**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3681**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Erickson, G.M. Smith, Elliott, G.R. Smith, Stringer, B. Newton, Davis, Fry, Clemmons, Long, Bennett, Thayer, Burns, Taylor, Huggins, Toole, Hiott, Jordan, Trantham, Hewitt, Kirby, V.S. Moss, Hyde, Johnson, Chumley, Collins, Clary, Bailey, Bannister, Bradley, Bryant, Caskey, B. Cox, Daning, Forrest, Lowe, Mace, McGinnis, Morgan, Pope, Willis, Wooten, Loftis, Hixon, Crawford, Ballentine, Herbkersman, W. Newton, Martin, Spires, West, D.C. Moss, Simrill, Lucas, Haddon and Oremus

Document Path: l:\council\bills\agm\19521wab19.docx

Companion/Similar bill(s): 523, 556

Introduced in the House on January 22, 2019

Currently residing in the House Committee on **Ways and Means**

Summary: Equal Opportunity Education Scholarship Account Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/22/2019 House Introduced and read first time ([House Journal‑page 23](file:///h:\hj\20190122.docx))

1/22/2019 House Referred to Committee on **Ways and Means** ([House Journal‑page 23](file:///h:\hj\20190122.docx))

1/23/2019 House Member(s) request name added as sponsor: Loftis

1/24/2019 House Member(s) request name added as sponsor: McCoy, Cogswell, Hixon

1/29/2019 House Member(s) request name added as sponsor: Crawford, Ballentine, Herbkersman, W.Newton

1/29/2019 House Member(s) request name removed as sponsor: Bernstein, Brawley

1/31/2019 House Member(s) request name added as sponsor: Martin

2/7/2019 House Member(s) request name added as sponsor: Spires, West, D.C.Moss

3/19/2019 House Member(s) request name added as sponsor: Simrill

3/21/2019 House Member(s) request name removed as sponsor: Cogswell

3/28/2019 House Member(s) request name added as sponsor: Lucas

4/30/2019 House Member(s) request name removed as sponsor: Sottile, Weeks, McCoy, Tallon

5/1/2019 House Member(s) request name removed as sponsor: Magnuson

2/27/2020 House Member(s) request name added as sponsor: Haddon

3/4/2020 House Member(s) request name added as sponsor: Oremus

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=3681&session=123&summary=B) at the website

**VERSIONS OF THIS BILL**

[1/22/2019](file:///p:\pprever\2019-20\3681_20190122.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ESTABLISH THE “EQUAL OPPORTUNITY EDUCATION SCHOLARSHIP ACCOUNT ACT” BY ADDING CHAPTER 8 TO TITLE 59 SO AS TO PROVIDE A CITATION, TO STATE THE PURPOSE OF THE CHAPTER, TO PROVIDE NECESSARY DEFINITIONS, TO PROVIDE FOR THE ESTABLISHMENT AND FUNDING OF ACCOUNTS FOR USE IN MEETING CERTAIN EDUCATION EXPENSES OF ELIGIBLE STUDENTS, TO PROVIDE GUIDELINES FOR THE USE OF SUCH FUNDS AND PENALTIES FOR MISUSE, TO PROVIDE CERTAIN RELATED POWERS AND DUTIES OF THE EDUCATION OVERSIGHT COMMITTEE, AND TO CREATE A PARENTAL REVIEW PANEL TO ASSIST IN DETERMINING WHETHER CERTAIN EXPENSES CONSTITUTE QUALIFIED EDUCATION EXPENSES, AMONG OTHER THINGS.

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 8

Equal Opportunity Education Scholarship Account Act

Section 59‑8‑110. This chapter must be known and may be cited as the ‘Equal Opportunity Education Scholarship Account Act’.

Section 59‑8‑120. In establishing the Equal Opportunity Education Scholarship Account Act (EOESA), the General Assembly intends to promote student achievement by making South Carolina the most choice‑driven state in the nation by increasing student participation in, and student access to, educational opportunities, both within and outside of their resident school district, regardless of where they live or their socioeconomic status. The General Assembly further intends that the provisions of this chapter be construed broadly to maximize parental choice options and student access to customized, high‑quality educational opportunities presently unavailable to their children.

Section 59‑8‑130. For purposes of this chapter:

(1) ‘Account’ means an Equal Opportunity Education Scholarship account established pursuant to this chapter.

(2) ‘Committee’ means the South Carolina Education Oversight Committee.

(3) ‘Eligible postsecondary institution’ means an accredited community college, technical college, university, or private postsecondary institution.

(4) ‘Eligible student’ means a student:

(a) evaluated in accordance with the state’s evaluation criteria and determined to be eligible as a child with a disability who needs special education and related services, in accordance with the requirements of regulations of Section 300.8 of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401(b);

(b) who has been diagnosed within the last three years by a licensed speech‑language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student’s ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child’s unique needs.

(c) who has been identified by the Department of Social Services as a special needs child;

(d) who is eligible to receive funding according to the pupils in poverty weighting in the Education Finance Act;

(e) who previously received an EOESA scholarship issued pursuant to this chapter or an Educational Credit for Exceptional Needs Children (ECENC) scholarship issued either by appropriation of the General Assembly or pursuant to Section 12‑6‑3790;

(f) in foster care under the responsibility of the State and for whom the family court has approved a permanent plan of termination of parental rights and adoption;

(g) who previously was in foster care under the responsibility of the State and then subsequently adopted;

(h) who is a child of a parent who is on full‑time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to U.S.C. Sections 1209 and 1211, or was killed in the line of duty; or

(i) who is a child with a guardian who is on full‑time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to U.S.C. Sections 1209 and 1211, or was killed in the line of duty; and

(j) with the exceptions of items (h) and (i), has:

(i) previously enrolled in a South Carolina public school during the two semesters immediately preceding the semester in which the student receives an Equal Opportunity Education scholarship; or

(ii) not previously attended a South Carolina public school but is currently eligible to enroll in a kindergarten program in a school district or charter school in this State.

(5) ‘IDEA’ means the Individuals with Disabilities Education Act found at 20 U.S.C. Section 1400, et seq.

(6) ‘Parent’ means a resident of this State who is a parent, guardian, custodian, or other person with the authority to act on behalf of the child.

(7) ‘Participating school’ means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59‑65‑10 may be met, that:

(a) offers a general education to elementary students, secondary students, or both;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state’s diploma requirements, and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws;

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, or Palmetto Association of Independent Schools, or their respective successors ; and

(g) has notified the committee of its intention to participate in the program and comply with the program’s requirements.

(8) ‘Private tutoring’ means a tutoring service provided by:

(a) a tutor who is accredited by a regional or national accrediting organization;

(b) a state‑certified teacher; or

(c) an instructor who has experience teaching in an accredited institution of higher education.

(9) ‘Program’ means the Equal Opportunity Education Scholarship Account Act program created by this chapter.

(10) ‘Resident school district’ means the public school district in which the student resides.

(11) ‘Scholarship’ means a scholarship awarded from an account established pursuant to this chapter.

(12) ‘Compliance organization’ means an entity that assists parents of eligible students with accountability requirements, such as maintaining records, providing transcripts, and reporting.

(13) ‘Educational consultant’ means an advisor in education curriculum, finance, scholarships or achievement who is certified or has experience necessary to provide guidance to parents of eligible students.

Section 59‑8‑140. (A) A parent of an eligible student is qualified for the State to make a grant to an account for the child if the parent signs an agreement promising:

(1) to provide, at a minimum, an education for the eligible student in at least the subjects of reading, grammar, mathematics, social studies, and science;

(2) to use program funds for authorized purposes only;

(3) not to enroll their eligible student in a public school;

(4) not to participate in a home instruction program under Section 59‑65‑40, 59‑65‑45, or 59‑65‑47;

(5) not enroll their eligible student in the ECENC program while participating in the program;

(6) to release the school district of residence from an obligation to educate the eligible student while they are enrolled in the program. Participation in the program shall have the same effect as to the district of residence as a parental placement under Section 1414 of IDEA; and

(7) to comply with the rules and requirements of this program.

(B) A parent who participates in the program shall agree to use funds deposited in the account of his eligible student only for the following qualifying expenses to educate the eligible student:

(1) tuition and fees at a participating school;

(2) textbooks required by a participating school;

(3) payment to a licensed or accredited tutor;

(4) payment for purchase of curriculum or instructional materials;

(5) computer hardware or other technological devices that are used solely for a student’s educational needs and approved by the committee or a licensed physician;

(6) payment to an educational consultant or compliance organization approved by the Education Oversight Committee;

(7) tuition and fees for a nonpublic online learning program or course;

(8) fees for:

(a) national norm‑referenced examinations, advanced placement examinations, or similar courses;

(b) fees associated with industry certification exams; or

(c) examinations related to college or university admission;

(9) contribution to a Coverdell education savings account established pursuant to 26 U.S.C. Section 530 for the benefit of the qualified student, except that funds used for elementary or secondary education expenses must be for expenses otherwise allowed under this section;

(10) educational services for pupils with disabilities from a licensed or accredited practitioner or provider including, but not limited to, occupational, behavioral, physical, and speech‑language therapies;

(11) tuition and fees at an eligible postsecondary institution;

(12) textbooks required for college or university courses;

(13) contracted services from a public school district, including individual classes, after school tutoring services, transportation, or fees or costs associated with participation in extracurricular activities should the public school choose to participate in the program;

(14) fees for transportation paid to a fee‑for‑service transportation provider for the eligible student to travel to and from an eligible provider as defined in this section, but not to exceed seven hundred and fifty dollars for each school year; or

(15) fees for account management by private financial management firms approved by the committee.

(C) A participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider may not refund, rebate, or share a student’s grant with a parent or the student. The funds in an account may be used only for educational purposes.

(D) A parent may make payments for the costs of educational programs and services not covered by the funds in their accounts, except that personal deposits into an account are not permitted.

(E) Funds received pursuant to this section do not constitute taxable income to the parent of the qualified student.

Section 59‑8‑150. Beginning with the 2019‑2020 School Year, the annual number of enrollees into the program is limited to eligible students under Section 59‑8‑130(4). The funding amount the State shall deposit into an account for a participating student must be equal to the Total State Funding of Shared Expenses Per Pupil the district to which the participating student would have been assigned would have received for the student, including Education Finance Act funding with appropriate weights, as determined by the State Revenue and Fiscal Affairs Office, less administrative costs withheld pursuant to Section 59‑8‑160. For the purpose of funding calculations, each eligible student who participates in the program must be counted in the enrollment figures for the district in which the student resides and is zoned to attend. The EOESA funds must be subtracted from funds otherwise payable to the district on behalf of the student. The amount deposited may not include federal or local funds.

Section 59‑8‑160. (A) The committee shall ensure that eligible students and their parents are informed annually of which providers will be participating in the program. Special attention must be paid to ensure that lower‑income families are made aware of the program and their options.

(B) The committee shall create a standard application process for parents of eligible students to establish the eligibility of their student for the program. The committee shall ensure that the application is readily available to interested families through various sources, including the Internet.

(C) The committee shall process applications in the order in which they are received.

(D) The committee shall provide parents of a participating student with a written explanation of the allowable uses of an account, the responsibilities of parents and the duties of the committee.

(E) The committee shall maintain a list of approved providers.

(F) The committee shall compare the list of students participating in the program with the public school enrollment lists before each program payment to avoid duplicate payments.

(G) The committee may prohibit a participating school or education provider from the program if the committee finds that the participating school or education provider has:

(1) routinely failed to comply with the accountability standards established in this chapter; or

(2) failed to provide the eligible student with the educational services funded by the account.

(H) If the committee decides to bar a participating school or education provider from the program, it shall notify eligible students and their parents of this decision as quickly as possible.

(I) The committee may make a parent of an eligible student ineligible for the program for substantial misuse of the funds in the account.

(J) The committee may conduct or contract for the auditing of accounts, and shall, at a minimum, conduct random audits of accounts on an annual basis. The committee may make a parent of an eligible student ineligible for the program for substantial misuse of the funds in the account.

(K) The committee may refer cases of substantial misuse of funds to law enforcement agencies for investigation if evidence of fraudulent use of an account is obtained.

(L) The committee shall promulgate rules to allow participating students to return to their zoned public schools at any time, providing the least disruptive process.

(M) The committee shall adopt rules and procedures as necessary for the administration of the program.

(N) The committee may contract with one or more qualified organizations to administer some or all portions of this program.

(O) The committee may receive contributions from private sources to help fund the program.

Section 59‑8‑170. (A) The committee shall qualify private financial management firms to manage accounts.

(B) The committee may conduct or contract for the auditing of accounts and will, at a minimum, conduct random audits of accounts on an annual basis. The committee may make a parent of an eligible student ineligible for the program for substantial misuse of the funds in the account.

(C) The committee shall develop a system for payment for services by participating parents by electronic funds transfer, including, but not limited to, debit cards, electronic payment systems, or another means of electronic payment that the committee determines to be commercially viable, cost effective, and parent‑friendly. However, the committee may not adopt a system that requires parents to be reimbursed for out‑of‑pocket expenses.

(D) The committee shall deduct an amount from the grants of all accounts to cover the costs of overseeing the accounts and administering the program up to a limit of four percent. In the first three years of the program, the committee annually may deduct an amount equal to four percent of the funds annually deposited into the accounts of participating students to cover the costs of the program. In subsequent years, the organization must be granted an amount equal to three percent of the funds.

(E) The committee shall establish reasonable fees for private financial management firms participating in the program based upon market rates.

(F) The committee shall make payments to eligible students’ accounts on a quarterly basis.

(G) The committee may contract with qualified organizations to administer the program or specific functions of the program.

(H) For purposes of continuity of educational choice, payments made under this section must remain in force until a student participating in the program participates in a prohibited activity specified in this chapter, returns to his or her resident public school, graduates from high school, or attains twenty‑two years of age, whichever occurs first. A participating student who enrolls in a resident public school or resident public school program is considered to have returned to a public school for the purpose of determining the end of the term.

(I) Unused funds must be rolled over to the following year. Only funds that are saved over the course of all four quarterly deposits of an entire school year are eligible to roll over. Remaining funds that are generated from less than four deposits, because the student either entered or left the program midyear, must revert to the State.

(J) Accounts are active and usable until:

(1) funds are revoked by the committee for misuse;

(2) a student graduates from an institution of higher learning in this State after four consecutive years following high school graduation in which a student is not enrolled in an institution of higher learning in this State;

(3) the student attains the age of twenty‑five years; or

(4) two consecutive years of account inactivity lapse except in the case of military families who remain in the State with guardians or return to the state before reaching the age of twenty‑five years.

(K) An agreement terminates automatically if the child no longer resides in this State, and money remaining in the account reverts to the State’s general fund.

(L) Only one account may be established for a child.

Section 58‑8‑180. (A) To ensure that students are treated fairly and kept safe, all participating private schools shall:

(1) comply with all health and safety laws or codes that apply to private schools;

(2) hold a valid occupancy permit if required by their municipality;

(3) not discriminate on the basis of race, color, disability or national origin; and

(4) conduct criminal background checks on employees and exclude from employment anyone who:

(a) is not permitted by state law to work in a nonpublic school;

(b) might reasonably pose a threat to the safety of students; and

(c) is listed on federal, state, or other central child abuse registries.

(B) To ensure that funds are spent appropriately, all participating schools shall:

(1) provide parents with a receipt for all qualifying expenses at the school; and

(2) demonstrate their financial viability by showing they can repay funds that might be provided from accounts, if they are to receive fifty thousand dollars or more during the school year, by filing with the committee prior to the start of the school year:

(a) a surety bond payable to the State in an amount equal to the aggregate amount of the funds from accounts expected to be paid during the school year from students admitted at the participating school; or

(b) financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the funds from accounts expected to be paid during the school year to students admitted to the participating school.

(C) In order to allow parents and the public to measure the achievements of the program:

(1) parents shall ensure that:

(a) each year their eligible student takes either the state achievement tests or nationally norm‑referenced tests identified by the committee that measure learning gains in math and language arts, and provide for value‑added assessment; provided, however, that students with disabilities for whom standardized testing is not appropriate are exempt from this requirement;

(b) the results of these tests are provided to the committee or an organization chosen by the State on an annual basis, beginning with the first year of testing;

(c) student information is reported in a way that would allow the State to aggregate data by grade level, gender, family income level, and race; and

(d) the committee or the appropriate organization chosen by the State, if any, is informed of the eligible student’s graduation from high school.

(2) The committee or an organization chosen by the State, if any, shall:

(a) ensure compliance with all student privacy laws;

(b) collect all test results;

(c) provide the test results, associated learning gains, and graduation rates to the public by means of a state Internet website after the third year of test and graduation‑related data collection; provided, however, these findings must be aggregated by the students’ grade level, gender, family income level, number of years of participation in the program, and race;

(d) provide graduation rates to the public by means of a state Internet website after the third year of test and test‑related data collection; and

(e) administer an annual parental satisfaction survey that asks parents of students receiving accounts to express their:

(i) satisfaction with the program; and

(ii) opinions on other topics, items, or issues that the State finds would elicit information about the effectiveness of the program and the number of years their child has participated in it.

(D) A participating private school is autonomous and not an agent of the State or federal government, therefore:

(1) the committee or another state agency may not regulate the educational program of a participating private school or education provider that accepts funds from an account;

(2) the creation of the program does not expand the regulatory authority of the State, its officers, or a school district to impose an additional regulation of private schools or education providers beyond those necessary to enforce the requirements of the program;

(3) participating private schools or education providers must be given the maximum freedom to provide for the educational needs of their students without governmental control; and

(4) in a legal proceeding challenging the application of this chapter to a participating school, the State bears the burden of establishing that the law is necessary and does not impose an undue burden on participating schools.

Section 59‑8‑190. The resident school district shall provide a participating school or education provider that has admitted an eligible student under this program with a complete copy of the student’s school records, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232(g).

Section 59‑8‑200. (A) The committee may contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct a study of the program with funds other than state funds.

(B) The study shall assess the:

(1) level of participating students’ satisfaction with the program;

(2) level of parental satisfaction with the program;

(3) fiscal impact to the State and resident school districts of the program;

(4) impact of the program on public and private school capacity, availability and quality; and

(5) participating students’ academic performance and graduation rates in comparison to students who applied for a scholarship under this program but did not receive one because of random selection.

(C) The researchers who conduct the study shall:

(1) apply appropriate analytical and behavioral science methodologies to ensure public confidence in the study;

(2) protect the identity of participating schools and students by, among other things, keeping anonymous all disaggregated data other than that for the categories of grade level, gender, and ethnicity; and

(3) provide the General Assembly with a final copy of the evaluation of the program.

(D) The relevant public schools and the parents of participating students shall cooperate with the research effort by providing student assessment results and other data necessary to complete this study.

(E) The committee may accept grants to assist in funding this study.

(F) The study shall cover a period of at least five years. The General Assembly may require periodic reports from the researchers. After publishing their results, the researchers shall make their data and methodology available for public review, while complying with the requirements of the Family Educational Rights and Privacy Act of 1974.

Section 59‑8‑210. (A) There is created the ‘Parental Review Panel’ to determine whether certain expenses meet the requirements to be considered a qualified education expense under this article when requested by the committee or as an appeal by a parent or guardian of the committee’s decision to reject an application of a private tutor, teaching service, compliance organization, educational consultant or online educational course or program provider for approval under Section 59‑9‑140 to receive funds distributed under the program.

(B) The Parental Review Panel must consist of eight parents of participating students appointed by, and serving at the pleasure of, the Governor. Members of the panel:

(1) must represent no fewer than four counties in the State;

(2) must serve for one‑year terms and may be reappointed; and

(3) may not receive mileage or per diem.

(C) The Governor or his designee shall serve as the chair of the panel, but may only vote if there is a tie between the other eight members of the panel.

Section 59‑8‑220. The annual number of new enrollees into the program is limited to five percent of eligible students for the 2019‑2020 School Year and ten percent of eligible students for the 2020‑2021 School Year. For the 2021‑2022 School Year, there is no eligibility limit.”

SECTION 2. 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 3. This act takes affect beginning with the 2019‑2020 School Year with expenses of the Education Oversight Committee for setting up the program authorized for the 2018‑2019 School Year.

‑‑‑‑XX‑‑‑‑