HB84
149517-9
By Representative Fincher
RFD: Education Policy
First Read: 05-FEB-13
PFD: 01/24/2013
ENROLLED, An Act,

To establish the Alabama Accountability Act of 2013, relating to public K-12 education; to authorize the establishment of innovative schools and school systems in the state; to provide legislative findings and purposes; to provide an overview; to authorize the State Board of Education to enter into school flexibility contracts with local school systems; to require the local board of education to submit a document of assurance; to require the State Board of Education to promulgate rules and regulations relating to innovative school systems; to require local school systems to submit an innovation plan to the State Department of Education in order to qualify for innovation status; to provide an income tax credit to any parent who transfers a student enrolled in or assigned to attend a failing public K-12 school to a nonfailing public school or nonpublic school of the parent's choice; to limit the income tax credit to 80 percent of the average annual state cost of attendance; to create within the Education Trust Fund the Failing Schools Income Tax Credit Account; and to authorize the Comptroller to annually transfer into the account proceeds from sales tax revenues in an amount sufficient for the Department of Revenue to pay the income tax credits; to authorize a tax credit for contributions to organizations that provide educational scholarships to
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Alabama Accountability Act of 2013.

Section 2. (a) Innovative schools and school systems may be established in Alabama in accordance with this act.

(b) The purpose of this act is to advance the benefits of local school and school system autonomy in innovation and creativity by allowing flexibility from state laws, regulations, and policies.

Section 3. (a) The Legislature finds and declares all of the following:

(1) To further the goals of public education throughout the state, each school system should be able to have maximum possible flexibility to meet the needs of students and the communities within its jurisdiction.

(2) There is a critical need for innovative models of public education that are tailored to the unique circumstances and needs of the students in all schools and communities, and especially in schools and communities that
are struggling to improve academic outcomes and close the
achievement gap.

(3) To better serve students and better use
available resources, local boards of education, local school
systems, and parents need the ability to explore flexible
alternatives in an effort to be more efficient and effective
in providing operational and programmatic services.

(b) Therefore, it is the intent of the Legislature
to do all of the following:

(1) Allow school systems greater flexibility in
meeting the educational needs of a diverse student population.

(2) Improve educational performance through greater
individual school autonomy and managerial flexibility with
regard to programs and budgetary matters.

(3) Encourage innovation in education by providing
local school systems and school administrators with greater
control over decisions including, but not limited to,
budgetary matters, staffing, personnel, scheduling, and
educational programming, including curriculum and instruction.

(4) Provide financial assistance through an income
tax credit to a parent who transfers a student from a failing
public school to a nonfailing public school or nonpublic
school of the parent's choice.

Section 4. For the purposes of this act, the
following terms shall have the following meanings:
(1) EDUCATIONAL SCHOLARSHIPS. Grants to any qualifying school to cover all or part of the tuition and fees at the school for an eligible student.

(2) ELIGIBLE STUDENT. A student who satisfies all of the following:

a. Is a member of a household whose total annual income the year before he or she receives an educational scholarship under this program does not exceed an amount equal to 150 percent of the median household income. Once a student receives an educational scholarship under this program, the student shall remain eligible regardless of household income until the student graduates high school or reaches 19 years of age.

b. Was eligible to attend a public school in the preceding semester or is starting school in Alabama for the first time.

c. Resides in Alabama while receiving an educational scholarship.

(3) FAILING SCHOOL. A public K-12 school that is labeled as persistently low-performing by the State Department of Education, in the then most recent United States Department of Education School Improvement Grant application; that is listed in the lowest ten percent of public K-12 schools on the state standardized assessment in reading and math; that has earned a grade of "F" or three consecutive grades of "D"
pursuant to Section 16-6C-2, Code of Alabama 1975; or that is designated a failing school by the State Superintendent of Education.

(4) FLEXIBILITY CONTRACT. A school flexibility contract between the local school system and the State Board of Education wherein a local school system may apply for programmatic flexibility or budgetary flexibility, or both, from state laws, regulations, and policies, including regulations and policies promulgated by the State Board of Education and the State Department of Education.

(5) INNOVATION PLAN. The request of a local school system for flexibility and plan for annual accountability measures and five-year targets for all participating schools within the school system.

(6) LOCAL BOARD OF EDUCATION. A city or county board of education that exercises management and control of a local school system pursuant to state law.

(7) LOCAL SCHOOL SYSTEM. A public agency that establishes and supervises one or more public schools within its geographical limits pursuant to state law.

(8) LOW-INCOME ELIGIBLE STUDENT. A student of a family with income less than two times the federal poverty level.

(9) NONPUBLIC SCHOOL. Any nonpublic or private school, including parochial schools, not under the
jurisdiction of the State Superintendent of Education and the State Board of Education, providing educational services to children. A nonpublic school is accredited by a state recognized accrediting agency that provides education to elementary or secondary, or both, students and has notified the State Department of Revenue of its intention to participate in the scholarship program and comply with the requirements of the scholarship program. A nonpublic school does not include home schooling.

(10) PARENT. The parent or legal guardian of a student, with authority to act on behalf of the student, who claims the student as a dependent on his or her federal income tax return.

(11) QUALIFYING SCHOOL. Either a public school outside of the resident school district that is not considered failing under either state or federal standards or any nonpublic school as defined in this act or that satisfies the compulsory attendance requirements provided in Section 16-28-7, Code of Alabama 1975. A qualified nonpublic school shall be accredited by one of the six regional accrediting agencies or, if not so accredited, shall satisfy all of the following conditions:

a. Be in existence for at least three years.

b. Have daily attendance of at least 85 percent over a two-year period.
c. Have a minimum 180-day school year, or its hourly equivalent.

d. Have a day length of at least six and one-half hours.

e. Require all students to take the Stanford Achievement Test, or its equivalent.

f. Require all candidates for graduation to take the American College Test before graduation.

g. Require students in high school in grades nine through 12 to earn a minimum of 24 Carnegie credits before graduating, including 16 credits in core subjects and additional requirements in health and physical education, fine arts, computer studies, and foreign language.

h. Not subject special education students to the same testing or curricular requirements as regular education students if it is not required in the individual plan for the student.

i. Maintain a current website that describes the school and the instructional program of the school.

j. Annually affirm on forms prescribed by the scholarship granting organization and the department its status financially and academically and provide other relative information as required by the scholarship granting organization or as otherwise required in this act.
(12) SCHOLARSHIP GRANTING ORGANIZATION. An organization that provides or is approved to provide educational scholarships to students attending qualifying schools of their parents' choice.

(13) SCHOOL ADMINISTRATOR. A local superintendent of education or local school principal, unless otherwise specified.

Section 5. (a) Pursuant to this act, to be considered as an innovative school system, a local school system shall successfully comply with the requirements and procedures set forth by the State Department of Education regarding school flexibility contracts, which include, but are not limited to:

(1) Submission to the State Department of Education of a letter of intent to pursue a school flexibility contract.

(2) Submission to the State Department of Education of a resolution adopted by the local board of education supporting the intent of the local school system to pursue a school flexibility contract.

(3) Submission to the State Department of Education of a document of assurance stating that the local board of education shall provide consistency in leadership and a commitment to state standards, assessments, and academic rigor.
(4) Submission to the State Board of Education of a resolution adopted by the local board of education supporting the flexibility contract proposal and the anticipated timeline of the local school system.

(b) Pursuant to State Board of Education rules, each local school system shall provide an opportunity for full discussion and public input, including a public hearing, before submitting a school flexibility contract proposal to the State Board of Education.

(c) A local school system shall ensure that its school flexibility contract proposal and innovation plan is easily accessible to the general public on the website of the local school system.

Section 6. (a) The innovation plan of a local school system shall include, at a minimum, all of the following:

(1) The school year that the local school system expects the school flexibility contract to begin.

(2) The list of state laws, regulations, and policies, including rules, regulations, and policies promulgated by the State Board of Education and the State Department of Education, that the local school system is seeking to waive in its school flexibility contract.

(3) A list of schools included in the innovation plan of the local school system.
(b) A local school system is accountable to the state for the performance of all schools in its system, including innovative schools, under state and federal accountability requirements.

(c) A local school system may not, pursuant to this act, waive requirements imposed by federal law, requirements related to the health and safety of students or employees, requirements imposed by ethics laws, requirements imposed by the Alabama Child Protection Act of 1999, Chapter 22A, Title 16, Code of Alabama 1975, requirements imposed by open records or open meetings laws, requirements related to financial or academic reporting or transparency, requirements designed to protect the civil rights of students or employees, requirements related to the state retirement system or state health insurance plan, or requirements imposed by Act 2012-482. This act may not be construed to allow a local school system to compensate an employee at an annual amount that is less than the amount the employee would otherwise be afforded through the State Minimum Salary Schedule included in the annual Education Trust Fund Appropriations Act. No local school system shall involuntarily remove any rights or privileges acquired by any employee under the Students First Act of 2011, Chapter 24C, Title 16, Code of Alabama 1975. Except as provided for a failing school pursuant to subsection (e), no plan or program submitted by a local board of
education may be used to deny any right or privilege granted
to a new employee pursuant to the Students First Act of 2011.

(d) No provision of this act shall be construed or
shall be used to authorize the formation of a charter school.

(e) Any provision of subsection (c) to the contrary
notwithstanding, nothing in this act shall be construed to
prohibit the approval of a flexibility contract that gives
potential, current, or future employees of a failing school
within the local school system the option to voluntarily waive
any rights or privileges already acquired or that could
potentially be acquired as a result of attaining tenure or
nonprobationary status, provided, however, that any employee
provided this option is also provided the option of retaining
or potentially obtaining any rights or privileges provided
under the Students First Act, Chapter 24C of Title 16, Code of
Alabama 1975.

(f) The State Department of Education shall finalize
all school data and the local school system shall seek
approval of the local board of education before final
submission to the State Department of Education and the State
Board of Education.

(g) The final innovation plan, as recommended by the
local superintendent of education and approved by the local
board of education, shall accompany the formal submission of
the local school system to the State Department of Education.
(h) Within 60 days of receiving the final submission, the State Superintendent of Education shall decide whether or not the school flexibility contract and the innovation plan should be approved. If the State Superintendent of Education denies a school flexibility contract and innovation plan, he or she shall provide a written explanation for his or her decision to the local board of education. Likewise, a written letter of approval by the State Superintendent of Education shall be provided to the local board of education that submitted the final school flexibility contract and innovation plan.

(i) The State Board of Education shall promulgate any necessary rules and regulations required to implement this act including, but not limited to, all of the following:

(1) The specification of timelines for submission and approval of the innovation plan and school flexibility contract of a local school system.

(2) An authorization for the State Department of Education, upon approval by the State Board of Education after periodic review, to revoke a school flexibility contract for noncompliance or nonperformance, or both, by a local school system.

(3) An outline of procedures and necessary steps that a local school system shall follow, upon denial of an
original submission, to amend and resubmit an innovation plan
and school flexibility contract for approval.

Section 7. The State Board of Education and the
State Department of Education shall ensure equal opportunity
for all school systems that apply for programmatic flexibility
or budgetary flexibility, or both, as delineated in this act,
and in no way shall one local school system be favored over
another local school system based upon its size, location,
student population, or any other possible discriminatory
measure.

Section 8. (a) To provide educational flexibility
and state accountability for students in failing schools:

(1) For tax years beginning on and after January 1,
2013, an Alabama income tax credit is made available to the
parent of a student enrolled in or assigned to attend a
failing school to help offset the cost of transferring the
student to a nonfailing public school or nonpublic school of
the parent's choice. The income tax credit shall be an amount
equal to 80 percent of the average annual state cost of
attendance for a public K-12 student during the applicable tax
year or the actual cost of attending a nonfailing public
school or nonpublic school, whichever is less. A parent is
allowed a credit against income tax for each taxable year
under the terms established in this section. If income taxes
owed by the parent are less than the total credit allowed
under this subsection, the taxpayer shall be entitled to a
refund or rebate, as the case may be, equal to the balance of
the unused credit with respect to that taxable year.

(2) Any income tax credit due a parent under this
section shall be granted or issued to the parent only upon his
or her making application therefor, at such time and in such
manner as may be prescribed from time to time by the
Department of Revenue. The application process shall include,
but not be limited to, certification by the parent that the
student was enrolled in or was assigned to attend a failing
school, certification by the parent that the student was
subsequently transferred to, and was enrolled and attended, a
nonfailing public school or nonpublic school of the parent's
choice, and proof, satisfactory to the Department of Revenue,
of the actual cost of attendance for the student at the
nonfailing public school or nonpublic school. The Department
of Revenue shall also prescribe the various methods by which
income tax credits are to be issued to taxpayers. Income tax
credits authorized by this section shall be paid out of sales
tax collections made to the Education Trust Fund, and set
aside by the Comptroller in the Failing School Tax Credit
Account created in subsection (c), in the same manner as
refunds of income tax otherwise provided by law, and there is
hereby appropriated therefrom, for such purpose, so much as
may be necessary to annually pay the income tax credits provided by this section.

(3) An application for an income tax credit authorized by this section shall be filed with the Department of Revenue within the time prescribed for filing petitions for refund under Section 40-2A-7, Code of Alabama 1975.

(4) The Department of Revenue shall promulgate reasonable rules to effectuate the intent of this section.

(b)(1) The parent of a public school student may request and receive an income tax credit pursuant to this section to reimburse the parent for costs associated with transferring the student from a failing school to a nonfailing public school or nonpublic school of the parent's choice, in any of the following circumstances:

a. By assigned school attendance area, if the student spent the prior school year in attendance at a failing school and the attendance of the student occurred during a school year in which the designation was in effect.

b. The student was in attendance elsewhere in the Alabama public school system and was assigned to a failing school for the next school year.

c. The student was notified that he or she was assigned to a failing school for the next school year.

(2) This section does not apply to a student who is enrolled in the Department of Youth Services School District.
(3) For the purposes of continuity of educational choice, the tax credit shall be available to parents for those grade levels of the failing school from which the student transferred. The parent of a student who transfers from a failing school may receive income tax credits for those grade levels enrolled in and attended in the nonfailing public school or nonpublic school of the parent's choice transferred to that were included in the failing school from which the student transferred, whether or not the failing school becomes a nonfailing school during those years. The student shall return to his or her original local school system of attendance when he or she completes the highest grade level of the failing school transferred from in the nonfailing public school or nonpublic school of the parent's choice. If the public school the student returns to is a failing school, the parent may again transfer the student to a nonfailing public school or nonpublic school of the parent's choice and request and receive an income tax credit as provided in this section.

(4) A local school system, for each student enrolled in or assigned to a failing school, shall do all of the following:

a. Timely notify the parent of the student of all options available under this section as soon as the school of attendance is designated as a failing school.
b. Offer the parent of the student an opportunity to enroll the student in another public school within the local school system that is not a failing school or a failing school to which the student has been assigned.

(5) The parent of a student enrolled in or assigned to a school that has been designated as a failing school, as an alternative to paragraph b. of subdivision (4), may choose to enroll the student in and transport the student to a nonfailing public school that has available space in any other local school system in the state, and that local school system is willing to accept the student on whatever terms and conditions the system establishes and report the student for purposes of the local school system's funding pursuant to the Foundation Program.

(6) For students in the local school system who are participating in the tax credit program, the local school system shall provide locations and times to take all statewide assessments required by law.

(7) Students with disabilities who are eligible to receive services from the local school system under federal or state law, and who participate in the tax credit program, remain eligible to receive services from the local school system as provided by federal or state law.

(8) If a parent requests that the student be enrolled in a nonfailing public school within the same local
school system, transportation costs to the nonfailing public
school shall be the responsibility of the local school system.

(9) The State Department of Education shall
promulgate reasonable rules to effectuate the intent of this
section. Rules shall include penalties for noncompliance.

(c) There is created within the Education Trust Fund
a separate account named the Failing Schools Income Tax Credit
Account. The Commissioner of Revenue shall annually certify to
the Comptroller the amount of income tax credits due to
parents under this section and the Comptroller shall transfer
into the Failing Schools Income Tax Credit Account only the
amount from sales tax revenues within the Education Trust Fund
that is sufficient for the Department of Revenue to use to
cover the income tax credits for the applicable tax year. The
Commissioner of Revenue shall annually distribute the funds in
the Failing Schools Income Tax Credit Account to parents
pursuant to this section.

Section 9. (a)(1) A taxpayer who files a state
income tax return and is not a dependent of another taxpayer
may claim a credit for a contribution made to a scholarship
granting organization.

(2) The tax credit may be claimed by an individual
taxpayer or a married couple filing jointly in an amount equal
to the total contributions made to a scholarship granting
organization for educational scholarships during the taxable
year for which the credit is claimed up to 50 percent of the
tax liability of the taxpayer, not to exceed seven thousand
five hundred dollars ($7,500) per taxpayer or married couple
filing jointly.

(3) The tax credit may be claimed by a corporate
taxpayer in an amount equal to 50 percent of the total
contributions made to a scholarship granting organization for
educational scholarships during the taxable year for which the
credit is claimed up to 50 percent of the tax liability of the
taxpayer. The cumulative amount of tax credits issued pursuant
to subdivision (2) and this subdivision shall not exceed
twenty-five million dollars ($25,000,000) annually. The
Department of Revenue shall develop a procedure to ensure that
this cap is not exceeded and shall also prescribe the various
methods by which these credits are to be issued.

(4) A corporate taxpayer, an individual taxpayer, or
a married couple filing jointly may carry forward a tax credit
under the tax credit scholarship program for three years.

(b)(1) Administrative accountability standards. All
scholarship granting organizations shall do all of the
following:

a. Notify the Department of Revenue of their intent
to provide educational scholarships.

b. Demonstrate to the Department of Revenue that
they have been granted exemption from the federal income tax
as an organization described in Section 501(c)(3) of the Internal Revenue Code.

c. Distribute periodic educational scholarship payments as checks made out and mailed to the school where the student is enrolled.

d. Provide a Department of Revenue approved receipt to taxpayers for contributions made to the scholarship granting organization.

e. Ensure that at least 95 percent of their revenue from donations is spent on educational scholarships, and that all revenue from interest or investments is spent on educational scholarships.

f. Spend each year a portion of their expenditures on educational scholarships for low-income eligible students equal to the percentage of low-income eligible students in the county where the scholarship granting organization expends the majority of its educational scholarships.

g. Ensure that at least 75 percent of first-time recipients of educational scholarships were not continuously enrolled in a private school during the previous year.

h. Cooperate with the Department of Revenue to conduct criminal background checks on all of their employees and board members and exclude from employment or governance any individual who may reasonably pose a risk to the appropriate use of contributed funds.
i. Ensure that educational scholarships are portable during the school year and can be used at any school that accepts the eligible student according to the wishes of the parent. If a student transfers to another school during a school year, the educational scholarship amount may be prorated.

j. Publicly report to the Department of Revenue by June 1 of each year all of the following information prepared by a certified public accountant regarding their grants in the previous calendar year:

1. The name and address of the scholarship granting organization.

2. The total number and total dollar amount of contributions received during the previous calendar year.

3. The total number and total dollar amount of educational scholarships awarded during the previous calendar year, the total number and total dollar amount of educational scholarships awarded during the previous year for students qualifying for the federal free and reduced-price lunch program, and the percentage of first-time recipients of educational scholarships who were enrolled in a public school during the previous year.

k. Ensure educational scholarships are not provided for students to attend a school with paid staff or board
members, or relatives thereof, in common with the scholarship
granting organization.

1. Ensure that scholarships are provided in a manner
that does not discriminate based on the gender, race, or
disability status of the scholarship applicant or his or her
parent.

m. Ensure that educational scholarships are provided
only to students who would otherwise attend a failing school
so that the student can attend a nonpublic school or a
nonfailing public school.

(2) Financial accountability standards.

a. All scholarship granting organizations shall
demonstrate their financial accountability by doing all of the
following:

1. Annually submitting to the Department of Revenue
a financial information report for the scholarship granting
organization that complies with uniform financial accounting
standards established by the Department of Revenue and
conducted by a certified public accountant.

2. Having the auditor certify that the report is
free of material misstatements.

b. All participating nonpublic schools shall
demonstrate financial viability, if they are to receive
donations of fifty thousand dollars ($50,000) or more during
the school year, by doing either of the following:
1. Filing with the scholarship granting organization before the start of the school year a surety bond payable to the scholarship granting organization in an amount equal to the aggregate amount of contributions expected to be received during the school year.

2. Filing with the scholarship granting organization before the start of the school year financial information that demonstrates the financial viability of the participating nonpublic school.

(c)(1) Each scholarship granting organization shall collect written verification from participating nonpublic schools that accept its educational scholarship students that those schools do all of the following:

a. Comply with all health and safety laws or codes that otherwise apply to nonpublic schools.

b. Hold a valid occupancy permit if required by the municipality.


d. Conduct criminal background checks on employees and then do all of the following:

1. Exclude from employment any person not permitted by state law to work in a public school.

2. Exclude from employment any person who may reasonably pose a threat to the safety of students.
(2) Academic accountability standards. There shall be sufficient information about the academic impact educational scholarship tax credits have on participating students in order to allow parents and taxpayers to measure the achievements of the tax credit scholarship program, and therefore:

a. Each scholarship granting organization shall ensure that participating schools that accept its educational scholarship shall do all of the following:

1. Annually administer either the state achievement tests or nationally recognized norm-referenced tests that measure learning gains in math and language arts to all participating students in grades that require testing under the accountability testing laws of the state for public schools.

2. Allow costs of the testing requirements to be covered by the educational scholarships distributed by the scholarship granting organizations.

3. Provide the parents of each student who was tested with a copy of the results of the tests on an annual basis, beginning with the first year of testing.

4. Provide the test results to the Department of Revenue or an organization chosen by the state on an annual basis, beginning with the first year of testing.
5. Report student information that allows the state to aggregate data by grade level, gender, family income level, and race.

6. Provide graduation rates of those students benefitting from education scholarships to the Department of Revenue or an organization chosen by the state in a manner consistent with nationally recognized standards.

b. The Department of Revenue or an organization chosen by the Department of Revenue shall do all of the following:

1. Ensure compliance with all student privacy laws.
2. Collect all test results.
3. Provide the test results and associated learning gains to the public via a state website after the third year of test and test-related data collection. The findings shall be aggregated by the grade level, gender, family income level, number of years of participation in the tax credit scholarship program, and race of the student.

(d)(1) The Department of Revenue shall adopt rules and procedures consistent with this section as necessary to implement the tax credit scholarship program.

(2) The Department of Revenue shall provide a standardized format for a receipt to be issued by a scholarship granting organization to a taxpayer to indicate the value of a contribution received. The Department of
Revenue shall require a taxpayer to provide a copy of the receipt when claiming the tax credit pursuant to this section.

(3) The Department of Revenue shall provide a standardized format for a scholarship granting organization to report the information required in paragraph j. of subdivision (1) of subsection (b).

(4) The Department of Revenue may conduct either a financial review or audit of a scholarship granting organization if possessing evidence of fraud.

(5) The Department of Revenue may bar a scholarship granting organization from participating in the tax credit scholarship program if the Department of Revenue establishes that the scholarship granting organization has intentionally and substantially failed to comply with the requirements in subsection (b) or subsection (c).

(6) If the Department of Revenue decides to bar a scholarship granting organization from the tax credit scholarship program, the Department of Revenue shall notify affected educational scholarship students and their parents of the decision as quickly as possible.

(7) The Department of Revenue shall publish and routinely update, on the website of the department, a list of scholarship granting organizations in the state, by county.

(e)(1) All schools participating in the tax credit scholarship program shall be required to operate in Alabama.
(2) All schools participating in the tax credit scholarship program shall comply with all state laws that apply to public schools regarding criminal background checks for employees and exclude from employment any person not permitted by state law to work in a public school.

(f) The tax credit provided in this section may be first claimed for the 2013 tax year.

Section 10. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 11. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.
Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives
I hereby certify that the within Act originated in
and was passed by the House 14-FEB-13, as amended.

Jeff Woodard
Clerk

<table>
<thead>
<tr>
<th>Senate</th>
<th>28-FEB-13</th>
<th>Amended and Passed</th>
</tr>
</thead>
<tbody>
<tr>
<td>House</td>
<td>28-FEB-13</td>
<td>Passed, as amended by Conference Committee Report</td>
</tr>
<tr>
<td>Senate</td>
<td>28-FEB-13</td>
<td>Passed, as amended by Conference Committee Report</td>
</tr>
</tbody>
</table>