manner in place in the school district in the previous school year.

(4) If a local school district superintendent or his designee notifies an applicant by the last day of March that their application for enrollment in a particular school has been denied due to a lack of capacity in that school, the school district superintendent or his designee in the denial notice also shall notify the applicant of any remaining schools in the district with the capacity to accept additional students seeking to enroll under this chapter. In this case, the applicant has an additional fifteen days from receipt of the notice to reapply seeking enrollment in one of these schools with capacity and the district superintendent or his designee must act on this application within fifteen days after its receipt.

(C) If a parent of a school-age child fails to file an application by the deadline, and good cause exists for the failure to meet the deadline, the receiving district and the district of residence may accept and consider the application in the same manner as if the deadline had been met.

(D) Upon agreement between the resident and the nonresident school districts, or between the affected schools within the resident district, the deadline for application may be waived.

(E) The parent or guardian of the student approved to enroll shall confirm in writing to the resident and nonresident school districts by May fifteenth of which school the student intends to enroll. Notice of intent to enroll in the nonresident district obligates the student to attend the nonresident district during the following school year, unless the resident and nonresident school districts agree in writing to allow the student to transfer back to the district of residence, or good cause can be substantiated.

Section 59‑62‑60. (A) Within ten working days of receiving an application, the receiving district shall notify the district of residence that it has received application. This notification must include the grade level and school the student previously attended in the district of residence.

(B) The district superintendent of the receiving district or his designee shall act no later than the last day of March of the school year preceding enrollment to approve or deny an application for admission in grades kindergarten through twelve. (C) The superintendent of the receiving district or his designee shall take action to approve or deny an application filed in accordance with Section 59‑62‑50(B) within forty‑five days of the receipt of the application.

(D) The superintendent of the receiving district or his designee shall notify the parent of the child and the superintendent of the district of residence in writing within five working days of the action taken. In the case of denial, a written explanation of the denial must be included in the notification.

Section 59‑62‑65. Students under this chapter, subject to capacity and the other requirements of this chapter, must be permitted to transfer to a school outside their attendance area within their district or to a school outside their attendance area in another district. Where the provisions of this chapter refer to sending districts or receiving districts, or both, they must be construed to mean sending schools or receiving schools as appropriate when the context requires.

Section 59‑62‑70. (A) In implementing the provisions of this chapter, a student who currently resides in the attendance zone of a school or who qualifies to attend schools within the attendance zone pursuant to Section 59‑63‑30 must not be displaced by a student transferring from outside the attendance zone.

(B) A school district is not required to:

(1) accept students at a particular school residing outside the school’s attendance area in excess of three percent of the school’s highest average daily membership in any year from the preceding ten‑year period. The acceptance of students residing outside of the attendance area for a particular school must be phased in at a yearly increase of one percent of the average daily membership of the school in the immediately preceding year. Enrolled students residing outside of the school’s attendance zone must continue to be counted in the acceptance percentage of the receiving school until the student is no longer enrolled in a receiving school;

(2) make alterations in the structure of a requested school;

(3) establish and offer a particular program in a school if the program is not currently offered in the requested school; or

(4) alter or waive an established eligibility criteria for participation in a particular program, including age requirements, course prerequisites, or required levels of performance.

(C)(1) The school board of trustees shall adopt specific policies regarding capacity standards, standards of approval, and priorities of acceptance. Standards of approval may include consideration of the capacity of a program, class, or grade level. Standards must not be based on ethnicity, national origin, income level, or disabling conditions, English proficiency level, or previous disciplinary proceedings, except that an expulsion from another district, offenses committed that would result in expulsion, or suspensions from the previous school year that total ten days may be included. However, the school board may provide for provisional enrollment of students with prior behavior problems and may establish conditions under which enrollment of nonresident students would be permitted or continued. These standards may include an applicant’s gender, previous academic achievement, and athletic, artistic, or other extracurricular ability, but only if enrollment in that program or school is based upon specific levels of performance uniformly applied to all applicants seeking enrollment to that program or school.

(2)(a) In the assignment of students, priority must be given as follows unless a district has a procedure in place and that procedure was implemented in the school year prior to implementation of this chapter:

(i) first, to returning students who continue to meet the requirements of the program or school;

(ii) second, to students residing within the district including students currently enrolled in private schools and home schools, but who desire to attend a school outside their attendance zone;

(iii) third, to students who meet the requirements of the program or school and who seek to attend the designated school in the district’s feeder pattern;

(iv) fourth, to the siblings of students residing in the same household already enrolled in the school, provided that any siblings seeking priority under this section meet the requirements of the program or school; and

(v) fifth, to students whose parent or legal guardian is assigned to the school as his primary place of employment.

(b) The policies must not have the purpose or effect of causing racial segregation in a school or the school district.

(D)(1) A receiving school only may deny resident students living outside the attendance zone or nonresident students permission to enroll when:

(a) there is a lack of capacity in the school or program requested;

(b) the school requested does not offer the appropriate programs or is not structured or equipped with the necessary facilities to meet special needs of a student;

(c) the student does not meet established eligibility criteria for participation in a particular program, including age requirements, course prerequisites, or required levels of performance;

(d) a voluntary or court‑ordered desegregation plan is in effect for the school district, and the denial is necessary in order to enable compliance with the desegregation plan;

(e) the student was suspended for ten days or more the previous school year, was expelled, has committed offenses that would result in expulsion, or is in the process of being suspended or expelled; or

(f) a student who qualifies to attend a school in a school district pursuant to Section 59‑63‑30, including the requirement that the student own real estate in the district that has an assessed value of three hundred dollars or more, may attend the schools within the attendance zone where the property is located without having to apply for enrollment to schools in that attendance zone pursuant to this chapter and the receiving school may not deny the student permission to enroll at the school.

(2) A nonresident student may appeal the decision of a district to deny enrollment to the superintendent of the receiving school district or his designee, and the district or the student may appeal an adverse decision to the board of trustees of the school district. The denial by the receiving district’s board of an appeal of an enrollment request is final.

(E) A sending school district only may deny resident students a transfer to a receiving school when the transfer would violate a voluntary or court‑ordered desegregation plan in effect for that district. However, if the percentage of students seeking to transfer to receiving schools exceeds twenty percent of the sending district’s enrollment, the sending district must concur with any additional students transferring from the school to attend a receiving school. If a school within the sending district has transfer requests which exceed twenty percent of its enrollment resulting in the school being at least twenty percent below capacity, the State Board of Education shall appoint an external review team to study educational programs in the school, identify factors contributing to the transfer requests of students, and make recommendations to the district.

(F) A district may not take action to prohibit or prevent application by resident students to attend school in a nonresident school district or to attend another school within the resident district.

(G) Each school district annually shall submit capacity figures for each of its schools to the department. Each district is responsible for annually posting school capacities on the district and school websites. Additionally, information regarding the current enrollment of the school and its percentage of capacity must be included. This information must be provided to the department and posted on the district and school websites by February fifteenth of each school year as it relates to capacity capabilities for the following school year.

Section 59‑62‑80. (A) A student approved for enrollment in a nonresident district school or program pursuant to this chapter is entitled to remain enrolled in that district until completion of the final grade within that school without being required to submit annual applications. Before completion of that final grade of the school, application for enrollment in the feeder school must be submitted pursuant to this chapter.

(B) A receiving district may terminate the enrollment of a nonresident student enrolled pursuant to this chapter at the end of a school year if the:

(1) student meets the definition of a habitual truant;

(2) student fails to comply with requirements for attending school or class;

(3) student has committed violations of the receiving district’s student code of conduct resulting in ten or more days of suspension; or

(4) superintendent of the district of residence, the superintendent of the receiving district, and the parent having submitted the application for enrollment agree for any reason to terminate the enrollment.

Section 59‑62‑90. (A) The parent is responsible for transporting the student to and from the school. However, nothing in this chapter may be construed to prohibit a resident district or a receiving district from providing bus transportation on an approved route. Districts are encouraged to collaborate in the development of transportation plans for students whose parents are unable to provide transportation.

(B) Parents or guardians of students attending a receiving school district, whose family income is one hundred eighty‑five percent or less of the federal poverty guidelines as promulgated annually by the United States Department of Health and Human Services, making them eligible for free or reduced‑price lunches, must be eligible for transportation services provided by the school district or must be eligible for transportation reimbursement from the district with funds appropriated by the General Assembly for that purpose. Should the General Assembly fail to appropriate funds for this purpose, receiving school districts must be under no obligation.

(C) With funds appropriated by the General Assembly, the department shall reimburse receiving school districts for transportation expenses as provided in subsection (B). The rate of reimbursement must be pursuant to Board of Education regulations.

Section 59‑62‑100. (A) A student enrolled in a receiving district pursuant to this chapter must be included in the average daily membership of the receiving district for purposes relating to the allocation of all state and federal education funding and must not be included in the average daily membership of the district of residence for these purposes.

(B) Districts shall receive one hundred percent of the base student cost from the State for nonresident students enrolled pursuant to this chapter.

Section 59‑62‑110. (A) A student enrolled in a receiving school pursuant to this chapter is ineligible to participate in interscholastic athletic contests and competitions for one calendar year after the student’s date of enrollment in the receiving school or, if the student makes subsequent transfers, for one calendar year from the date of each transfer. This restriction does not apply to the initial transfer of a student from his district of residence if the sport in which the student wishes to participate is not offered in the student’s previous school.

(B) A student may not gain eligibility to participate in extracurricular activities in violation of policies governing eligibility as a result of an enrollment transfer to another school.

Section 59‑62‑120. (A) A receiving district shall accept credits for a course completed in another accredited school and shall apply those credits toward the student’s requirements for graduation.

(B) The receiving district shall award a diploma to a nonresident student if the student meets all state requirements for graduation.

Section 59‑62‑130. Open Enrollment does not preclude a school district from contracting with other school districts, educational service providers, or other entities approved by the State to provide services. A child with a disability receiving services from another district pursuant to contract due to lack of appropriate programming in his resident school district is not eligible to transfer as an Open Enrollment student into the district currently providing services, but is eligible to transfer as an Open Enrollment student into another district that has an appropriate program and has not reached enrollment capacity.

Section 59‑62‑135. (A) A school district may apply to the State Board of Education for a waiver to phase in the implementation of the ‘School District Choice and Open Enrollment Programs’ required by this chapter on an alternate schedule proposed by the district other than as required by this chapter. The State Board of Education may grant the waiver request upon good cause shown.

(B) A school district also may apply to the State Board of Education, separately from the waiver authorized by subsection (A), for a waiver of the requirement in Section 59‑62‑70 that the district accept students at a particular school residing outside the school’s attendance area not in excess of three percent of the school’s highest average daily membership in any year over the preceding ten‑year period with this requirement phased in at a yearly increase of one percent of the school’s previous year’s average daily membership of the school in the immediately preceding year. The Board of Education may grant the waiver request upon good cause shown.

(C) In addition to the other waiver requests permitted by this section, a school district in the process of consolidation may request a waiver from all requirements of this chapter until the consolidation is completed. Thereafter, the provisions of this chapter then must apply to the district in the manner specified in the waiver request. The State Board of Education may grant the waiver request upon good cause shown.

(D) The State Board of Education shall promulgate a regulation to define the term ‘good cause’ as it is to be applied in this section.

Section 59‑62‑140. The department shall conduct an annual survey of districts to determine the number of students participating in the Open Enrollment Program. The participants must be reported according to the number of resident students enrolling in a school other than the school in their attendance zone, the number of nonresident students enrolled, and the number of denied applications. The department annually shall report these findings to the General Assembly by January first.

Section 59‑62‑150. Implementation of this chapter each fiscal year is contingent upon the appropriation of adequate funding as documented by a fiscal impact statement provided by the Office of State Budget of the State Budget and Control Board to the General Assembly and the department on or before February fifteenth of each year estimating the cost of implementation for the ensuing fiscal year; provided that for Fiscal Year 2013‑2014 the cost of implementation must be as determined in the fiscal impact statement of the act enacting this chapter. There is no mandatory financial obligation to public schools or public school districts with respect to this chapter if state funding is not appropriated for each fiscal year of implementation as provided for in the annual fiscal impact statement of the Office of the State Budget of the State Budget and Control Board provided for above.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this chapter is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this chapter, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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