**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3802**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Edge, Bedingfield, Herbkersman, Merrill, Viers, Stewart, Hamilton, Erickson, Stringer, Duncan, G.R. Smith, Nanney, Millwood, Barfield, Scott, Chalk, Bowen, J.R. Smith, Hardwick, Delleney, Loftis, Cato, Clemmons, Crawford, Haley, Limehouse, Lowe, Owens, M.A. Pitts, Rice, Simrill, G.M. Smith, Sottile, Spires, Thompson, A.D. Young, Willis and D.C. Moss

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Companion/Similar bill(s): 520

Introduced in the House on March 26, 2009

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

Summary: Educational Opportunity Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/26/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\03-26-09.docx)‑45

3/26/2009 House Referred to Committee on **Ways and Means** [HJ](file:///h:\HJ%20Archive\2009\03-26-09.docx)‑46

4/28/2009 House Member(s) request name added as sponsor: Willis

6/16/2009 House Member(s) request name added as sponsor: D.C.Moss

**VERSIONS OF THIS BILL**

[3/26/2009](file:///p:\pprever\2009-10\3802_20090326.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA EDUCATIONAL OPPORTUNITY ACT” BY ADDING ARTICLE 6 TO CHAPTER 63, TITLE 59 SO AS TO PROVIDE THAT A STUDENT IS ELIGIBLE TO RECEIVE A SCHOLARSHIP OR TUITION GRANT AND A PERSON WHO PAYS TUITION FOR THAT STUDENT IS ELIGIBLE FOR A TAX CREDIT FOR THE PAYMENT OF THAT TUITION UPON CERTAIN CONDITIONS; TO ALLOW A TAX CREDIT FOR A PERSON WHO PAID TUITION FOR A QUALIFYING STUDENT TO ATTEND AN INDEPENDENT OR PUBLIC SCHOOL UPON CERTAIN CONDITIONS DURING THE FIRST THREE FISCAL YEARS AFTER THE ENACTMENT OF THIS ACT, TO ALLOW A TAX CREDIT FOR A PERSON WHO PAID TUITION FOR ANY STUDENT WHO IS ENROLLED IN GRADES TWO THROUGH FOUR IN AN INDEPENDENT OR PUBLIC SCHOOL FOR THE FOURTH YEAR AFTER THE ENACTMENT OF THIS ACT, AND TO ALLOW A TAX CREDIT FOR A PERSON WHO PAID TUITION FOR ANY STUDENT ENROLLED IN ANY GRADE IN AN INDEPENDENT OR PUBLIC SCHOOL FOR EVERY FISCAL YEAR THEREAFTER; TO PROVIDE TERMS AND CONDITIONS OF THE TAX CREDIT, TO PROVIDE THAT THE TAX CREDIT MAY BE CARRIED FORWARD AND APPLIED PROSPECTIVELY FOR UP TO FIVE YEARS; TO ALLOW A TAX CREDIT OF UP TO ONE THOUSAND DOLLARS PER STUDENT FOR A PERSON WHO TEACHES HIS STUDENT AT HOME; TO ALLOW A TAX CREDIT FOR A PERSON OR CORPORATION FOR A CONTRIBUTION MADE TO A STUDENT SCHOLARSHIP ORGANIZATION UPON CERTAIN TERMS AND CONDITIONS; TO PROVIDE REQUIREMENTS THAT AN INDEPENDENT SCHOOL MUST MEET IN ORDER TO ACCEPT STUDENTS PURSUANT TO THIS ARTICLE; TO REQUIRE PARTICIPATING SCHOOLS TO ADMINISTER CERTAIN ASSESSMENT TESTS; TO REQUIRE A FAILING SCHOOL TO NOTIFY PARENTS AND GUARDIANS OF STUDENTS ENROLLED IN THE SCHOOL OF ITS FAILING STATUS; TO ALLOW THE DEPARTMENT OF REVENUE TO PROMULGATE REGULATIONS AND MAKE INVESTIGATIONS IN ACCORDANCE WITH THIS ARTICLE; TO REQUIRE THE STATE BUDGET AND CONTROL BOARD ANNUALLY TO REPORT ON THE FISCAL IMPACT OF THIS ARTICLE, AND TO SPECIFY WHAT MUST BE INCLUDED IN THE REPORT; TO REQUIRE THE STATE BUDGET AND CONTROL BOARD TO UNDERTAKE A LONG‑TERM EVALUATION OF THE IMPACT OF THE ARTICLE, AND TO SPECIFY WHAT MUST BE INCLUDED IN THE EVALUATION, AND TO DEFINE CERTAIN TERMS; AND BY ADDING SECTION 12‑6‑3383 SO AS TO CREATE THE TAX CREDIT AND REFERENCE ITS TERMS AND CONDITIONS.

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

SECTION 1. This act may be cited as the “South Carolina Educational Opportunity Act”.

SECTION 2. Chapter 63, Title 59 of the 1976 Code is amended by adding:

“Article 6

Educational Opportunity Act

Section 59‑63‑610. As used in this article:

(1) ‘Department’ means the South Carolina Department of Revenue.

(2) ‘Failing public school’ means a public school in the State that has received a rating of ‘below average’ or ‘school at‑risk’ as its absolute grade on its most recent annual report card pursuant to the Education Accountability Act provided in Chapter 18, Title 59.

(3) ‘Independent school’ means a school, other than a public school, at which the compulsory attendance requirements of Section 59‑56‑10 may be met and that does not discriminate based on the grounds of race, color, or national origin. For purposes of this article, ‘independent school’ does not include a home where a parent or legal guardian teaches one or more children as authorized pursuant to Sections 59‑65‑40, 59‑65‑45, or 56‑65‑47.

(4) ‘Parent’ means the natural or adoptive parent or legal guardian of a child.

(5) ‘Public school’ means a public school in the State as defined in Section 59‑1‑120.

(6) ‘Qualifying student’ means a student who is a South Carolina resident and who is enrolled in a South Carolina secondary or primary public school in the preceding school year or who is eligible to enroll in a qualified kindergarten program.

(7) ‘Receipt’ means a document developed by the South Carolina Department of Revenue that is issued by the Department to a person who makes a tuition payment on behalf of a qualifying student and that contains, at a minimum:

(a) the name and address of the school;

(b) the name, social security number, and address of the qualifying student for whom the tuition has been paid; and

(c) the name of the payer and the date and amount of tuition paid.

(8) ‘Receiving school’ means a public or independent school other than the school for which the student is zoned in which the student seeks to attend.

(9) ‘Release of information form’ means a document developed by a school which is signed by the parent or guardian of a qualifying student and which acknowledges the parent’s consent to release of information contained in the receipt.

(10) ‘Scholarship receipt’ means a document developed by the South Carolina Department of Revenue that is issued by the department to a corporation or a person that makes a contribution to a student scholarship organization.

(11) ‘State’ means the state of South Carolina.

(12) ‘Student scholarship organization’ means a charitable organization in this State that:

(a) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;

(b) allocates ninety per cent of its annual revenue to scholarships or tuition grants that allow only students with a household income of two hundred percent of the federal poverty rate or less to attend a school of their parents’ choice;

(c) has the sole discretion to determine eligibility for students based on household income after the household income eligibility requirement set forth in item (b) has been satisfied for the first school year in which a student receives an educational scholarship or tuition grant; and

(d) provides educational scholarships or tuition grants to qualifying students without limiting availability to only students of one school.

(13) ‘Tuition’ means the total amount of money charged for the cost of a qualifying student to attend a public school or an independent school including, but not limited to, fees for attending the school and fees for school related transportation.

Section 59‑63‑620. (A) A qualifying student is eligible to receive a scholarship if the student transfers to a public school or an independent school and:

(1) has a household income of two hundred percent of the federal poverty rate or less; or

(2) is determined by a school psychologist to be physically or mentally handicapped according to the definitions in Section 59‑21‑510.

(B) For a student who transfers to a public school pursuant to this article, one hundred percent of the State’s total allocation to the school district in which the student resides for the preceding academic year divided by the initial average daily student membership of that school district must be distributed directly to the receiving school.

Section 59‑63‑623. (A) Beginning in the first school year after the enactment of this article, a person who files a state income tax return and who is not a dependent of another taxpayer may claim a tax credit for any part of the tuition paid by that person for a qualifying student to attend an independent school or a public school.

(B) Beginning in the second school year after the enactment of this article and for every school year thereafter, a person who files a state income tax return and who is not a dependent of another taxpayer may claim a tax credit for any part of the tuition paid by that person for any student who is not a qualifying student and who is enrolled in kindergarten or first grade in an independent school or a public school.

(C) Beginning in the third school year after the enactment of this article and for every school year thereafter, a person who files a state income tax return and who is not a dependent of another taxpayer may claim a tax credit for any part of the tuition paid by that person for any student who is not a qualifying student and who is enrolled in kindergarten through grade two in an independent school or a public school.

(D) Beginning in the fourth school year after the enactment of this article and for every school year thereafter, a person who files a state income tax return and who is not a dependent of another taxpayer may claim a tax credit for any part of the tuition paid by that person for any student who is not a qualifying student and who is enrolled in kindergarten through grade four in an independent school or a public school.

(E) Beginning in the fifth school year after the enactment of this article and for every school year thereafter, a person who files a state income tax return and who is not a dependent of another taxpayer may claim a tax credit for any part of the tuition paid by that person for any student who is not a qualifying student and who is enrolled in an independent school or a public school.

(F) Tax credits may only be claimed within the limits of the credit as set forth in Section 59-63-625, even if the person paid a greater amount in tuition, and no tax credit may be claimed without a receipt.

Section 59‑63‑625. (A) For a special needs student for whom tuition is paid to attend a receiving school for which a tax credit is claimed under Section 59‑63‑623, the tax credit may be taken in the amount of either:

(1) one hundred percent of the State’s total allocation to the school district in which the student resides for the preceding academic year divided by the initial average daily student membership of that school district; or

(2) the amount of actual tuition paid, whichever is less.

(B) For other students who are zoned to attend a failing public school but for whom tuition is paid to attend a receiving school for which a tax credit is claimed under Section 59‑63‑623, the tax credit may be taken under this article in the amount of either:

(1) seventy‑five per cent of the State’s total allocation to the school district in which the student resides for the preceding academic year divided by the initial average daily student membership of that school district, or

(2) the amount of actual tuition paid, whichever is less.

(C) For other students for whom tuition is paid to attend a receiving school for which a tax credit is claimed under Section 59‑63‑623, such tax credit may be taken under this article in the amount of either:

(1) fifty per cent of the State’s total allocation to the school district in which the student resides for the preceding academic year divided by the initial average daily student membership of that school district; or

(2) the amount of actual tuition paid, whichever is less.

(D) A parent or legal guardian who teaches one or more children at home as authorized under Sections 59‑65‑40, 59‑65‑45, or 59‑65‑47 may take a tax credit of up to one thousand dollars per home school student for instruction related expenditures.

(E) For any student for whom tuition is paid to attend an independent school for which a tax credit is claimed under Section 59‑63‑623 and whose enrollment at such independent school is terminated for any reason during the academic year, the independent school shall notify the department so that no tax credit may be taken for any tuition paid for the student.

Section 59‑63‑627. (A) A corporation or a person who files a state income tax return may claim a tax credit for a contribution made to a student scholarship organization.

(B) This tax credit may be claimed in an amount equal to the total contributions made to a student scholarship organization during the taxable year for which the credit is claimed up to fifty percent of the corporation’s or person’s tax liability for that taxable year or fifty thousand dollars, whichever is less.

(C) A tax credit may not be claimed without a scholarship receipt.

(D) The aggregate amount of tax credits allowed under this article may not exceed twenty‑five million dollars per tax year, indexed to inflation.

(E) After a student scholarship organization has been in operation for two consecutive taxable years, if less than ninety per cent of its annual revenue is allocated for scholarships or tuition grants for any year thereafter, any unallocated funds up to ninety per cent of its annual revenue must be deposited to the credit of the general fund of the State.

Section 59‑63‑630. An independent school that accepts students pursuant to this article must:

(1) comply with federal anti‑discrimination law pursuant to 42 U.S.C. Section 1981;

(2) meet state and local health and safety laws and codes;

(3) comply with state statutes relating to independent schools;

(4) employ or contract with teachers who hold a baccalaureate or higher degree, have at least three years of teaching experience in a public or independent school, or have special skills, knowledge, or expertise that qualify them to provide instruction in subjects taught;

(5) be academically accountable to the parent or guardian for meeting the education needs of the student;

(6) administer to students a nationally recognized achievement test and report the school’s aggregate score to all parents in accordance with Section 59‑63‑633;

(7) accept scholarship students who meet the admissions criteria of the school, without regard to the student’s past academic history, with preference given to siblings of other scholarship students; and

(8) have a physical location in the State of South Carolina in which the students attend classes.

Section 59‑63‑633. To ensure that schools provide academic accountability to parents of students, receiving schools annually shall administer the Palmetto Assessment of State Standards (PASS) test or its equivalent or a nationally recognized norm‑ referenced test including, but not limited to, the Stanford Achievement Test or the Iowa Test of Basic Skills, in the areas of mathematics and language arts to each student participating in the program. Receiving schools publicly shall disclose the aggregate results of the tests by grade level, but only if the disclosure of the aggregate results is in compliance with 20 U.S.C. Section 1232g, Family Educational Rights and Privacy Act of 1974, and shall provide the parents of each student with a copy of the results. Receiving schools also shall provide aggregate results by grade level to the chairman of the House Education and Public Works Committee, the Senate Education Committee, and the Governor no later than August thirty‑first of the school year in which the tests are administered.

Section 59‑63‑635. (A) A failing public school, as defined in this article, must provide notice to the student’s parent of its status as a failing public school and of the options available to transfer to a receiving school.

(B) If a qualifying student transfers to public school, the parents or legal guardian of the student must notify the receiving school of the transfer and must provide transportation to the receiving school.

(C) Upon request, a public school must provide parents or legal guardians with access to the school’s aggregate testing information, results, and related statistics.

Section 59‑63‑647. The Department of Revenue may promulgate regulations to aid in the performance and assessment of its duties pursuant to this article; however, its power does not extend to matters of school governance, curriculum, hiring or firing, or religious beliefs or practices.

Section 59‑63‑648. The Department of Revenue may conduct examinations and investigations when it believes that the provisions of this article have been evaded or violated. All powers possessed by the Department as provided in Title 12 to conduct examinations and investigations apply to examinations and investigations conducted pursuant to this section.

Section 59‑63‑650. (A) The State Budget and Control Board annually shall provide for the preparation of a report on the fiscal impact of the implementation of this article on school enrollment and state and local funding of public schools for the fiscal year most recently completed. The report must include, but need not be limited to, an analysis of and statement on the:

(1) change in public school enrollment, by school district, attributable to this article;

(2) amount of funds the State would have had to expend for public schools under the education funding formula in existence on or before the enactment of this article and the amount actually expended by the State in public schools; and

(3) amount of locally raised revenue, calculated on a per student basis, retained by the local school district for each student participating in the scholarship program who is not attending a public school.

(B) The report must be submitted by December first of each year to the Governor, the Chairman of the Senate Finance Committee, the Chairman of the Senate Education Committee, the Chairman of the House Ways and Means Committee, and the Chairman of the House Education and Public Works Committee.

Section 59‑63‑655. (A)(1) In addition to the annual report as provided in Section 59‑63‑650, the State Budget and Control Board shall provide for a long‑term evaluation of the impact of this article. The evaluation must be conducted by contract with one or more qualified persons or entities with previous experience evaluating school choice programs and must be conducted for a minimum of five years beginning five years after enactment of this article. The evaluation must include an assessment of the:

(a) level of satisfaction of parents of students participating in the scholarship program provided in this article;

(b) level of satisfaction of parents of students in failing public schools;

(c) academic performance of receiving independent schools and failing public schools;

(d) level of student satisfaction with the scholarship program provided in this article;

(e) level of student satisfaction for students attending failing public schools;

(f) impact of the provisions of this article on public school districts, public school students, independent schools, and independent school students; and

(g) impact of the provisions of this article on independent school and public school capacity, availability, and quality.

(2) The evaluation must be conducted using appropriate analytical and behavioral science methodologies and must protect the identity of participating schools and students by, at a minimum, keeping anonymous all disaggregated data other than that for the categories of grade, gender, race, and ethnicity. The evaluation of public and independent school students must compute the relative efficiency of public and independent schools, the value added to educational performance by independent schools relative to failing public schools, and a comparison of acceptance rates into college, while adjusting or controlling for student and family background.

(B) State and local government entities shall cooperate with the persons or entities conducting the evaluation provided for in subsection (A). Cooperation includes providing available student assessment results and other information needed to complete the evaluation.

(C) The State Budget and Control Board shall pay the cost of the evaluation from funds available to it for that purpose except that state funds used must not exceed four hundred thousand dollars per year.

(D) By January thirty‑first of each year, the State Budget and Control Board shall provide to each member of the General Assembly interim reports of the results of the evaluation. Upon completion of the evaluation, the State Budget and Control Board shall provide a final report to each member of the General Assembly. At the same time as the final report is made public, the persons or entities who conducted the evaluation must make their data and methodology available for public review and inspection, but only if the release of the data and methodology is in compliance with 20 U.S.C. Section 1232g, Family Educational Rights and Privacy Act of 1974.

Section 59‑63‑660. The provisions of this article regarding independent schools only apply to independent schools that choose to accept scholarship students.”

SECTION 3. (A) A receiving independent school that accepts students benefiting from scholarships, grants, or tax credits is not an agent or arm of the state or federal government.

(B) Except as provided by this act, the Department of Education, Department of Revenue, State Budget and Control Board, or any other state agency may not regulate the educational program of a receiving independent school that accepts students pursuant to this article.

(C) One purpose of this article is to allow maximum freedom to parents and independent schools to respond to and provide for the educational needs of children without governmental control, and this act must be liberally construed to achieve that purpose.

SECTION 4. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3383. An individual may claim an income tax credit for tuition paid for a child to attend a qualifying public or independent school pursuant to the terms and conditions provided in Article 6, Chapter 63, Title 59.”

SECTION 5. If a section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, this holding does not affect the constitutionality or the validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each 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 thereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor and applies at the start of the first school year beginning after approval of this act.

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