COMMITTEE REPORT

February 10, 2022

**H. 4879**

Introduced by Reps. G.M. Smith, Lucas, Simrill, Erickson, Elliott, W. Cox and White

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Read the first time January 27, 2022.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Joint Resolution (H. 4879) to create the “Student Flexibility in Education Scholarship Fund”, to provide for funding, to provide for qualifications, and to provide for the administration of the program., etc., respectfully

**REPORT:**

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

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

/ SECTION 1. This act may be referred to as the “Parental Choice in Education Act”.

SECTION 2. (A) As used in this section:

(1) “Cost of attendance” means the published tuition, fees, and textbooks but does not include transportation or tutoring.

(2) “Department” means the Department of Education.

(3) “Eligible school” means a South Carolina public school or an independent school that chooses to participate in the program, accepts qualifying students, and instructs students in grades kindergarten through sixth grade. An eligible school does not include charter schools.

(4) “Independent school” means a school, other than a public school unless at which the compulsory attendance requirements of Section 59‑65‑10 may be met and:

(a) offers a general education to elementary students;

(b) does not discriminate in the admissions process on the basis of race, color, sex, religion, or national origin with the exception that schools serving a single sex may participate provided they meet all other requirements;

(c) is located in this State;

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

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

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

(5) “Parent” means the natural or adoptive parent or legal guardian of a child or a foster parent pursuant to Section 59-63-31.

(6)(a) “Qualifying student” means a student who is a resident of this State who has not earned a high school diploma and is between kindergarten and fifth grade. A qualifying student must have a family income equal to or less than Medicaid eligibility as set forth by the Medically Indigent Assistance Program and:

(i) is entering kindergarten or first grade; or

(ii) was previously enrolled in and attended a South Carolina elementary public school during one of the three school years immediately preceding the school year in which the student would be enrolled under this program.

(b) For purposes of this item, a qualifying student’s sibling also is considered to be a qualifying student provided that he meets the qualifications set forth in this section, and his parent elects to enroll him in the program.

(c) Students participating in the Educational Credit for Exceptional Needs Children’s Fund program as provided in Section 12‑6‑3790 are not considered to be qualifying students for the purposes of this section.

(d) A qualifying student also includes up to five hundred students whose parents are an active duty member of the Armed Forces of the United States.

(e) A qualifying student also includes up to five hundred students that are entering kindergarten and were enrolled in the South Carolina Early Reading Development and Education program in the immediately previous school year.

(7) “Scholarship account” means the individual student account that is established by the department for each qualifying student.

(B)(1) There is created the “Parental Choice in Education Scholarship Fund” that is separate and distinct from the state general fund. The fund must receive and hold all funds allocated for it as well as all earnings until disbursed as provided in this section. Monies received in the fund must be held by the Office of the State Treasurer and must be used to provide scholarships to qualifying students attending eligible schools to provide for the cost of attendance.

(2) The department is responsible for keeping records, managing accounts, and disbursing scholarships awarded pursuant to this section. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the department in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act, of children applying for or receiving scholarships must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.

(3) By January fifteenth of each year, the department shall report to the General Assembly and the Governor:

(a) the number and total amount of scholarships issued to qualifying students in each year;

(b) programmatic information that includes, but is not limited to, where qualifying students attend eligible schools;

(c) a copy of a compilation, review, or audit of the fund’s financial statements, conducted by a certified public accounting firm; and

(d) the number of applications for scholarships by county.

(C)(1) The department shall ensure that qualifying students participating in the program and their parents annually are informed of which eligible schools are participating in the program. The department shall create a standard application process for parents to establish the eligibility of their student for the program. The department shall ensure that the application is readily available to interested parents through various sources, including the Internet.

(2) The department shall set a deadline for the receipt of applications. In the event the number of eligible students exceeds five thousand by the deadline, the department shall use a lottery system to award scholarships. Students already participating in the program are automatically approved for participation in the immediate subsequent year.

(3) The department shall provide the parent of a qualifying student participating in the program with a written explanation of the allowable uses of an account, the responsibilities of the parent, and the duties of the department.

(4) The department may prohibit a school from participating in the program if the department finds that the participating school has:

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

(b) failed to provide the eligible student participating in the program with the educational services funded by the account.

(5) If the department decides to prohibit an eligible school from participating in the program, then the department shall notify qualifying students participating in the program and their parents of this decision as quickly as possible. The department also must notify the Education Oversight Committee which must remove the school from the list of approved schools.

(6) Qualifying students participating in the program may return to their resident school districts at any time, providing the least disruptive process.

(7) A school shall report to the department if a student withdraws from the program.

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

(D) An eligible school may not refund, rebate, or share the scholarship account of a qualifying student participating in the program with his parent or with the qualifying student.

(E) Funds received pursuant to this section do not constitute taxable income to the parent of a qualifying student participating in the program.

(F)(1) In the first year in which the account is funded, scholarships may be awarded in an amount not exceeding five thousand dollars or the cost of attendance, whichever is lower, to a qualifying student at an eligible school to be disbursed up to two thousand five hundred dollars each semester. The department may not issue debit cards, but shall distribute funds through an online system directly to a qualifying student for the preapproved cost of attendance. The department may procure a system that can create the scholarship accounts and process the cost of attendance.

(2)(a) Before awarding a scholarship, the department shall document the student’s eligibility with the following documentation:

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

(ii) other documentation as the department may require to demonstrate that the family income is equal to the poverty level of Medicaid eligibility; or

(iii) a record to provide that the student’s parent is an active member of the Armed Forces of the United States.

(b) Upon approving the application, the department shall create an online account for the qualifying student that the parent or legal guardian can access using a secure portal. The individual student account must be created within thirty days of approval of the application.

(3) If a qualifying student leaves or withdraws from the eligible school for any reason before the end of the semester or school year and does not reenroll within thirty days, or if the qualifying student graduates from or chooses to permanently leave a qualifying school, then the balance in the scholarship account must be credited to the Parental Choice in Education Scholarship Fund.

(4) Any funds not expended in an individual 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.

(G)(1) The Education Oversight Committee will approve independent schools for participation in the program that meet all program requirements. Once a school is found eligible to participate in the program, it is presumed eligible for the remaining two years unless the Education Oversight Committee finds otherwise. The independent school shall certify to the Education Oversight Committee that it continues to meet all program requirements. The Education Oversight Committee shall develop an application to be completed by the independent schools.

(2) By March first of each year the Education Oversight Committee shall publish on its website a comprehensive list of independent and public schools certified as eligible schools. The list must include each eligible school’s name, addresses, telephone numbers, and, if available, website addresses.

(3) An independent school 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.

(4) The Education Oversight Committee shall grant an exemption to an eligible school from participating in the program if the eligible school can show that it has space limitations and is unable to accept additional students.

(H) Except as otherwise provided, the Department of Education and the Education Oversight Committee, or any other state agency, may not regulate the educational program of an independent school that accepts students receiving scholarship grants pursuant to this section.

(I) The Education Oversight Committee and the department shall collaborate to develop and administer an annual program survey to all parents of qualifying students regarding the effectiveness of the fund. Results must be provided to the General Assembly by December thirty-first of each year.

(J) There is appropriated seventy-five million dollars from the contingency reserve fund to the Parental Choice in Education Fund to be used as described in this joint resolution.

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, 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 joint resolution takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

G. MURRELL SMITH, JR. for Committee.

**A** **JOINT RESOLUTION**

TO CREATE THE “STUDENT FLEXIBILITY IN EDUCATION SCHOLARSHIP FUND”, TO PROVIDE FOR FUNDING, TO PROVIDE FOR QUALIFICATIONS, AND TO PROVIDE FOR THE ADMINISTRATION OF THE PROGRAM.

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

SECTION 1. This act may be referred to as the “Student Flexibility in Education Act”.

SECTION 2. (A) As used in this section:

(1) “Allowable expenditures” means the cost of attendance of an eligible school.

(2) “Cost of attendance” means the published tuition, fees, and textbooks but does not include transportation or tutoring.

(3) “Department” means the Department of Education.

(4) “Eligible school” means a South Carolina public school or an independent school that chooses to participate in the program and accepts qualifying students. An eligible school does not include charter schools.

(5) “Independent school” means a school, other than a public school unless at which the compulsory attendance requirements of Section 59‑65‑10 may be met and:

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

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

(c) is located in this State;

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

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

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

(6) “Parent” means the natural or adoptive parent or legal guardian of a child.

(7)(a) “Qualifying student” means a student who is a resident of this State who has not earned a high school diploma and is between the ages of five and eighteen. A qualifying student must be Medicaid eligible or the parent has a family income that is one hundred and eighty-five percent of the poverty level and:

(i) is entering kindergarten for the first time; or

(ii) was previously enrolled in and attended a South Carolina elementary or secondary public school for one full school year immediately preceding the school year in which the student would be enrolled under this program.

(b) For purposes of this item, a qualifying student’s sibling also is considered to be a qualifying student.

(c) Students participating in the Educational Credit for Exceptional Needs Children’s Fund program as provided in Section 12‑6‑3790 are not considered to be qualifying students for the purposes of this section.

(d) A qualifying student also includes up to five hundred students whose parents are an active duty member of the Armed Forces of the United States.

(8) “Scholarship account” means the individual student account that is established by the department for each qualifying student.

(B)(1) There is created the “Student Flexibility in Education Scholarship Fund” that is separate and distinct from the state general fund. The fund must receive and hold all funds allocated for it as well as all earnings until disbursed as provided in this section. Monies received in the fund must be held by the Office of the State Treasurer and must be used to provide scholarships to qualifying students attending eligible schools to provide for allowable expenditures.

(2) The department shall administer the fund and is responsible for keeping records, managing accounts, and disbursing scholarships awarded pursuant to this section. The General Assembly shall appropriate seventy‑five million dollars from the contingency reserve fund to the department for initial costs to create the program. Thereafter, the department may expend up to two percent of the fund for administration and related costs. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the department in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act, of children applying for or receiving scholarships must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.

(3) By January fifteenth of each year, the department shall report to the General Assembly and the Governor:

(a) the number and total amount of scholarships issued to qualifying students in each year;

(b) information on allowable expenditures by type funded by the scholarships;

(c) programmatic information that includes, but is not limited to, where qualifying students attend eligible schools;

(d) a copy of a compilation, review, or audit of the fund’s financial statements, conducted by a certified public accounting firm; and

(e) the number of applications for scholarships by county.

(C)(1) The department shall ensure that qualifying students participating in the program and their parents annually are informed of which eligible schools are participating in the program. The department shall create a standard application process for parents to establish the eligibility of their student for the program. The department shall ensure that the application is readily available to interested parents through various sources, including the Internet.

(2) The department shall process applications in the order in which they are received. In the event that by August first applications exceed the number of scholarship accounts, the department will use a lottery system to award scholarships.

(3) The department shall provide the parent of a qualifying student participating in the program with a written explanation of the allowable uses of an account, the responsibilities of the parent, and the duties of the department.

(4) The department may prohibit a school from participating in the program if the department finds that the participating school has:

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

(b) failed to provide the eligible student participating in the program with the educational services funded by the account.

(5) If the department decides to prohibit an eligible school from participating in the program, then the department shall notify qualifying students participating in the program and their parents of this decision as quickly as possible. The department also must notify the Education Oversight Committee which must remove the school from the list of approved schools.

(6) Qualifying students participating in the program may return to their resident school districts at any time, providing the least disruptive process.

(7) A school shall report to the department if a student withdraws from the program.

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

(D) An eligible school may not refund, rebate, or share the scholarship account of a qualifying student participating in the program with his parent or with the qualifying student.

(E) Funds received pursuant to this section do not constitute taxable income to the parent of a qualifying student participating in the program.

(F)(1) In the first year in which the account is funded, scholarships may be awarded in an amount not exceeding five thousand dollars or the cost of attendance, whichever is lower, to a qualifying student at an eligible school to be disbursed each semester. The department may not issue debit cards, but shall distribute funds through an online system directly to a qualifying student for preapproved allowable expenditures. The department may procure a system that can create the scholarship accounts and process allowable expenditures.

(2)(a) Before awarding a scholarship, the department shall document the student’s eligibility with the following documentation:

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

(ii) other documentation as the department may require to demonstrate that the family income is less than one hundred and eighty-five percent of the poverty level; or

(iii) a record to provide that the student’s parent is an active member of the Armed Forces of the United States.

(b) Upon approving the application, the department shall create an online account for the qualifying student that the parent or legal guardian can access using a secure portal. The individual student account must be created within thirty days of approval of the application.

(3) If a qualifying student leaves or withdraws from the eligible school for any reason before the end of the semester or school year and does not reenroll within thirty days, or if the qualifying student graduates from or chooses to permanently leave a qualifying school, then the balance in the scholarship account must be credited to the Student Flexibility in Education Scholarship Fund.

(4) Any funds not expended in an individual 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.

(G) In the first year of the program’s operation, the department may award up to five thousand scholarships for students in elementary school. If more than five thousand applications are received, then the department may utilize a lottery system to award scholarships to qualifying students at the discretion of the department. For purposes of this subsection, “elementary school” means any public school which contains grades no lower than kindergarten and no higher than the sixth grade.

(H) The number of scholarships annually awarded to qualifying students is contingent upon the amount of funds in the program. If the number of applicants exceeds available funds, then the department may utilize a lottery system to award scholarships to qualifying students at the department’s discretion.

(I)(1) The Education Oversight Committee will approve independent schools for participation in the program that meet all program requirements. An independent school that participated in the program in the previous year and desires to participate in the program in the current year shall reapply to the Education Oversight Committee. The independent school shall certify to the Education Oversight Committee that it continues to meet all program requirements. The Education Oversight Committee shall develop an application to be completed by the independent schools.

(2) The Education Oversight Committee may waive the March first deadline contained in subsection (E) upon good cause shown by an independent school.

(3) By March first of each year the Education Oversight Committee shall publish on its website a comprehensive list of independent and public schools certified as eligible schools. The list must include each eligible school’s name, addresses, telephone numbers, and, if available, website addresses.

(4) An independent school 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.

(5) Annually, the Education Oversight Committee shall issue a report to the General Assembly documenting the impact of the Student Flexibility in Education Account including, but not limited to, data on the number of students who applied, data on the number of students enrolled in the program, and the number of students who withdrew from the program. The committee also shall report any ways to improve the program.

(6) The Education Oversight Committee shall grant an exemption to an eligible school from participating in the program if the eligible school can show that it has space limitations and is unable to accept additional students.

(J) Except as otherwise provided, the Department of Education, the Education Oversight Committee, and the Department of Revenue, or any other state agency may not regulate the educational program of an independent school that accepts students receiving scholarship grants pursuant to this section.

(K) The Education Oversight Committee and the department shall collaborate to develop and administer an annual program survey to all parents of qualifying students regarding the effectiveness of the fund. Results must be provided to the General Assembly by December thirty-first of each year.

SECTION 3. This joint resolution takes effect upon approval by the Governor.

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