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Summary: SC School Bus Privatization Act of 2018

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[11/9/2017](file:///p:\pprever\2017-18\4389_20171109.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 68 TO TITLE 59 SO AS TO ENACT THE “SOUTH CAROLINA SCHOOL BUS PRIVATIZATION ACT OF 2018”, INCLUDING PROVISIONS TO PROVIDE THAT THE STATE OF SOUTH CAROLINA SHALL NOT OWN, PURCHASE, OR ACQUIRE ADDITIONAL SCHOOL BUSES ON OR AFTER JULY 1, 2022, AND ITS PRESENT FLEET OF SCHOOL BUSES SOLD OR DISPOSED OF ON A PHASED‑IN BASIS BEGINNING IN 2019, TO PROVIDE THAT BEGINNING WITH THE 2019‑2020 SCHOOL YEAR, SCHOOL DISTRICTS ON A PHASED‑IN BASIS INDIVIDUALLY OR TOGETHER WITH OTHER DISTRICTS SHALL PROVIDE SCHOOL TRANSPORTATION SERVICES OR BY CONTRACT MAY ENGAGE A PRIVATE ENTITY TO PROVIDE SCHOOL TRANSPORTATION SERVICES WITH THE PRIVATE ENTITY PROVIDING ALL SCHOOL BUSES, PERSONNEL TO OPERATE, AND AUXILIARY SERVICES, AND TO PROVIDE FOR TERMS, CONDITIONS, PROCEDURES, AND REQUIREMENTS APPLICABLE TO THE PROVISION OF THESE SERVICES, TO PROVIDE THAT STATE SCHOOL BUS MAINTENANCE FACILITIES, ON A PHASED‑IN BASIS BEGINNING IN 2019, SHALL BE LEASED OR SOLD TO SCHOOL DISTRICTS OR PRIVATE SCHOOL TRANSPORTATION PROVIDERS OR IN THE ABSENCE OF A SALE OR LEASE CLOSED, TO ESTABLISH A “SCHOOL TRANSPORTATION REIMBURSEMENT FUND” CONSISTING OF SPECIFIED FUNDS WHICH MUST BE USED TO REIMBURSE SCHOOL DISTRICTS FOR THE COST OF SCHOOL TRANSPORTATION SERVICES ON A FORMULA BASIS AND TO INCREASE TEACHER SALARIES FROM SAVINGS RESULTING FROM PRIVATIZATION, TO PROVIDE FOR THE LIABILITY INSURANCE REQUIREMENTS APPLICABLE TO PRIVATE ENTITIES PROVIDING SCHOOL TRANSPORTATION SERVICES AND FOR SCHOOL BUS, DRIVER, PASSENGER, AND EQUIPMENT REQUIREMENTS IN REGARD TO THESE SERVICES; TO AMEND SECTION 59‑67‑460, RELATING TO CONTRACTS BY SCHOOL DISTRICTS FOR TRANSPORTATION SERVICES WITH PRIVATE CONTRACTORS, SO AS TO PROVIDE THAT A SCHOOL DISTRICT OR A GROUP OF SCHOOL DISTRICTS ARE AUTHORIZED BY CONTRACT TO HAVE THEIR SCHOOL TRANSPORTATION SERVICES PROVIDED BY A PRIVATE ENTITY WHICH FURNISHES ITS OWN BUSES, PERSONNEL, AND AUXILIARY SERVICES PRIOR TO THE REQUIRED IMPLEMENTATION DATE OF THE DISTRICT’S ASSUMPTION OF RESPONSIBILITY FOR ALL SCHOOL TRANSPORTATION SERVICES IN THE DISTRICT AS REQUIRED BY CHAPTER 68, TITLE 59; AND TO REPEAL SECTION 59‑67‑460, EFFECTIVE ON JULY 1, 2022, WHEN THE RESPONSIBILITY TO PROVIDE SCHOOL TRANSPORTATION SERVICES IS TRANSFERRED FULLY TO THE SCHOOL DISTRICTS OF THIS STATE.

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 68

School Bus Privatization

Article 1

General Provisions

Section 59‑68‑100. This chapter is known and may be cited as the ‘South Carolina School Bus Privatization Act of 2018’.

Section 59‑68‑110. (A) The State of South Carolina, on and after July 1, 2018, shall not own, purchase, or acquire additional school buses as defined in Section 59‑67‑10 and its present fleet of school buses must be disposed of as provided in this chapter.

(B) All state school bus maintenance facilities of the Department of Education, according to the schedule provided in Section 59‑68‑120, must be leased or sold to private entities providing school transportation services in this State as provided in this chapter, leased or sold to a school district or a group of school districts in this State providing their own transportation services in the manner permitted by this chapter, or in the alternative, closed when no longer needed.

Section 59‑68‑120. (A)(1) After May 1, 2018, those school districts that do not wish to provide school transportation services for the students of the district themselves, shall prepare and publish requests for proposals soliciting responsive bids from private entities to furnish school transportation services for the district beginning with the 2019‑2020 School Year or after, but beginning no later than the 2021-2022 School Year, in the manner provided by this chapter, or shall negotiate an agreement for school transportation with a private carrier if permitted under state and local procurement provisions. The governing body of the district then shall award a contract to a responsive bidder pursuant to the bid or negotiated agreement. An integral part of the contract must be the requirement for the private carrier to acquire from the Department of Education the state‑owned school buses and maintenance facilities previously employed in the school transportation services contemplated by the contract. The prices for these state‑owned buses and facilities must be set in advance as set forth in this chapter. State school buses and maintenance facilities may be sold together or separately; provided, the state school bus maintenance facilities also may be leased rather than sold. The Department of Education shall conduct these sales in the manner required by this chapter, and subject to the approval of the Department of Administration. The proceeds of these sales must be deposited in the School Transportation Reimbursement Fund established in Section 59‑68‑130. The private entities shall then begin providing school transportation services to the school districts with which they have contracts, beginning at the earliest with the 2019‑2020 School Year, and beginning at the latest with the 2021‑2022 School Year. Nothing herein prevents the Department of Education from selling the state‑owned school buses used in a particular school district and a state‑owned school bus maintenance facility to a school district in the manner provided by this chapter which wishes to provide its own school transportation services.

(2) The Department of Education, upon approval of the Department of Administration, is authorized to delay for a period not exceeding one year the scheduled implementation of the privatization of school transportation services in a particular school district, including the sale of state‑owned school buses and state‑owned school bus maintenance facilities where for justifiable reasons, including procurement protests, lack of responsive bidders, or other factors beyond the control of the school district, the institution of the provisions of this chapter for the furnishing of school transportation services cannot be reasonably and effectively accomplished.

(B) The Department of Education shall specify the school buses and maintenance facilities to be sold in connection with the school transportation service for each school district. The department may sell school buses and facilities to private carriers contracted to provide school transportation to school districts that previously used the same buses and facilities in their student transportation service, or the department may sell the appropriate assets to a school district or group of districts which together or separately wish to provide school transportation services directly in the manner authorized by this chapter. All proceeds of these sales must be deposited in the School Transportation Reimbursement Fund.

(C) Only those school buses determined to be in good operating condition by the department and less than fifteen years of age from the date of manufacture may be operated in school service after the sale. If a school bus is fifteen years of age or older based on its date of manufacture, the private carrier or school district acquiring the bus shall remove it from the operating bus fleet, and may dispose of the bus at wholesale auction or otherwise sell it on the open market.

(D) To establish the prices to be charged, appraisals must be obtained by the State for each bus in the state fleet, and for each of the state’s maintenance facilities. The buses may be priced in groups by age. Thereafter, districts opting to provide their own transportation service and private contractors with agreements to provide service to specific districts may purchase the corresponding buses and facilities at appraised value, and commence their own service within the period required by this chapter.

Section 59‑68‑130. Funds received from the sale of state‑owned school buses and state‑owned maintenance facilities as required by Section 59‑68‑120, funds available from other sources due to the elimination of the requirement that the State of South Carolina obtain and provide school buses, including the elimination of appropriations to the Department of Education for state aid to school districts for school bus drivers, aides to drivers, and other transportation needs, funds saved by the Department of Education due to the closure of school bus maintenance facilities, and other funds, including those set aside for the purchase of school buses, all as determined by the General Assembly in the general appropriations act, must be placed annually into a special fund administered by the Department of Education to be known as ‘School Transportation Reimbursement Fund’. All interest or other income of the fund must remain in the fund. Beginning with Fiscal Year 2019‑2020, the Department of Education shall provide payments to school districts from this fund on a quarterly basis, as these districts begin the operation of their own student transportation, either by employing a private contractor, or by self‑operation, in those amounts determined as provided by this chapter to reimburse them in the form of state aid for their costs incurred in providing school transportation services, with any savings realized over the amount spent for transportation in a district in Fiscal Year 2021‑2022 to be used to increase teacher salaries in the district.

Section 59‑68‑140. Local school districts, as authorized by Article 3 of this chapter, by contract may engage private entities providing school transportation services to provide student transportation services to all students within the district eligible to be furnished school transportation where the State has assumed this responsibility in the manner provided by law or, in the alternative, may provide these services on its own or together with other districts. Private providers selected must provide complete transportation services for all eligible students in the district.

Section 59‑68‑150. (A) School bus drivers must be considered for employment by either the private transportation entity awarded a contract to provide school transportation services to the particular district in which the school bus driver works or, alternatively, by the school district in which the school bus driver works if it elects to provide school transportation services itself or together with a group of other districts as provided in Article 3.

(B) Employees of school bus maintenance facilities, who are in good standing, must be considered for employment by either the private contractor selected to provide school transportation services in the maintenance area where the employee is employed, or by a school district in the maintenance area where the employee is employed if it elects to provide its own transportation services individually or together with other districts.

Article 3

Provisions of Transportation Services

Section 59‑68‑300. School districts furnishing school transportation services shall comply with all requirements of this chapter and Chapter 67, Title 59 as are applicable, and the regulations of the Department of Education thereunder.

Section 59‑68‑310. The means of student transportation to and from school, whether furnished by school conveyances, private conveyances, or common carriers, and contracts and agreements relating thereto, are the responsibility of the governing body of a local school district according to the timelines provided in this chapter.

Section 59‑68‑320. Insofar as it is feasible, transportation for exceptional students, kindergarten students, and students in isolated areas must be integrated with regular transportation services in cases where transportation of these students is provided but not required by law.

Section 59‑68‑330. When a school district becomes responsible for providing its own school transportation services as provided in this chapter, a school district is granted self‑determination to make decisions as to how to approach their student transportation services, how much to pay, and in setting local transportation policies within the parameters of state law and regulations. For this purpose, the governing body of a school district is responsible for all aspects of school transportation programs, including the following:

(1) the selection of means of transportation in conformity with state law and regulations;

(2) the selection and approval of appropriate vehicles for use in district service and eligible operators who qualify under state law and regulations;

(3) the establishment of routes, schedules, and loading zones which comply with state law and regulations, together with a provision of planned instruction for school bus drivers serving in the district; provided, however, that in meeting the requirement for school bus driver instruction, the Department of Education is authorized to continue its school bus driver training program and offer this instruction to school bus drivers or prospective drivers of a school district or of a private contractor providing such services to a school district in this State upon the payment of an appropriate fee set by the department;

(4) the adoption of policies and establishment of criteria and procedures governing:

(a) the eligibility of resident students for free transportation services;

(b) the discipline related to transportation of students and other authorized passengers; and

(c) field trips, including the number of chaperons and whether the chaperons may be accompanied on field trips by their minor children;

(5) the furnishing of rosters of students to be transported on each school bus run or trip;

(6) the maintenance of a record of students transported to and from school, including determination of students’ distances from home to pertinent school bus loading zones;

(7) the negotiation and execution of contracts or agreements with private contractors, drivers of district vehicles and common carriers, and submission of pertinent documents to the department for approval of operation; and

(8) assuring that vehicles used in transporting students have adequate liability insurance coverage as required by this chapter.

Section 59‑68‑340. (A) To implement the provisions of this article, the governing body of a school district may at any time contract with a private contractor for the furnishing of transportation services where the private contractor will provide all school buses, equipment, personnel to operate, and facilities to accomplish this responsibility. The district is responsible for the payment of all sums due under the contracts so entered into and shall receive state aid to offset the cost thereof on the basis provided in Section 59‑68‑350.

(B) A school district also is authorized under this chapter to contract with a private entity to operate and maintain school buses owned by the district under such terms as the district and private entity may agree. The provisions of this subsection must be accomplished by means of requests for proposals subject to all applicable state and local procurement provisions, or by negotiated agreement if permitted under state and local procurement procedures.

Section 59‑68‑350. (A) The General Assembly declares that state aid to school districts for transportation services should be a uniform fixed rate, with a unitary dollar rate per bus operated, plus a unitary dollar rate per mile operated with a goal of ease of administration and as little state involvement as possible.

(B) To implement the policy and goals of subsection (A), the General Assembly in the annual general appropriations act beginning with Fiscal Year 2019‑2020, shall provide by formula for the manner in which the school districts of this State, whether or not a district provides its own transportation services, transportation services together with other districts, or contracts with a private entity to provide these services, must be reimbursed from the School Transportation Reimbursement Fund for part of the cost of providing transportation services or causing these services to be provided. This formula shall include, but is not limited to, the following:

(1) a basic annual allowance per vehicle to compensate the district for the operation of the vehicle in school service, depreciation of the vehicle, its potential replacement, and its cost of maintenance, including employee costs associated with these expenses. This allowance per vehicle is required to be the same for all vehicles in school service without regard for vehicle age;

(2) a basic mileage allowance for the miles a vehicle is operated during a reimbursement period. This allowance is required to be the same for all miles driven.

(C) The Department of Education may require any information, substantiation, and verification it considers necessary to ensure accurate reimbursements from the School Transportation Reimbursement Fund and consistency and compliance with the requirements of the applicable formula provisions.

Section 59‑68‑360. (A) A school district which contracts with a private entity to provide school transportation services where the private entity provides all services and furnishes and operates its own equipment must do so in conformity with all applicable state or local procurement provisions.

(B) One pricing option a district is authorized to request and consider from private contractors is a basic price‑per‑bus‑per‑day for AM/PM service, with midday routes, late buses, field and athletic trips presented on an optional pricing structure, to be selected as needs dictate, including:

(1) a dollar price‑per‑bus‑per‑day for AM/PM basic regular bus;

(2) a dollar price‑per‑bus‑per‑day for AM/PM special needs bus;

(3) a dollar price‑per‑bus‑per‑day for AM/PM special needs bus with monitor;

(4) a dollar price‑per‑bus‑per‑day for midday route;

(5) a dollar price‑per‑bus‑per‑day for late bus;

(6) a dollar price‑per‑bus‑per‑hour for field and athletic;

(7) a dollar price‑per‑bus‑per‑mile for field and athletic.

The above price structure shall apply equally to magnet schools, charter schools, summer school, or other services.

Section 59‑68‑370. A school district, in providing for its transportation services under this chapter, is authorized to combine routes or services on a shared cost basis with other districts to maximize the effectiveness of the service at a minimum cost, or to provide in a request for proposals from a private contractor for shared routes or services with another district which includes similar requirements in that district’s request for proposals.

Article 5

Bus, Driver, Passenger, and Route Requirements

Section 59‑68‑500. (A) School buses in this State on and after July 1, 2019, must meet the equipment requirements as the General Assembly shall specify by law, except that any bus owned by the State or a school district within the State and used in school service as of the effective date of this chapter, must be permitted to be used in school service until retired due to an age of fifteen years or more, or unsatisfactory mechanical condition.

(B) Any school bus purchased from the State by a private contractor as authorized by this chapter may continue to be operated by that contractor for the transportation of students in this State so long as it remains less than fifteen years old from the date of manufacture, and is in safe operational condition.

Section 59‑68‑510. Beginning with the 2019‑2020 School Year, school bus drivers employed by a school district or by a private contractor must meet all requirements as provided by state law.

Section 59‑68‑520. Beginning with the 2019‑2020 School Year, school bus passengers authorized to ride on a school bus and the extent of school transportation services required or authorized to be provided continue to be as provided by state law.

Article 7

Liability

Section 59‑68‑700. School districts which elect to provide school transportation services on their own without contracting for same with a private contractor together with employees of the district engaged in providing these services shall have that liability as is provided in the South Carolina Tort Claims Act in Chapter 78, Title 15.

Section 59‑68‑710. (A) A private entity providing school transportation services to a school district under contract as provided in this chapter shall maintain with an insurer authorized to transact business in this State liability insurance in connection with the provisions of these services in an amount of at least five million dollars for each accident for each motor vehicle with the applicable school district as a named insured.

(B) The policy under this section covers the transportation of pupils, their parents or guardians, authorized chaperones, school district officers, faculty, and employees and school doctors, dentists, and nurses:

(1) to and from the school or school district which operates the school bus or contracts for its operation; and

(2) in connection with any extracurricular school activity authorized by law.

Section 59‑68‑720. If a school district elects to provide school transportation services on its own without contracting for same with a private contractor, it may nevertheless contract with a private contractor to operate and maintain the school bus equipment owned by the district under such terms and conditions as the district and the private contractor may agree. In this instance, the liability of the private contractor and its employees operating and maintaining the school district equipment, notwithstanding any other provision of law, is not limited by the South Carolina Tort Claims Act as provided in Chapter 78, Title 15, and the private contractor is required to maintain the insurance coverage provided in Section 59‑68‑710.”

SECTION 2. A. Section 59‑67‑460 of the 1976 Code is amended to read:

“Section 59‑67‑460. (A) ~~Any county board of education~~ The governing body of a school district may at any time contract for any part or all of its transportation services with private individuals or contractors for the furnishing of ~~such~~ these services. In ~~any such~~ this instance, the ~~county board of education~~ governing body of the school district shall execute the contracts. The ~~county board~~ governing body of the school district shall be responsible for the payment of all sums due under contracts so entered into and shall receive aid from the State for pupils thus transported only on the basis of the average per pupil operating cost of state‑owned equipment for the current year as determined by the State Board of Education.

(B) The state board may enter into agreements with ~~county boards of education~~ the governing body of a school district whereby pupils living in isolated areas may be transported by special arrangements when such transportation can be provided at lower cost than by operating a regular bus route.

(C) A school district or a group of districts is authorized by contract to have their school transportation services provided by a private entity which furnishes its own buses, personnel, and auxiliary services prior to the required implementation date of the district’s assumption of responsibility for all school transportation services in the district as required by Chapter 68, Title 59.”

B. Effective July 1, 2019, Section 59‑67‑460 of the 1976 Code is repealed.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act 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 act, the General Assembly hereby declaring that it would have passed this act, 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 4. Unless otherwise specified, this act takes effect upon approval by the Governor.

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