**South Carolina General Assembly**

124th Session, 2021-2022

**H. 4397**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Erickson, West, Allison, Lucas, Bradley, Herbkersman, Haddon, Crawford, Thayer, McGarry, Elliott, Kimmons and Bennett

Document Path: l:\council\bills\rt\17974wab21.docx

Introduced in the House on May 13, 2021

Currently residing in the House Committee on **Education and Public Works**

Summary: Open enrollment in public schools

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/13/2021 House Introduced and read first time ([House Journal‑page 21](file:///h:\hj\20210513.docx))

5/13/2021 House Referred to Committee on **Education and Public Works** ([House Journal‑page 21](file:///h:\hj\20210513.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=4397&session=124&summary=B) at the website

**VERSIONS OF THIS BILL**

[5/13/2021](file:///p:\pprever\2021-22\4397_20210513.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59‑63‑25 SO AS TO PROVIDE AN OPEN ENROLLMENT OPTION IN PUBLIC SCHOOLS, AND TO PROVIDE RELATED APPLICATION AND ENROLLMENT PROCEDURES; TO AMEND SECTION 59‑40‑145, RELATING TO INTERDISTRICT ATTENDANCE IN CHARTER SCHOOLS, SECTION 59‑63‑30, RELATING TO PUBLIC SCHOOL ATTENDANCE QUALIFICATIONS, SECTION 59‑63‑32, RELATING TO PUBLIC SCHOOL ENROLLMENT REQUIREMENTS, AND SECTION 59‑63‑480, RELATING TO PUBLIC SCHOOL ATTENDANCE REQUIREMENTS IN ADJACENT COUNTIES, ALL SO AS TO MAKE CONFORMING CHANGES; TO REPEAL SECTION 59‑63‑45 RELATING TO INTERDISTRICT STUDENT TRANSFER REIMBURSEMENTS, AND SECTION 59‑63‑500 RELATING TO INTERDISTRICT STUDENT TRANSFER CONSENT; AND TO MAKE THE PROVISIONS OF THIS ACT EFFECTIVE JULY 1, 2021.

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

SECTION 1. Article 1, Chapter 63, Title 59 of the 1976 Code is amended by adding:

“Section 59‑63‑25. (A) Except as otherwise provided in subsection (C)(3), every school district, as defined in Section 59‑1‑160, and charter school, as defined in Section 59‑40‑40, shall allow:

(1) its resident pupils who apply pursuant to the procedures established in subsection (B) to enroll in a particular program or school within such school district; and

(2) commencing with the 2022‑2023 School Year and thereafter, nonresident pupils from other school districts within the State who apply pursuant to the procedures established in subsection (B) to enroll in a particular program or school within the school district or charter school.

(B)(1) A district school board shall adopt by rule and post on its website the process required to participate in open enrollment. The process must:

(a) adhere to federal desegregation requirements;

(b) allow parents to declare school preferences, including placement of siblings within the same school;

(c) provide a lottery procedure to determine student assignment and establish an appeal process for hardship cases;

(d) identify schools that have not reached capacity, as determined by the school district;

(e) ensure that each district school board adopts a policy to provide preferential treatment pursuant to subsection (C)(1); and

(f) describe whether the district will charge nonresident students a fee to cover costs associated with their enrollment that are not covered by federal, state, or local funding.

(2) In implementing the provisions of subsection (A), a school district may not be required to:

(a) make alterations in the structure of a requested school or to make alterations to the arrangement or function of rooms within a requested school;

(b) establish and offer any particular program in a school if such program is not currently offered in the school;

(c) alter or waive any established eligibility criteria for participation in a particular program, including age requirements, course prerequisites, and required levels of performance; or

(d) provide transportation to nonresident students who enroll pursuant to this section.

(C)(1) A district school board must provide preferential treatment in its open enrollment process to all of the following:

(a) dependent children of active‑duty military personnel whose move resulted from military orders;

(b) children who have been relocated due to a foster care placement in a different school zone;

(c) children who move due to a court ordered change in custody due to separation or divorce or the serious illness or death of a custodial parent;

(d) students residing in the school district; and

(e) children entitled to attend school pursuant to a qualifying reason as stated in Section 59‑63‑31.

(2) A school district may deny any of its resident pupils or any nonresident pupils from other school districts within the State permission to enroll in a particular program or school within the school district only if:

(a) there is a lack of space or teaching staff within a particular program or school requested, in which case, priority must be given to resident students applying for admission to the program or school;

(b) the school requested does not offer a particular program requested;

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

(d) a desegregation plan is in effect for the school district, and the denial is necessary to enable compliance with the desegregation plan;

(e) the student has been expelled, or is in the process of being expelled, for the reasons specified in Section 59‑63‑210 or the student may be denied permission to enroll pursuant to Section 59‑63‑217; or

(f) any combination of subitems (a) through (e).

(3) A school receiving a request for enrollment from a nonresident student must issue a written decision accepting or denying the request within ten days after receiving the request for enrollment. If a request is denied, the written decision must cite the school’s specific reasons for the denial. If a school fails to issue a written decision within the time period required in this item, the request must be considered accepted and the nonresident student may enroll within the school district, subject to other applicable laws regarding the enrollment of students in public schools.

(4)(a) A student who attempts to enroll in a school district in which he does not reside and is denied enrollment pursuant to this section may appeal the decision to the school board of trustees of the district in which the student wishes to enroll. The student shall submit a request for a hearing to the school board of trustees within ten days after receiving the denial of enrollment. The student is entitled to a prompt and fair hearing by the school board of trustees, which shall try the matter de novo and in accordance with its rules and regulations. At the hearing, parties may be represented by counsel and are permitted to present relevant evidence, including calling and questioning witnesses. The school board shall ensure a transcript of the proceeding is recorded. The school board shall hold the hearing within thirty days after receiving a written request, unless the parties mutually agree otherwise, and shall issue a written order within ten days after the hearing. The written order must contain findings of fact, conclusions of law, and the disposition of the matter.

(b) A party aggrieved by the decision of the school board shall have the right to appeal to the court of common pleas of the county, where the matter will be tried de novo by the circuit judge. The appealing party shall file its appeal within thirty days of the issuance of the written decision provided in subitem (a). The school board shall certify to the court the record of the proceedings upon which its written order was based, and the court shall admit the record as evidence and consider the record, along with any additional evidence either of the parties wish to present. A student who prevails in an action in the circuit court pursuant to this subitem may recover reasonable attorney’s fees and costs associated with the action.

(5) As part of its open enrollment process, a charter school may give enrollment priority and preference to students as set forth in Section 59‑40‑50(B)(7) and (8). A charter school annually shall post on its website the application process required to participate in open enrollment, consistent with this section, Section 59‑40‑50, and its charter contract.

(6) A student who resides in a school district may not be displaced by a student from another district seeking enrollment under the open enrollment process.

(7) For purposes of continuity of educational choice, a student who transfers pursuant to this section may remain at the school chosen by the parent or guardian until the student completes the highest grade level at the school.”

SECTION 2. Section 59‑40‑145 of the 1976 Code is amended to read:

“Section 59‑40‑145. A child who resides in a school district other than the one where a charter school is located may attend a charter school outside his district of residence; however, the receiving charter school shall have authority to grant or deny permission for the student to attend pursuant to Sections 59‑40‑40(2)(b) and 59‑40‑50(B)(7) and (8) according to the terms of the charter after in‑district children have been given priority in enrollment. ~~However, the out‑of‑district enrollment shall not exceed twenty percent of the total enrollment of the charter school without the approval of the sponsoring district board of trustees.~~ The district sending children to the charter school under the terms of this section must be notified immediately of the transferring students. Out‑of‑district students must be considered based on the order in which their applications are received. ~~If the twenty percent out‑of‑district enrollment is from one school district, then the sending district must concur with any additional students transferring from that district to attend the charter school.~~ The charter school to which the child is transferring shall be eligible for state and federal funding according to the formula defined in Section 59‑40‑140(A), (B), and (C), as applicable. However, this section does not apply to a charter school sponsored by the South Carolina Public Charter School District Board of Trustees, a public institution of higher learning, or an independent institution of higher learning.”

SECTION 3. Section 59‑63‑30 of the 1976 Code is amended to read:

“Section 59‑63‑30. Children within the ages prescribed by Section 59‑63‑20 ~~shall be~~ are entitled to attend the public schools of any school district, without charge, ~~only~~ if ~~qualified under the following provisions of this section~~:

(a) ~~Such child resides with its parent or legal guardian;~~

~~(b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or~~

~~(c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and~~

~~(d)~~ the child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to Section 59‑19‑90; and

~~(e)~~(b) the child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to Section 59‑19‑90.”

SECTION 4. Section 59‑63‑32(B) of the 1976 Code is amended to read:

“(B) The school district also must require an adult to complete and sign an affidavit:

(1) confirming the qualifications set out in Section 59‑63‑31(1)(c) ~~establishing residency of the child in the school district~~; and

(2) ~~attesting that the child’s claim of residency in the district is not primarily related to attendance at a particular school within the district; and~~

~~(3)~~ accepting responsibility for educational decisions for the child.”

SECTION 5. Section 59‑63‑480 of the 1976 Code is amended to read:

“Section 59‑63‑480. If school children in one county reside closer to schools in an adjacent county, they may attend such schools ~~upon~~ by applying for enrollment through the applicable school district’s open enrollment procedures and policies. Alternatively, the school authorities of the county of their residence ~~arranging~~ may arrange with the school officials of the adjacent county for such admission and upon payment of appropriate charges as herein authorized. The board of trustees in the school district in which the pupils reside shall make written application through its county board of education to the board of trustees of the district in which the school is located for the admission of such children, giving full information as to ages, residence and school attainment, and the board of trustees in the school district, agreeing to accept such pupils, shall give a written statement of agreement. Upon receipt of such application the board of trustees of the school and its county board of education shall determine the monthly per pupil cost of all overhead expenses of the school, which will include all expenses of the school not paid by the State. Upon proper arrangement being made for the payment monthly of such overhead per pupil cost for each such child the same shall be admitted to the schools of the adjacent county.”

SECTION 6. Sections 59‑63‑45 and 59‑63‑500 of the 1976 Code are repealed.

SECTION 7. This act takes effect on July 1, 2021.

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