COMMITTEE REPORT

March 15, 2022

**S. 935**

Introduced by Senators Grooms, Loftis, Goldfinch, Verdin, Rice, Cash, Adams, Climer, Peeler, Garrett, Kimbrell, Davis, Campsen, Hembree, Turner, Corbin, Bennett, Massey, Gambrell, Rankin and Senn

S. Printed 3/15/22--S.

Read the first time December 7, 2021.

**THE COMMITTEE ON EDUCATION**

To whom was referred a Bill (S. 935) to amend Title 59 of the 1976 Code, relating to education, by adding Chapter 8, to provide for the creation of education scholarship accounts, to provide requirements for the, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. This act may be cited and referred to as the ‘Put Parents in Charge Act.’

SECTION 2. 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) ‘Department’ means the South Carolina Department of Education.

(2) ‘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.

(3) ‘Eligible student’ means a student who:

(a) is a resident of this State;

(b)(i) attended a public school in this state during the previous school year;

(ii) had not yet attained the age of five on or before September first of the previous school year but who has attained the age of five on or before September of the current school year; or

(iii) received an ESA scholarship pursuant to this chapter for the previous school year; and

(c)(i) has a statement of Medicaid eligibility;

(ii) has an IEP; or

(iii) has a sibling living in the same household who receives an ESA scholarship.

(4) ‘ESA student’ means an eligible student who is participating in the Education Scholarship Account program.

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

(6) ‘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.

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

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

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

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

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

(12) ‘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 department;

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

(f) 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;

(g) 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;

(h) 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;

(i) contracted teaching services and education classes approved by the depatrment;

(j) 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;

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

(l) any other educational expense approved by the department.

Section 59‑8‑115. (A) The department shall create a standard application process and establish the timeline for parents of eligible students to establish the eligibility of their student for the Education Scholarship Account program. The application window established shall last at least forty-five days, opening no later earlier than January fifteenth and closing no later than April fifteenth each calendar year.

(B) Pursuant to the timeline established pursuant to subsection (A), the department shall:

(1) process applications in the order in which they are received, after a preference has been extended to all prior‑year participants and their respective siblings; and

(2) enroll and issue award letters within thirty days of the deadline for receipt of completed applications and all required documentation.

(C) Before awarding a scholarship, the department shall have obtained evidence of the student’s eligibility through the card issued in the student’s name from the Department of Health and Human Services for Medicaid eligibility included as applicable with application documentation.

(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 in the resident school district, as defined in this chapter;

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

(f) to comply with the conditions and requirements of the ESA program as established by the department; and

(g) 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 IDEA, along with an explanation of the rights that parentally placed students possess under IDEA and any applicable state laws and regulations, including the consultation process provided for in 20 U.S.C. Section 1412(a)(10) and the Indivdual Education Program requirements described in Section 1414(d) of IDEA.

(E) The department shall make available on its website in a conspicuous location information in conformity with 34 C.F.R Sections 300.130 through 300.144, Assistance to States for the Education of Children with Disabilities, explaining to parents the rights of children with disabilities under IDEA both in public schools and as parentally placed students in private schools.

(F) 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.

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

(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 State Board of Education 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 State 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 department shall compare the list of ESA students with the public school enrollment lists to avoid duplicate payments.

(H) 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 may only be used for qualifying expenses as defined in this chapter and provided by the department.

(I) 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 three percent. Annually, on or before December thirty-first, the department shall notify the respective Chairmen of the Senate Finance Committee and House of Representatives Ways and Means Committee regarding the amount deducted for administrative costs and an itemization of the costs incurred to administer the program for the previous school year.

(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 a public school in his resident public school district, or an ESA student graduates from high school or attains twenty‑two years of age, whichever occurs first. An ESA student who enrolls in his resident public school district 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 2023‑2024 School Year, the annual number of ESA students is limited by the following capacity:

(1) in School Year 2023‑2024, the program is limited to five thousand ESA students;

(2) in School Year 2024‑2025, the program is limited to ten thousand ESA students; and

(3) in School Year 2025‑2026, and for all subsequent school years, the program is limited to fifteen thousand ESA students.

(B) In 2026, and every five years thereafter, the department 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 department shall develop an application for education service providers desiring to participate in the program to submit according to the process established by the department.

(2) The department 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 to meet the compulsory attendance and State Board of Education approval requirements in Section 59-65-10.

(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 school year shall reapply to the department. The education service provider reapplying shall certify to the department that it continues to meet all program requirements. An education service provider required to administer academic testing shall provide to the department test score data from the previous school year. If individual student test score data is not submitted, then the department shall remove the education service provider from the program.

(4) By March first of each year, the department will certify the list of approved education service providers for participation in the program that meet all program requirements. The department may waive the deadline requirement upon good cause shown by an 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 department 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 department 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 department’s approval, and will be published on its website.

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

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

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

(D) The department 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 department decides to bar an education service provider from the program, it shall notify affected students and their parents of this decision as quickly as possible.

(2) Education service providers may appeal the department’s decision to bar the education service provider from receiving payments from accounts pursuant to the Administrative Procedures Act.

(E) The State Board 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 adopt procedures to inform students that are eligible for the program and their parents annually of their ability to participate in the program.

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

(C) 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.

(D) The department may declare that a parent is ineligible for the program due to the parent’s substantial misuse of the funds in the account.

(E) 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.

(F) 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.

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

(H) 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) hold a valid occupancy permit if required by the municipality in which the education service provider is located, if applicable;

(3) not unlawfully discriminate on the basis of race, color, religion, 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 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 department 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 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 twelve takes a nationally norm-referenced or formative assessment approved by the department. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement; and

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

(i) requiring that each ESA student takes either an approved nationally norm-referenced assessment annually, or an approved formative assessment in the fall and spring, to measure learning gains in math and reading; and

(ii) collecting high school graduation information of ESA students for reporting to the department 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 department on an annual basis, beginning with the first year of program implementation; and

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

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

(D) The department shall:

(1) comply with all student privacy laws;

(2) collect all test results;

(3) annually provide individual student assessment results and information to the Education Oversight Committee. The transmission of the information must be made in a manner that safeguards the data to ensure student privacy.

(E) The Education Oversight Committee shall:

(1) comply with all student privacy laws;

(2) report on and publish associated learning gains and graduation rates to the public by means of a state website with data aggregated by grade level, gender, family income level, number of years participating in the program, and race and a report for any participating school if at least fifty-one percent of the total enrolled students in the private school participated in the ESA program in the prior school year or if there at least thirty participating students who have scores for tests administered. If the Education Oversight Committee determines that the thirty participating-student cell size may be reduced without disclosing the personally identifiable information of a participating student, the Education Oversight Committee may reduce the participating-student cell size, but the cell size may not be reduced to fewer than ten participating students;

(3) evaluate and report the academic performance of ESA students compared to similar public school populations;

(4) collaborate with the department to develop and administer an annual parental satisfaction survey for 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;

(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 of Representatives 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 about improving the program.

(D) Members shall serve at the pleasure of their appointing authority. In making appointments to the panel, 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 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, then 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. This act takes effect thirty days after approval by the Governor, provided that upon approval of this act by the Governor, the Department of Education 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. /

Renumber sections to conform.

Amend title to conform.

GREG HEMBREE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill creates the ESA program for elementary and secondary students, which will be administered by SCDE. Funds will be allocated to the parent of an eligible student to pay for qualifying expenses. The bill defines an eligible student as follows:

 A resident of this state;

 Attended a public school in this state the prior school year; or

o has not yet attained the age of five on or before September first of the prior school year but has attained the age of five on or before September first of the current school year;

 Has a statement of Medicaid eligibility; or

o attends a public school in this State that has earned an overall rating of “unsatisfactory” on the most recent school report card; or

o attends a public school in this State that has earned an overall rating of “below average” and “unsatisfactory” on the school report card for three of the past five years; or

o has an IEP; or

o received an ESA scholarship issued pursuant to this bill for the prior school year; or

o has a sibling living in the same household who receives an ESA scholarship.

The bill also limits the number of annual enrollees. In the first year, school year 2023-24, the program is limited to 5,000 ESA students. In the second year, school year 2024-25, the program is limited to 10,000 ESA students. In the third year, school year 2025-26 and beyond, the program is limited to 15,000 ESA students. In 2026 and every five years thereafter, SCDE must conduct an eligibility and use review of the program and must make recommendations to the General Assembly to improve the program.

Additionally, the bill requires RFA to determine the state average of state funding per pupil in public schools for the current fiscal year. The amount must not include federal or local funds.

Also, for this analysis, we used the state funding per pupil amount from our Revenue Per Pupil Report. Following the methodology used to determine revenue per pupil in Proviso 1.3 of the FY 2021-22 Appropriations Act, the state funding per pupil amount used in this analysis includes only revenues from the regular school districts and does not include the statewide public charter school districts. Also, historical growth rates have been factored into the state revenue per pupil amount. The funding in state average funding per pupil includes funding from the Education Finance Act (EFA), Education Improvement Act (EIA), state grants, Education Lottery (when appropriated to K-12), and property tax reimbursements. Since the General Assembly has great discretion in the appropriations process to determine state per pupil funding, these estimates are based solely on the growth in state property tax reimbursements and total school district appropriations in recent years. These estimated amounts are also a statewide average across all school districts. Actual state revenue per pupil ranged from $5,089 to $11,940 in FY 2019-20. An individual student’s total state funding can vary depending on the student’s grade, poverty standing, and any special educational needs. The analysis anticipates that a general cross section of students will participate in the ESA program. If participants reflect predominately higher or lower per pupil funding, this would affect our estimates.

The estimated maximum scholarship funding could total up to $113,472,000 in school year 2025-26 when the number of eligible students allowed to participate in the program reaches the maximum amount. Actual participation in the program may vary widely and determining a better estimate will require actual student enrollment. Additionally, in 2026 and every five years thereafter, the number of students and estimated scholarship amount may vary since SCDE must conduct an eligibility and use review of the program and make recommendations to the General Assembly to improve the program. Please see the table below for an analysis of the eligible students and maximum scholarship funding.

**Table 1**

School Year Number of Average State Estimated Maximum

Allowed Funding per Scholarship Funding

Students Pupil

2023-24 5,000 $7,140 $35,701,000

2024-25 10,000 $7,349 $73,495,000

2025-26 forward 15,000 $7,565 $113,472,000

*(Figures may be rounded)*

The amount of funding for the individual ESA accounts is based upon the state average of state funding per pupil. However, in Section 59-8-120 (C), upon approval of an eligible student’s application by SCDE, the State Treasurer is directed to transfer from the state appropriated monies allocated to the child’s district of residence the monies that would otherwise be allocated for the child’s education in the school district. The amount of state funding by district varies widely, and the funding transferred to the program based upon each district’s appropriations could be more or less than the state average. While funding is likely to meet the average over time, if the funding to the districts for students in the program varies significantly from the average in a particular year, the program may either have more or less funding than necessary.

Further, depending on the timing of eligibility determination, if the full appropriation is redirected to the ESA fund at the beginning of the fiscal year before sufficient revenues have been received, there may be an issue with cash flow, depending upon the volume of students participating in the program, particularly in later years when a greater number of students may participate.

Lastly, the appropriations and average funding per pupil include the amounts allocated for property tax relief. For this analysis, we have assumed that local property tax reimbursements will be reduced by the amount of the appropriations transferred to the ESA fund. However, should the state still be responsible for the full amount of local property tax reimbursements, net state expenditures would increase. On average, 24.6 percent of the state average funding per pupil is for local property tax reimbursements and could be at risk. Additionally, while certain school operating property tax relief reimbursement funding is allocated on a school district basis, other funding such as the uncapped portion of sixty-five and over Homestead Exemption Tier II reimbursements, the manufacturer’s depreciation reimbursement, manufacturer’s value exemption, and merchant’s inventory reimbursements are distributed to each county to distribute to their respective school districts. It is unclear how the Department of Revenue will handle reallocation of those property tax reimbursements that are distributed to counties.

**State Department of Education.** This bill requires SCDE to create a standard application process for the ESA program, process and approve applications, establish conditions and requirements of the ESA program, and promulgate regulations for the administration of the program. The bill also establishes the South Carolina Education Scholarship Account Fund, which SCDE is responsible for administering including keeping records, managing accounts, and disbursing scholarships. Additionally, SCDE is required to create individual online accounts for each student and make payments to the online accounts on a quarterly basis. Furthermore, the bill requires the department to develop an online electronic system for payment for services by participating parents. The bill requires the General Assembly to provide funds to SCDE for the initial costs to create the program. The amount of funding will be contingent upon appropriations. Thereafter, SCDE may deduct an amount from the fund to cover the costs of overseeing the accounts and administering the program up to a limit of 3 percent. The bill further provides requirements for how SCDE will inform parents and students of the program, handle cases of misuse, and audit accounts.

This bill additionally requires SCDE to maintain a record of the number of applications received annually for the program, the number of students accepted into the program each year, and 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. SCDE is required to provide a report on this information to the General Assembly each year. Furthermore, SCDE must develop and administer an annual parental satisfaction survey, the results of which are to be provided to the General Assembly each year.

The bill also requires SCDE to develop an application and process for participation in the program by education service providers. An education service provider is defined as a person or organization approved by SCDE that receives payments from education savings accounts to provide educational goods and services to ESA students. SCDE must publish on its website a comprehensive list of certified education service providers by March fifteenth of each year. SCDE must develop and administer an annual parental satisfaction survey to parents of ESA students. Results of the survey must be provided to the General Assembly by December thirty-first of each year.

Further, the bill allows SCDE to contract with qualified organizations or vendors to administer some or all portions of the program, including the program application process, fund administration, account management, and account auditing.

The expenditure impact of this bill on SCDE is pending, contingent upon a response. However, please see Table 2 below for an estimate of the scholarship funding amounts by year and available funding for SCDE’s expenses.

**Table 2**

School Year Number of Estimated 3% Available Estimated Scholarship

Allowed Maximum to SCDE Funding Amount

Students Scholarship (Net of Expenditures)

Funding

2023-24 5,000 $35,701,000 $1,071,000 $34,630,000

2024-25 10,000 $73,495,000 $2,205,000 $71,290,000

2025-26 forward 15,000 $113,472,000 $3,404,000 $110,068,000

*(Figures may be rounded)*

**Office of the Governor, Senate, and House of Representatives.** This bill creates the ESA Review Panel that must serve as an advisory panel to SCDE. The review panel must consist of ten members as follows:

 The Governor, or his designee, who will serve as chair of the panel; and

 Three members to be appointed by the Governor upon the recommendation of the:

o S.C. Association of Christian Schools;

o S.C. Independent Schools Association; and

o Palmetto Association of Independent Schools;

 One member appointed by the Speaker of the House of Representatives;

 One member appointed by the President of the Senate;

 One member appointed by the Chairman of House Education and Public Works;

 One member appointed by the Chairman of Senate Education; and

 Two parents of ESA students to be appointed by the Governor.

The review panel may advise SCDE on whether certain expenses meet the requirements to be considered a qualified expense and may make recommendations to the General Assembly on improving the program. Members may not receive mileage or per diem.

We anticipate that any expenses for the Office of the Governor, Senate, and House of Representatives can be accomplished within existing appropriations. Therefore, the bill is not expected to have an expenditure impact on these entities.

**Department of Revenue.** The Department of Revenue (DOR) allocates local property tax reimbursements from the Trust Fund for Tax Relief and the Homestead Exemption fund to local school districts and counties. Under our analysis, this bill would shift those appropriations for eligible students from locals to the ESA fund. We anticipate that DOR will coordinate with SCDE and the State Treasurer’s Office to determine the adjustments to local property tax reimbursements as a result of this bill. While certain school operating property tax funding is allocated on a school district basis, other funding, such as the uncapped portion of Tier II Homestead Exemption reimbursements, the manufacturer’s depreciation reimbursement, manufacturer’s value exemption, and merchant’s inventory reimbursement is distributed to each county to distribute to their respective school districts. It is unclear how those property tax reimbursements that are distributed to counties will be distributed.

**State Treasurer’s Office.** STO is directed to transfer from the state appropriated monies allocated for the child’s education in the prior school district of the child’s domicile or for kindergarten students, the district that the child is eligible to attend, to the department the monies that would otherwise be allocated for the child’s education in the expected school district. Based upon information previously obtained from STO, the agency will coordinate with SCDE to determine the appropriate funding to be transferred to the ESA fund. STO indicates that the bill will increase general fund expenses of the agency by $25,000 beginning in FY 2022-23 for 0.33 FTE to manage the responsibilities of the bill. Further, STO does not anticipate any cashflow or timing issues as a result of the bill.

**State Revenue**

This bill requires SCDE to create a standard application process for the ESA program, process and approve applications, establish conditions and requirements of the ESA program, and promulgate regulations for the administration of the program. The bill also establishes the South Carolina Scholarship Account Fund, which SCDE is responsible for administering including keeping records, managing accounts, and disbursing scholarships. The bill further allows SCDE to deduct an amount from the fund to cover the costs of overseeing the accounts and administering the program up to a limit of 3 percent. Based upon the estimated expenditures for the program explained above, we anticipate that the bill will increase other funds revenue of SCDE by approximately $1,071,000 in FY 2023-24, $2,205,000 in FY 2024-25, and $3,404,000 in FY 2025-26 annually thereafter for administrative expenses. However, the amounts for the second and subsequent years are dependent upon projected expenditures by SCDE.

**Local Expenditure**

The overall expenditure impact of this bill on local school districts is undetermined. The potential reduction in school district expenditures due to students enrolling in the program will vary depending on the degree to which districts can consolidate resources by reducing the number of teachers or classrooms. Assuming the students are spread throughout the state, each school district would see only a reduction in the variable costs per student. School districts may be able realign resources to realize savings, but this will take time to implement. Since the bill provides a phase-in on the number of eligible students per year, we anticipate only marginal expenditure reductions for teachers, school classrooms, and buildings during initial implementation. Savings on counseling, libraries, and school administration would be similarly minimal. Therefore, we do not anticipate significant local expenditure savings from the ESA program in the initial years. Potential savings in future years will be largely dependent on the number of participants and actions taken by school districts in response to changes in enrollment.

**Local Revenue**

The overall impact on local revenues is undetermined. The bill provides a phase-in on the number of eligible students for the ESA program for school years 2024-25 through 2025-26 until the number of students reaches the maximum limit in school year 2025-26. The estimated potential local school district revenue impact of this bill corresponds to the state appropriations that are allocated to the ESA program as outlined in Table 1. Based upon average funding per pupil, if all eligible students participate, the revenue reduction would total up to $35,701,000 in school year 2023-24, reaching $113,472,000 by school year 2025-26. However, the actual reduction in local revenue will depend upon the number of students participating in the program and the district’s actual state funding. State funding per pupil in FY 2019-20 ranged from $5,089 to $11,940.

**Introduced on December 7, 2021**

**State Expenditure**

This bill creates the ESA program for elementary and secondary students, which will be administered by Admin. Funds will be allocated to the parent of an eligible student to pay for qualifying expenses. The bill defines an eligible student as follows:

 A student residing in any school district of this state that has attained the age of five on or before September first of the school year; and

o Has an annual adjusted gross family income of 200 percent or less of the federal poverty guidelines as promulgated annually by the U.S. Department of Health and Human Services or a statement of Medicaid eligibility; or

o That participated in the S.C. Early Reading Development and Education Program; or

o That previously received an ESA scholarship issued pursuant to this legislation or an Educational Credit for Exceptional Needs Children (ECENC) scholarship.

The bill also limits the number of annual enrollees. In the first year, school year 2022-23, the program is limited to 5,000 eligible students in kindergarten through third grade. In the second year, school year 2023-24, the program is limited to 10,000 students in kindergarten through fifth grade. In the third year, school year 2024-25, the program is limited to 15,000 students in kindergarten through eighth grade. In the fourth year, school year 2025-26, the program is limited to 20,000 students in kindergarten through twelfth grade. In all subsequent years, as long as the program remains in effect and contingent upon the amount of funds in the program, there will be no limit on the number of eligible students.

Additionally, the bill requires RFA to determine the state average of state funding per pupil in public schools for the current fiscal year. The amount must not include federal or local funds.

For this analysis, we used the 2019 American Community Survey 1-Year Estimates from the U.S. Census Bureau to determine the population of school age persons age 5 to 17 by poverty level and then factored in growth expectations to determine the estimated number of eligible school age children under the poverty threshold of 200 percent. Additionally, please note the following adjustments and considerations in determining the potential number of eligible students:

 Based upon current guidelines, students eligible for Medicaid would be at or below the 185 percent poverty threshold, so we did not add additional students due to the Medicaid eligibility provision.

 Based upon the eligibility requirements for the S.C. Early Reading Development Education program, we assume that the majority of students who participated in the program are already included under the poverty threshold and have not included any additional students under this eligibility category.

 We included the number of students served under the ECENC scholarship program for the 2018-19 school year. While we anticipate that some students in the ECENC scholarship program may be below the poverty threshold, the program does not include specific poverty requirements. Further, we are unable to determine how many students may be duplicated and have, therefore, included all students.

 For future years, including students previously receiving an ESA may slightly increase the number of eligible students, but we do not anticipate this would significantly change these estimates as most would likely continue to meet the original eligibility requirements.

Also, for this analysis, we used the state funding per pupil amount from our Revenue Per Pupil Report. Following the methodology used to determine revenue per pupil in Proviso 1.3 of the FY 2021-22 Appropriations Act, the state funding per pupil amount used in this analysis includes only revenues from the regular school districts and does not include the statewide public charter school districts. Also, historical growth rates have been factored into the state revenue per pupil amount. The funding in state average funding per pupil includes funding from the Education Finance Act (EFA), Education Improvement Act (EIA), state grants, Education Lottery (when appropriated to K-12), and property tax reimbursements. Since the General Assembly has great discretion in the appropriations process to determine state per pupil funding, these estimates are based solely on the growth in state property tax reimbursements and total school district appropriations in recent years. These estimated amounts are also a statewide average across all school districts. Actual state revenue per pupil ranged from $5,089 to $11,940 in FY 2019-20. An individual student’s total state funding can vary depending on the student’s grade, poverty standing, and any special educational needs. The analysis anticipates that a general cross section of students will participate in the ESA program. If participants reflect predominately higher or lower per pupil funding, this would affect our estimates.

The estimated maximum scholarship funding could total up to $2,921,792,000 in school year 2026-27 when there is no limit on the allowed number of students who can receive a scholarship. Actual participation in the program may vary widely and determining a better estimate will require actual student enrollment. Please see the table below for an analysis of the eligible students and maximum scholarship funding.

**Table 1**

School Grade Population Number of Total Number Percent Average Estimated

Year Level at 200% ECENC Number of of State Maximum

of Students of Allowed Eligible Funding Scholarship

Poverty Eligible Students Students per Funding

Students Allowed Pupil

2022-23 K-3 107,411 142 107,553 5,000 4.6% $7,140 $35,701,000

2023-24 K-5 163,288 363 163,651 10,000 6.1% $7,349 $73,495,000

2024-25 K-8 252,012 790 252,802 15,000 5.9% $7,565 $113,472,000

2025-26 K-12 360,608 1,138 361,746 20,000 5.5% $7,786 $155,729,000

2026-27 K-12 363,421 1,138 364,559 no cap 100% $8,015 $2,921,792,000

forward

*(Figures may be rounded)*

The amount of funding for the individual ESA accounts is based upon the state average of state funding per pupil. However, in Section 59-8-120 (C), upon approval of an eligible student’s application by Admin, the State Treasurer is directed to transfer from the state appropriated monies allocated to the child’s district of residence the monies that would otherwise be allocated for the child’s education in the school district. The amount of state funding by district varies widely, and the funding transferred to the program based upon each district’s appropriations could be more or less than the state average. While funding is likely to meet the average over time, if the funding to the districts for students in the program varies significantly from the average in a particular year, the program may either have more or less funding than necessary.

Further, depending on the timing of eligibility determination, if the full appropriation is redirected to the ESA fund at the beginning of the fiscal year before sufficient revenues have been received, there may be an issue with cash flow, depending upon the volume of students participating in the program, particularly in later years when a greater number of students may participate.

Lastly, the appropriations and average funding per pupil include the amounts allocated for property tax relief. For this analysis, we have assumed that local property tax reimbursements will be reduced by the amount of the appropriations transferred to the ESA fund. However, should the state still be responsible for the full amount of local property tax reimbursements, net state expenditures would increase. On average, 24.6 percent of the state average funding per pupil is for local property tax reimbursements and could be at risk. Additionally, while certain school operating property tax relief reimbursement funding is allocated on a school district basis, other funding such as the uncapped portion of sixty-five and over Homestead Exemption Tier II reimbursements, the manufacturer’s depreciation reimbursement, manufacturer’s value exemption, and merchant’s inventory reimbursements are distributed to each county to distribute to their respective school districts. It is unclear how the Department of Revenue will handle reallocation of those property tax reimbursements that are distributed to counties.

**Department of Administration.** This bill requires Admin to create a standard application process for the ESA program, process and approve applications, establish conditions and requirements of the ESA program, and promulgate regulations for the administration of the program. The bill also establishes the South Carolina Scholarship Account Fund, which Admin is responsible for administering including keeping records, managing accounts, and disbursing scholarships. Additionally, Admin is required to create individual online accounts for each student and make payments to the online accounts on a quarterly basis. Furthermore, the bill requires the department to develop an online electronic system for payment for services by participating parents. The bill requires the General Assembly to provide funds to the department for the initial costs to create the program. The amount of funding will be contingent upon appropriations. Thereafter, Admin is to deduct an amount from the fund to cover the costs of overseeing the accounts and administering the program up to a limit of 4 percent. The bill further provides requirements for how Admin will inform parents and students of the program, handle cases of misuse, and audit accounts.

This bill additionally requires Admin to maintain a record of the number of applications received annually for the program, the number of students accepted into the program each year, and 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. Admin is required to provide a report on this information to the General Assembly each year. Furthermore, EOC is required to collaborate with Admin to develop and administer an annual parental satisfaction survey, the results of which are to be provided to the General Assembly each year.

The bill allows Admin to contract with qualified organizations or vendors to administer some or all portions of the program, including the program application process, fund administration, account management, and account auditing.

Admin indicates that this bill will require the agency to hire 2.0 new FTEs to assist with the administration of the ESA program. Annual salary and fringe benefits for a Program Manager II and a Program Coordinator I will total $126,681, and total annual operating expenses related to telephone and desktop support will total $6,000. Additionally, Admin anticipates that this bill will increase annual expenditures by $150,000 for third-party auditing services and $2,000,000 for third-party administrative costs. In total, Admin estimates that this bill may increase expenditures by approximately $2,283,000 for 2.0 additional FTEs, operating expenses, and third-party services in FY 2022-23 and each year thereafter. However, Admin estimates that total annual expenditures could range from $1,833,000 and $2,561,000 based on the scope of third-party services required.

Further, Admin expressed concerns about potential legal defense costs that could be incurred as a result of this bill given recent litigation with similar issues. Generally, legislation is presumed to be constitutional. However, the agency expressed a concern that they may incur legal costs should there be legal challenges. In recent years, court cases have challenged providing public money to private schools, such as the recent S.C. Supreme Court challenge to a proposal to use federal Governor’s Emergency Education Relief money for private schools, in which Admin was a party.[[1]](#footnote-1)

Based upon our analysis of potential ESA funding in Table 2, expenditures in the first year would exceed the projected available 4 percent funding allocated to Admin. We anticipate that general fund appropriations of approximately $855,000 would be necessary to fund the expenditures in FY 2022-23. In future years, other funds revenue from the scholarship program will be sufficient to offset these expenditures.

**Table 2**

School Year Estimated 4% Available Admin Estimated Scholarship

Maximum to Admin Projected Funding Amount

Scholarship Expenditures (Net of Expenditures)

Funding (Average)

2022-23 $35,701,000 $1,428,000 $2,283,000 $34,273,000

2023-24 $73,495,000 $2,940,000 $2,283,000 $71,212,000

2024-25 $113,472,000 $4,539,000 $2,283,000 $111,189,000

2025-26 $155,729,000 $6,229,000 $2,283,000 $153,446,000

2026-27 $2,921,792,000 $116,872,000 $2,283,000 $2,919,509,000

forward

*(Figures may be rounded)*

**Education Oversight Committee.** This bill requires EOC to conduct an eligibility and use review of the ESA program in 2026 and every five years thereafter and to make recommendations to the General Assembly on how to improve the program. The bill also requires EOC to develop an application and process for participation in the program by education service providers. An education service provider is defined as a person or organization approved by EOC that receives payments from education savings accounts to provide educational goods and services to ESA students. Education service providers must apply annually for participation in the program and must certify to EOC that they continue to meet all program requirements. EOC must publish on its website a comprehensive list of certified education service providers by March fifteenth of each year. EOC may bar an education service provider from the program under certain conditions. Further, EOC must comply with all student privacy laws, collect all test results, annually provide the test results and other measures by means of a state website with aggregated data by the school, and must collaborate with Admin to develop and administer an annual parental satisfaction survey to parents of ESA students. Results of the survey must be provided to the General Assembly by December thirty-first of each year.

EOC indicates that this bill will increase other funds expenses of the agency by $199,126 in FY 2022-23. Of this amount, $119,126 is for recurring funds for 1.0 FTE to develop procedures and process applications for education service providers, process all test score data, and to create a state website to provide test results. The remaining $80,000 in non-recurring funds is for computer equipment, software, and the establishment of a secure portal for education service providers to securely provide student achievement data. Expenses would decrease to $149,126 beginning in FY 2023-24 for the FTE and $20,000 of software licenses and annual maintenance for the secure portal.

**State Department of Education.** This bill requires SCDE by September first of each school year and again on January fifteenth and March fifteenth, to compare the list of ESA students with the public school enrollment lists and to notify Admin of any duplications to avoid duplicate payments. Also, SCDE must promulgate regulations to allow ESA students to return to the resident school districts at any time, providing the least disruptive process, and as may be necessary for applicable administration of the program. Additionally, 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 where the student is zoned to attend.

SCDE indicates that it can accomplish the requirements of the bill within existing appropriations as long as Admin uses the Revenue Per Pupil Report to transfer funds for each eligible student. If this is the case, the bill will have no expenditure impact on the agency. However, SCDE indicates that if the agency will be involved in identifying funding for individual students, general fund expenses of the agency could increase by $91,650 for 1.0 FTE to assist with the provisions of the bill. Further, SCDE indicates that there could be some cashflow issues related to EIA appropriated line items since there is often a timing issue with EIA revenue.

**Office of the Governor, Senate, and House of Representatives.** This bill creates the ESA Review Panel that must serve as an advisory panel to Admin. The review panel must consist of ten members as follows:

 The Governor, or his designee, who will serve as chair of the panel; and

 Three members to be appointed by the Governor upon the recommendation of the:

o S.C. Association of Christian Schools;

o S.C. Independent Schools Association; and

o Palmetto Association of Independent Schools;

 One member appointed by the Speaker of the House of Representative;

 One member appointed by the President of the Senate;

 One member appointed by the Chairman of the House Education and Public Works Committee;

 One member appointed by the Chairman of the Senate Education Committee; and

 Two parents of ESA students to be appointed by the Governor.

The review panel may advise Admin on whether certain expenses meet the requirements to be considered a qualified expense and may make recommendations to the General Assembly, Admin, and EOC on improving the program. Members may not receive mileage or per diem.

We anticipate that any expenses for the Office of the Governor, Senate, and House of Representatives can be accomplished within existing appropriations. Therefore, the bill is not expected to have an expenditure impact on these entities.

**Department of Revenue.** The Department of Revenue (DOR) allocates local property tax reimbursements from the Trust Fund for Tax Relief and the Homestead Exemption fund to local school districts and counties. Under our analysis, this bill would shift those appropriations for eligible students from locals to the ESA fund. We anticipate that DOR will coordinate with Admin and the State Treasurer’s Office to determine the adjustments to local property tax reimbursements as a result of this bill. While certain school operating property tax funding is allocated on a school district basis, other funding, such as the uncapped portion of Tier II Homestead Exemption reimbursements, the manufacturer’s depreciation reimbursement, manufacturer’s value exemption, and merchant’s inventory reimbursement is distributed to each county to distribute to their respective school districts. It is unclear how those property tax reimbursements that are distributed to counties will be distributed.

**State Treasurer’s Office.** STO is directed to transfer from the state appropriated monies allocated for the child’s education in the prior school district of the child’s domicile or for kindergarten students, the district that the child is eligible to attend, to the department the monies that would otherwise be allocated for the child’s education in the expected school district. Based upon information from STO, the agency will coordinate with Admin and SCDE to determine the appropriate funding to be transferred to the ESA fund. STO indicates that the bill will increase general fund expenses of the agency by $25,000 beginning in FY 2022-23 for 0.33 FTE to manage the responsibilities of the bill. Further, STO does not anticipate any cashflow or timing issues as a result of the bill. The appropriation and cash will be reallocated from SCDE to Admin once the student is approved. SCDE would then reduce its distribution to the school district by the same amount.

**State Revenue**

This bill requires Admin to create a standard application process for the ESA program, process and approve applications, establish conditions and requirements of the ESA program, and promulgate regulations for the administration of the program. The bill also establishes the South Carolina Scholarship Account Fund, which Admin is responsible for administering including keeping records, managing accounts, and disbursing scholarships. The bill further allows Admin to deduct an amount from the fund to cover the costs of overseeing the accounts and administering the program up to a limit of 4 percent. Based upon the estimated expenditures for the program explained above, we anticipate that the bill will increase other funds revenue of Admin by approximately $1,428,000 in FY 2022-23 and $2,283,000 annually thereafter for administrative expenses.

**Local Expenditure**

The overall expenditure impact of this bill on local school districts is undetermined. The potential reduction in school district expenditures due to students enrolling in the program will vary depending on the degree to which districts can consolidate resources by reducing the number of teachers or classrooms. Assuming the students are spread throughout the state, each school district would see only a reduction in the variable costs per student. School districts may be able realign resources to realize savings, but this will take time to implement. Since the bill provides a phase-in on the number of eligible students per year, we anticipate only marginal expenditure reductions for teachers, school classrooms, and buildings during initial implementation. Savings on counseling, libraries, and school administration would be similarly minimal. Therefore, we do not anticipate significant local expenditure savings from the ESA program in the initial years. Potential savings in future years will be largely dependent on the number of participants and actions taken by school districts in response to changes in enrollment.

**Local Revenue**

The overall impact on local revenues is undetermined. The bill provides a phase-in on the number of eligible students for the ESA program for school years 2022-23 through 2025-26 until the number of students reaches no limit in school year 2026-27. The estimated potential local school district revenue impact of this bill corresponds to the state appropriations that are allocated to the ESA program as outlined in Table 1. Based upon average funding per pupil, if all eligible students participate, the revenue reduction would total up to $35,701,000 in school year 2022-23, reaching $2,919,792,000 by school year 2026-27. However, the actual reduction in local revenue will depend upon the number of students participating in the program and the district’s actual state funding. State funding per pupil in FY 2019-20 ranged from $5,089 to $11,940.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND TITLE 59 OF THE 1976 CODE, RELATING TO EDUCATION, BY ADDING CHAPTER 8, 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. This act may cited and referred to as the ‘Put Parents in Charge Act.’

SECTION 2. 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 willfully 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 that 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 may only 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) hold a valid occupancy permit if required by their municipality and if applicable;

(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 about 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 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, then 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. 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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1. https://www.sccourts.org/opinions/HTMLFiles/SC/28000.pdf [↑](#footnote-ref-1)