**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3976**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Erickson, Elliott, Fry, Lucas, Pope, Simrill, West, B. Newton, G.M. Smith, Bailey, Ballentine, Bannister, Bennett, Bradley, Brittain, Bryant, Burns, Bustos, Caskey, B. Cox, W. Cox, Crawford, Daning, Davis, Forrest, Haddon, Hardee, Herbkersman, Hewitt, Hiott, Hixon, Huggins, Hyde, J.E. Johnson, Jones, Jordan, Kimmons, Ligon, Long, Lowe, Martin, May, McGarry, McGinnis, Morgan, D.C. Moss, V.S. Moss, Murphy, W. Newton, Oremus, Sandifer, G.R. Smith, M.M. Smith, Stringer, Taylor, Thayer, Trantham, Willis, Wooten, Yow, Nutt, McCravy, Magnuson and Blackwell

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Companion/Similar bill(s): 935

Introduced in the House on February 24, 2021

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

Summary: Education Savings Accounts

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/24/2021 House Introduced and read first time ([House Journal‑page 42](file:///h:\hj\20210224.docx))

2/24/2021 House Referred to Committee on **Ways and Means** ([House Journal‑page 42](file:///h:\hj\20210224.docx))

3/11/2021 House Member(s) request name added as sponsor: Magnuson

1/19/2022 House Member(s) request name removed as sponsor: Chumley

2/15/2022 House Member(s) request name added as sponsor: Blackwell

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**VERSIONS OF THIS BILL**

[2/24/2021](file:///p:\pprever\2021-22\3976_20210224.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 TO TITLE 59 SO AS TO PROVIDE FOR THE CREATION OF EDUCATION SCHOLARSHIP ACCOUNTS, TO PROVIDE REQUIREMENTS FOR THE ACCOUNTS, TO CREATE AN EDUCATION SCHOLARSHIP ACCOUNT FUND TO FUND THE SCHOLARSHIPS, AND TO PROVIDE RELATED REQUIREMENTS OF THE EDUCATION OVERSIGHT COMMITTEE AND THE DEPARTMENT OF ADMINISTRATION, AMONG OTHER THINGS.

Whereas, in 1970, the State of South Carolina enacted the Tuition Grants Program to award needs‑based grants for students to attend the independent college of their choice. Since 1970, 450,000 grants totaling $988 million have been awarded to deserving students; and

Whereas, in 1999, the State of South Carolina enacted First Steps to School Readiness, a program for low‑income children to attend independent, prekindergarten programs; and

Whereas in 2013, the South Carolina General Assembly passed its first K‑12 choice program, the Exceptional SC Scholarship, a tax credit scholarship to assist children with special needs that was made permanent law in 2018; and

Whereas, in establishing the Education Scholarship Account Act, the South Carolina General Assembly intends to further enhance educational opportunity for all South Carolinians across the prekindergarten through higher education spectrum by providing parents with state funds that will allow them to access the K‑12 education that works best for their child, and

Whereas, the South Carolina General Assembly intends for these state funds to belong to parents, and for parents to use these funds in furtherance of personalized education to meet the needs of their child and as a direct benefit to their child; and

Whereas, the South Carolina General Assembly intends to promote student achievement by making South Carolina the most student‑centered State in the nation by increasing student participation in, and student access to, effective educational opportunities, both within and outside of their resident school district, regardless of where they live or their socioeconomic status; and

Whereas, the South Carolina General Assembly intends that the provisions of this chapter be construed broadly as a direct benefit to students to maximize parental choice options and student access to customized, high‑quality educational opportunities presently unavailable to their children. Now, therefore,

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

Education Scholarship Accounts

Section 59‑8‑110. For purposes of this chapter:

(1) ‘Committee’ means the Education Oversight Committee.

(2) ‘Department’ means the South Carolina Department of Administration.

(3) ‘Education Scholarship Account’, ‘ESA’, or ‘account’ means the individual account that is administered by the department to which funds are allocated to the parent of an ESA student to pay for qualifying expenses.

(4) ‘Eligible student’ means a student:

(a) residing in any school district of this State;

(b) that has attained the age of five on or before September first of the school year; and

(c) that has an annual adjusted gross family income of two hundred percent or less of the federal poverty guidelines as promulgated annually by the United States Department of Health and Human Services or a statement of Medicaid eligibility; or

(d) that participated in the South Carolina Early Reading Development and Education program; or

(e) that previously received an ESA 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.

(5) ‘ESA student’ means an eligible student who is participating in the Education Scholarship Account Act Program.

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

(7) ‘Parent’ means a resident of this State who is the natural or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student.

(8) ‘Education service provider’ means a person or organization approved by the committee that receives payments from education savings accounts to provide educational goods and services to ESA students.

(9) ‘Program’ means the ESA program created by this chapter.

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

(11) ‘Scholarship’ means education funding allocated from an account established pursuant to this chapter.

(12) ‘Substantial misuse’ means wilfully and knowingly receiving or spending any portion of a scholarship for any purpose other than a qualifying expense.

(13) ‘Qualifying expense’ means:

(a) tuition and fees of an education service provider;

(b) textbooks, curriculum, or other instructional materials, including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(c) tutoring services approved by the committee;

(d) computer hardware or other technological devices that are used primarily for an ESA student’s educational needs and approved by the department or a licensed physician;

(e) payment to an educational consultant who is an advisor in education curriculum, finance, scholarships or achievement, or who has experience necessary to provide guidance to parents of eligible ESA students, and is approved by the committee;

(f) tuition and fees for an approved nonpublic online education service provider or course;

(g) fees for approved:

(1) national norm‑referenced examinations, advanced placement examinations, or similar assessments;

(2) industry certification exams; or

(3) examinations related to college or university admission;

(h) 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;

(i) tuition and fees at an eligible postsecondary institution that is an accredited community college, technical college, university, or independent postsecondary institution in this State;

(j) textbooks required for instruction at an eligible postsecondary institution referenced in subitem (i);

(k) approved 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;

(l) contracted teaching services and education classes approved by the committee;

(m) fees for transportation paid to a fee‑for‑service transportation provider for the ESA 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;

(n) fees for ESA account management by private financial management firms approved by the department; or

(o) any other educational expense approved by the department or committee.

Section 59‑8‑115. (A) The department shall create a standard application process for parents of eligible students to establish the eligibility of their student for the Education Scholarship Account program.

(B) The department shall process applications on a rolling basis in the order in which they are received, after a preference has been extended to all prior‑year participants and their respective siblings. The department shall enroll and issue award letters within forty‑five days after receipt of applications and all required documentation.

(C) Before awarding a scholarship, the department shall have obtained evidence of the student’s eligibility, through the following application documentation:

(1) card issued in the student’s name from the Department of Health and Human Services for Medicaid eligibility; or

(2) other documentation as the department may require to demonstrate that the family income is two hundred percent or less of the poverty level.

(D) The department shall approve an application for an ESA if:

(1) the parent submits an annual application for an ESA in accordance with the application and procedures established by the department;

(2) the student on whose behalf the parent is applying is an eligible student;

(3) funds are available for the ESA; and

(4) the parent signs an annual agreement with the department:

(a) to provide, at a minimum, a program of academic instruction for the eligible student in at least the subjects of English/language arts to include writing, mathematics, social studies, and science;

(b) to ensure the ESA student takes assessments as referenced in Section 59‑8‑150 or provides assessments in a similar manner through other means if the ESA student does not receive full‑time instruction from an education service provider;

(c) to use program funds for qualifying expenses only for an approved provider to educate the eligible student, subject to penalty;

(d) not to enroll their eligible student in a public school as a full‑time student;

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

(f) to release the resident school district from an obligation to educate the eligible student while enrolled in the program, which shall have the same effect as to the resident school district as a parental placement under Section 1414 of IDEA;

(g) to comply with the conditions and requirements of this program as established by the department or committee; and

(h) to confirm that, if the parent’s child is a student with disabilities, the parent has received notice from the department that participation in the ESA program is a parental placement of the ESA student under Section 1412 of IDEA, along with an explanation of the rights that parentally placed students possess under IDEA and any applicable state laws and regulations.

(E) A parent will be allowed to make payments for the cost of educational goods and services not covered by the funds in their student’s ESA, however, personal deposits into an ESA are prohibited.

(F) Funds received pursuant to this section do not constitute taxable income to the parent of the ESA student or to the ESA student.

(G) Nothing in this chapter may be construed to require that an ESA student must be enrolled, full or part‑time, in a school.

(H) A parent’s signed agreement under subsection (D)(4) satisfies the state’s compulsory attendance law pursuant to Section 59‑65‑10.

(I) The department shall promulgate regulations for the administration of the program as may be applicable.

(J) The department may contract with qualified organizations to administer the program application process or specific functions, maintenance, and monitoring of the program application process as required above.

Section 59‑8‑120. (A) There is established, at the department, the ‘South Carolina Education Scholarship Account Fund’ that is separate and distinct from the general fund, consisting of monies appropriated to the department to provide scholarships to ESA students for qualifying expenses. The fund must receive and hold all monies allocated for it as well as all earnings until disbursed as provided in this section.

(B) The department shall administer the fund and is responsible for keeping records, managing accounts, and disbursing scholarships awarded pursuant to this section.

(C) Upon approval of an eligible student’s application by the department, the State Treasurer shall transfer from the state appropriated monies allocated for the child’s education in the prior school district of the child’s domicile, or if the child is currently eligible to attend kindergarten, the monies that would otherwise be allocated for the child’s education in the expected school district of the child’s domicile, to the department. The department shall deposit these monies into the South Carolina Education Scholarship Account Fund.

(D) The department shall create an individual online ESA account for each ESA student and transfer an amount that is equivalent to the state average of state funding per pupil in public schools for the current fiscal year as determined by the Revenue and Fiscal Affairs Office. The amount deposited shall not include federal or local funds.

(1) The parent must be able to access the online account for the ESA student using a secure portal.

(2) The ESA student account must be created within thirty days of the application approval.

(E) The department shall make payments to an ESA student’s account on a quarterly basis with the first payment being distributed by July thirty‑first of each year.

(F) For the purpose of funding calculations, each eligible student who participates in the program must be counted in the enrollment figures for the resident school district in which the student is zoned to attend.

(G) By September first of each school year and again on January fifteenth and March fifteenth of the school year, the State Department of Education shall compare the list of ESA students with the public school enrollment lists and shall notify the department of any duplications to avoid duplicate payments.

(H) The department may receive contributions from private sources to help fund administration of the program.

(I) Education service providers may not refund, rebate, or share an ESA student’s scholarship funds with a parent or the ESA student. The funds in an account only may be used for qualifying expenses as defined in this chapter and provided by the department.

(J) The department may contract with qualified organizations to administer the program.

Section 59‑8‑125. (A) The department shall develop an online electronic system for payment for services by participating parents. The department shall not adopt a system that requires parents to be reimbursed for out‑of‑pocket expenses.

(B) The General Assembly shall appropriate funds to the department for initial costs to create the program. Thereafter the department 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.

(C) The department may contract with qualified vendors to manage accounts and shall establish reasonable fees for private financial management firms participating in the program based upon market rates.

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

(E) Payments made by the department must remain in force until a parent or ESA student is proven to have participated in a prohibited activity specified in this chapter, an ESA student returns to his resident or other public school district or his public charter school, or an ESA student graduates from high school or attains twenty‑two years of age, whichever occurs first. An ESA student who enrolls in a public school or public charter school program is considered to have returned to a public school for the purpose of determining the end of the term.

(F) An account is active and usable until funds are revoked by the department for substantial misuse or the ESA student leaves the program for any reason, at which time any remaining funds must revert to the program fund.

(G) Unused funds must be rolled over to the following year for an ESA student who continues to meet eligibility requirements to participate in the program.

(H) An agreement terminates automatically if the ESA student is no longer domiciled in this State, and money remaining in the account reverts to the program fund.

(I) Only one account may be established for an eligible student.

Section 59‑8‑130. (A) If an ESA student’s program of academic instruction is terminated for any reason before the end of the semester or school year and the ESA student does not resume instruction within thirty days, then the parent shall notify the department and remaining funds in the ESA student’s account must be credited to the program fund.

(B) Any funds not expended in an ESA student’s scholarship account at the end of the school year will be carried forward into the next school year and expended for the same purposes.

Section 59‑8‑135. (A) Beginning with the 2022‑2023 School Year, the annual number of ESA students is limited by the following capacity:

(1) In School Year 2022‑2023, the program is limited to five thousand ESA students, kindergarten aged through third grade.

(2) In School Year 2023‑2024, the program is limited to ten thousand ESA students, kindergarten aged through fifth grade.

(3) In School Year 2024‑2025, the program is limited to fifteen thousand ESA students, kindergarten aged through eighth grade.

(4) In School Year 2025‑2026, the program is limited to twenty thousand ESA students, kindergarten aged through twelfth grade.

(B) In all subsequent years, if the program remains in effect and contingent upon the amount of funds in the program, there may be no limit on the number of ESA students.

(C) In 2026, and every five years thereafter, the committee shall conduct an eligibility and use review of the program and shall make recommendations to the General Assembly to improve the program.

Section 59‑8‑140. (A)(1) The committee shall develop an application for education service providers desiring to participate in the program to submit according to the process established by the committee.

(2) The committee shall require an independent school that applies to be an education service provider to be located in the State, to have an educational curriculum that includes courses set forth in the state’s diploma requirements and be accredited or certified by, and a member in good standing with, the South Carolina Association of Christian Schools, the Association of Christian Schools International, the South Carolina Independent Schools Association, the Palmetto Association of Independent Schools, Cognia, the National Council for Private School Accreditation, or their respective successors.

(3) An education service provider that participated in the program in the previous school year and which desires to participate in the program in the current year shall reapply to the committee. The education service provider reapplying shall certify to the committee that it continues to meet all program requirements. An education service provider required to administer academic testing shall provide to the committee test score data from the previous school year. If individual student test score data is not submitted, then the committee shall remove the education service provider from the program.

(4) By March first of each year, the committee will certify education service providers for participation in the program that meet all program requirements. The committee may waive the deadline requirement upon good cause shown by the education service provider.

(5) An education service provider that is denied certification pursuant to this section may seek review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court’s rules of procedure.

(6) By March fifteenth of each year, the committee shall publish on its website a comprehensive list of certified education service providers. The list must include the name, address, telephone number, and website address for each education service provider.

(B) The committee shall establish the process for new education service providers to participate in the program which may be added on a rolling basis, subject to the committee’s approval, and will be published on its website.

(C) The committee may bar an education service provider from the program if the committee establishes that the education service provider has:

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

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

(D) The committee shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payments from accounts.

(1) If the committee decides to bar an education service provider from the program, it shall notify the department, which, in turn, shall notify affected students and their parents of this decision as quickly as possible.

(2) Education service providers may appeal the committee’s decision to bar them from receiving payments from accounts pursuant to the state’s Administrative Procedures Act.

(E) The South Carolina Department of Education shall promulgate regulations to allow ESA students to return to their resident school districts at any time, providing the least disruptive process, and as may be necessary for applicable administration of the program.

Section 59‑8‑145. (A) The department shall include on its website a link to the list of certified education service providers that the committee is required to publish on its website under Section 59‑8‑140(A)(6).

(B) The department shall adopt procedures to inform students that are eligible for the program and their parents annually of their ability to participate in the program.

(C) The department shall adopt procedures to annually inform ESA students and their parents of which education service providers will be participating in the program.

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

(E) The department may make a parent ineligible for the program for substantial misuse of the funds in the account.

(F) The department may conduct or contract for the auditing of accounts, and shall, at a minimum, conduct random audits of accounts on an annual basis.

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

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

(I) The department shall maintain a record of the number of applications received annually for the program, the number of students accepted into the program each year, the number of students not accepted into the program each year with a corresponding explanation as to why the student was not accepted into the program. The department shall compile this information and provide a report the General Assembly by December thirty‑first of each year.

Section 59‑8‑150. (A) To ensure equitable treatment and personal safety of all ESA students, all education service providers shall:

(1) comply with all applicable health and safety laws or codes;

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

(3) not discriminate on the basis of race, color, 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 school;

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

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

(B) To ensure that funds are spent appropriately, all education service providers shall:

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

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

(C) In order to allow parents and the public to measure the achievements of the program, academic progress must be documented annually for each ESA student. ESA students with an Individualized Education Plan (IEP) that cannot be accommodated with standardized testing are excluded from the requirements of item (1). Education service providers that provide academic instruction, however, must monitor the progress of students with significant cognitive disabilities through alternative assessments including portfolios.

(1) Education service providers that provide full‑time academic instruction shall:

(a) ensure that each ESA student in grades three through eight takes one of an approved list of nationally norm‑referenced assessments identified by the committee at the end of each school year; and

(b) measure academic performance and learning gains of its ESA by:

(i) requiring that each ESA student takes one of an approved list of nationally norm‑referenced tests identified by the committee that measure learning gains in math and language arts and provide for value‑added assessment; and

(ii) collecting high school graduation information of ESA students for reporting to the committee as required in this section.

(2) For the purpose of evaluating program effectiveness, education service providers that provide full‑time academic instruction shall ensure that results in item (1) are:

(a) provided to the parent of an ESA student and must be provided to the committee on an annual basis, beginning with the first year of program implementation; and

(b) disaggregated by grade level, gender, family income level, and race.

(3) The department or the appropriate organization chosen by the department, if any, will be informed of the ESA student’s graduation from high school.

(D) The committee shall:

(1) comply with all student privacy laws;

(2) collect all test results;

(3) annually provide the test results, associated learning gains, and graduation rates to the public by means of a state website with aggregated data by the school, grade level, gender, family income level, number of years of participation in the program, and race;

(4) collaborate with the department to develop and administer an annual parental satisfaction survey to all parents of ESA students to express their satisfaction with the program and their opinions on issues relevant to the ESA program that the State finds would elicit information about the effectiveness of the program, including the number of years the child has participated in it. Results of this survey must be provided to the General Assembly by December thirty‑first of each year.

(E) An education service provider that is not a public school is autonomous and not an agent of the State or federal government, therefore:

(1) the department or any other state agency may not regulate the educational program of a certified 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 regulation of education service providers beyond those necessary to enforce the requirements of the program;

(3) the freedom of education service providers to provide for the educational needs of ESA students without governmental control must not be abridged;

(4) an education service provider that accepts payment from a parent using funds from an ESA pursuant to this chapter is not an agent of the State or federal government; and

(5) education service providers shall not be required to alter their creeds, practices, admissions policy, or curriculum in order to accept payments from a parent using funds from an ESA.

Section 59‑8‑155. The ESA student’s resident school district shall provide a parent and the education service providers that provide academic services to an ESA student 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 59‑8‑160. (A) There is created the ‘ESA Review Panel’ that shall serve as an advisory panel to the department.

(B) The review panel shall consist of ten members, pursuant to the following:

(1) the Governor or his designee, who shall serve as the chair of the panel; and

(2) three members to be appointed by the Governor upon the recommendation of the:

(a) South Carolina Association of Christian Schools;

(b) South Carolina Independent Schools Association; and

(c) Palmetto Association of Independent Schools;

(3) one member appointed by the Speaker of the House of Representatives;

(4) one member appointed by the President of the Senate;

(5) one member appointed by the Chairman of the House Education and Public Works Committee;

(6) one member appointed by the Chairman of the Senate Education Committee; and

(7) two parents of ESA students to be appointed by the Governor.

(C) The review panel may advise the department on whether certain expenses meet the requirements to be considered a qualified expense under this chapter when requested by the department. The review panel periodically may make recommendations to the General Assembly, the department, and the committee on improving the program.

(D) Members shall serve at the pleasure of their appointing authority. In making appointments to the board, the appointing authorities, as appropriate, shall consider legal, financial, accounting, and marketing experience and race, gender, and other demographic factors to ensure nondiscrimination, inclusion, and representation of all segments of the State to the greatest extent possible.

(E) Members may not receive mileage or per diem.”

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 effect thirty days after approval by the Governor, provided that upon approval of this act by the Governor, the Education Oversight Committee and the Department of Administration shall begin undertaking and executing responsibilities incident to the implementation of this act so that the provisions of this act may be fully implemented thirty days after approval by the Governor.

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