SB140

214694-2

By Senators Marsh, McClendon, Allen, Stutts, Melson, Whatley, Albritton and Barfoot

RFD: Education Policy

First Read: 01-FEB-22
SYNOPSIS: This bill would create the Parent's Choice Act.

This bill would create and provide for the Parent's Choice Program and the membership and duties of the Parent's Choice Board.

This bill would provide for the process for creating, funding, and utilizing education savings accounts.

This bill would specify which expenses are qualified expenses.

This bill would provide for the renewal and administration of education savings accounts.

This bill would provide for the auditing of the program and the suspension of education service providers.

This bill would also provide for the responsibilities of resident school districts.

A BILL

TO BE ENTITLED
AN ACT

To establish the Parent's Choice Act relating to K-12 education; to create the Parent's Choice Program and provide for the membership and duties of the Parent's Choice Board; to provide definitions; to establish the framework and guidelines for education savings accounts; to create and provide for the membership and duties of the Parent's Choice Board; to create a process for awarding education savings accounts; to establish funding mechanisms; to specify qualified expenses; to create a renewal and administration process; to create requirements for education service providers; to establish an auditing mechanism and potential suspension system for education service providers; to establish responsibilities of resident school districts; and to provide for legal proceedings.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Parent's Choice Act.

Section 2. For the purposes of this act, the following terms shall have the following meanings:

(1) BOARD. The Parent's Choice Board.

(2) CURRICULUM. A complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum.

(3) DEPARTMENT. The State Department of Education.
(4) EDUCATION SAVINGS ACCOUNT. An account to which funds are deposited by the treasurer to pay qualifying education expenses of a participating student pursuant to this act.

(5) EDUCATION SERVICE PROVIDER. An individual or organization that receives payments from education savings accounts to provide educational goods and services to participating students.

(6) ELIGIBLE RECIPIENT. A student who is a resident of this state and satisfies eligibility criteria provided in this act.

(7) PARENT. The biological parent or parents, grandparent or grandparents, legal guardian, custodian, or other individual with legal authority to act on behalf of an eligible recipient or participating student.

(8) PARTICIPATING SCHOOL. Any public or nonpublic school that provides education to elementary or secondary students, or both, has notified the treasurer of its intention to participate in the program and comply with the requirements of the program, and satisfies the requirements of this act.

(9) PARTICIPATING STUDENT. An elementary or secondary school student who receives education savings account funds pursuant to this act.

(10) PROGRAM. The Parent's Choice Program.

(11) RESIDENT SCHOOL DISTRICT. The county or city school district in which the student resides.

(12) TREASURER. The State Treasurer.
Section 3. (a) The program shall be administered by the Parent's Choice Board.

(b) The membership of the board shall consist of the following members:

(1) The treasurer, or his or her designee.

(2) The State Finance Director, or his or her designee.

(3) A representative of the Alabama Disabilities Advocacy Program, appointed by the Governor, with the advice and consent of the Senate, who shall serve a term of three years.

(4) Four members appointed by the Governor, with the advice and consent of the Senate, who are parents, as defined by this act. The four shall be appointed to initial staggered terms of one, two, or three years, with two being appointed to three-year terms. Thereafter, these appointed members shall serve three-year terms of office and shall be eligible for reappointment.

(c) Each member of the board shall be a resident of this state at the time of appointment and during his or her entire term of office. The Governor shall coordinate his or her appointments to assure the board membership is inclusive and reflects the racial, gender, geographic, urban, rural, and economic diversity of the state.

(d) A vacancy among appointed members shall be filled by appointment of the Governor, with the advice and consent of the Senate, for the unexpired term.
Appointments made at times when the Senate is not in regular
session shall be effective ad interim. Any appointment made by
the Governor while the Senate is in regular session shall be
submitted to the Senate not later than the third legislative
day following the date of the appointment;
any appointment made while the Senate is not in regular
session shall be submitted not later than the third
legislative day following the reconvening of the Legislature
in regular session. If the Senate fails to vote on the
confirmation of an appointee before adjourning sine die during
the regular session in which the name of the appointee
is submitted, the appointee is deemed to be confirmed. A
member shall serve until the later of the expiration of the
term for which he or she was appointed, or the appointment of
his or her successor.

(e) Members shall serve without compensation. The
treasurer may pay all reasonable and necessary expenses,
including actual travel expenses, incurred in the conduct of
official duties, from the Parent's Choice Program Expense Fund
at the same rate paid to state employees.

(f) The treasurer, or his or her designee, shall
serve as the chair and presiding officer of the board and may
provide office space and staff as requested by the board. A
vice chair shall be selected by the membership of the board
and shall preside over meetings in the absence of the chair.

(g) A majority of the members of the board shall
constitute a quorum for the transaction of business.
(h) The board shall be subject to the Alabama Open Meetings Act, Chapter 25A of Title 36, Code of Alabama 1975, and the open records law, Chapter 12 of Title 36, Code of Alabama 1975.

Section 4. The board may take any action necessary to effectuate this act and to successfully administer the program, subject to applicable state and federal law including, but not limited to, all of the following:

(1) Adopt and amend rules pursuant to the Alabama Administrative Procedure Act.

(2) Execute contracts and other instruments for necessary goods and services, employ necessary personnel, and engage the services of private consultants, actuaries, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice.

(3) Implement the program through the use of financial organizations as account depositories and managers.

(4) Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program.

(5) Determine whether an expenditure of education savings account funds is or was a qualifying expense to educate a participating student pursuant to Section 8. The board may approve or deny expenditures by a majority vote.

(6) Review any appeals made pursuant to subsections (b) and (d) of Section 11.
(7) Establish the method by which funds shall be allocated to pay for administrative costs and assess, collect, and expend administrative fees, charges, and penalties.

(8) Authorize the assessment, collection, and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, or other professional managing or investing the trust funds and accounts.

(9) Invest and reinvest any of the funds and accounts under the treasurer and control of the board with a financial institution, an investment manager, a fund manager, or other professionals investing the funds and accounts.

(10) Solicit and accept gifts, including bequests and other testamentary gifts made by will, trust, or other disposition; grants; loans; aid; and property, real or personal, of any nature and from any source, or participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of this act. The treasurer and board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within 180 days after receipt.

Section 5. Notification to the treasurer of an intention to participate in the program by a K-12 public school or nonpublic school shall be submitted annually on or before July 1, in writing, on a form provided by the
treasurer. The notification shall include all of the following:

(1) A statement detailing the extent of the participation of the public school or nonpublic school.

(2) The number of participating students the public school or nonpublic school could accommodate for the immediately succeeding school year.

(3) The nondiscriminatory process to be used by the public school or nonpublic school for enrolling participating students.

Section 6. (a) The program is established to provide the option for a parent to better meet the individual education needs of his or her eligible student. The program shall be operational beginning as soon as possible, but no later than July 1, 2022.

(1) Only students who are enrolled in and attending a public school or being home schooled, or entering kindergarten, may apply for participating student status for the 2022-2023 school year.

(2) For the 2023-2024 school year, in addition to those students enrolled in and attending public school, being home schooled, or entering kindergarten, any otherwise eligible student, who is enrolled in and attending a nonpublic school and whose family had an adjusted gross income up to 200 percent of the federal poverty level for the preceding tax year, may apply for participating student status for that school year.
(3) Commencing with the 2024-2025 school year, and thereafter, any student may apply for participating student status for the immediately succeeding school year, regardless of income.

(b) The board shall create a standard application form that a parent may submit to the treasurer to establish the eligibility of his or her student for the receipt of education savings account funds, to be placed in a personal education savings account to be used for qualifying education expenses on behalf of the eligible recipient as provided for in Section 8. Information about education savings account funds and the application process shall be made available on the website of the treasurer.

(c) The treasurer shall make applications available no later than May 1, 2022, and shall begin accepting applications immediately thereafter. The board may update the application as needed. The board shall issue an award letter to eligible recipients within 45 days after receipt of a completed application and all required documentation.

(d) The board shall approve an application for an education savings account if all of the following circumstances are satisfied:

(1) The parent of the student submits an application for an education savings account in accordance with the procedures established by rule of the board.

(2) The student on whose behalf the parent is applying is an eligible recipient.
(3) The parent signs an agreement with the board, promising to do all of the following:

a. Provide an education for the eligible recipient in at least the subjects of reading, language, mathematics, science, and social studies.

b. Use education savings account funds exclusively for qualifying expenses as provided for in Section 8.

c. Comply with the rules and requirements of the program.

d. Afford the participating student opportunities for educational enrichment including, but not limited to, organized athletics, subject to the limitations in Section 14, art, music, and literature.

(4) The treasurer has confirmed with the department or participating nonpublic school that the student is an eligible recipient. If the department or participating nonpublic school does not respond to the confirmation request of the treasurer within 30 calendar days after the date of receipt, the treasurer shall consider the student an eligible recipient.

(e) An application for an education savings account is confidential and not a public record subject to release pursuant to the open records law, Chapter 12 of Title 36, Code of Alabama 1975.

(f) Participation and receipt of scholarship funds pursuant to the Alabama Accountability Act of 2013, Chapter 6D, Title 16, Code of Alabama 1975, is supplemental to the
receipt of education savings account funds by a participating
student pursuant to this act.

Section 7. (a) There is created in the State
Treasury a special revenue fund designated and known as the
Parent's Choice Program Trust Fund. The fund shall be
administered by the treasurer and shall consist of funds
appropriated by the Legislature in accordance with subsection
(b). Any funds appropriated annually to the Parent's Choice
Program Trust Fund that remain unexpended on September 30 of
each fiscal year, shall be reappropriated annually and used
for the purposes authorized by this act.

(b) The amount of education savings account funding
granted to an eligible recipient on a yearly basis shall be
equal to 100 percent of the Education Trust Fund's share of
the prior year's Foundation Program Fund as provided in
Section 16-13-231(b)(2)g., Code of Alabama 1975, subject to
subsection (c). The amount of the funding to an eligible
recipient who is awarded funds from an education savings
account for less than a full fiscal year shall be prorated
based on the portion of the fiscal year the eligible recipient
receives funds from an education savings account.
Additionally, if sufficient funds are not available to provide
fully for all participating students pursuant to this act
during a school year, the treasurer shall prorate all funds on
a per capita basis among all participating students.

(c) Expenditures from the Parent's Choice Program
Trust Fund shall be limited to the purposes set forth in this
act. To cover the annual administrative costs of the program, an amount not exceeding five percent of the fund shall be transferred annually to the Parent's Choice Program Expense Fund established in subsection (h). If the number of participating students increases significantly after any fiscal year, the treasurer may request an appropriation from the Legislature to the Parent's Choice Program Expense Fund in an amount equal to the increased administrative costs associated with the increase in education savings accounts.

(d) The first deposit of education savings account funds into an eligible recipient's education savings account shall be subject to the execution of the parental agreement required by Section 6. Upon execution of the required parental agreement, and subject to Section 10, one half of the total annually required deposit shall be made no later than August 15 of every year into the education savings account of an eligible recipient, and one half of the total annually required deposit shall be made no later than January 15 of every year. Any funds remaining in an education savings account at the end of a fiscal year may be carried over to the next fiscal year upon successful renewal of the education savings account.

(e) Funds deposited in the education savings account of a student do not constitute taxable income to the parent or the participating student.

(f) The treasurer shall continue to make deposits into the education savings account of an eligible recipient in
accordance with this section unless, and until, any of the following conditions have occurred:

(1) The parent of the eligible recipient fails to renew the education savings account or withdraws from the program.

(2) The board determines that the student is no longer eligible for education savings account funds.

(3) The board suspends or revokes participation in the program for failure to comply with this act.

(4) The participating student successfully completes a secondary education program.

(5) The participating student reaches 21 years of age.

(g) If any of the conditions in subsection (f) occur, the board shall notify the parent that the education savings account of the eligible recipient shall be closed in 45 calendar days. If a parent fails to adequately address the condition or conditions upon which closure is based, or does not respond within 30 calendar days after receipt of notice, the board shall close the education savings account and any remaining monies shall be returned to the state.

(h)(1) There is created in the State Treasury a special revenue fund designated and known as the Parent's Choice Program Expense Fund. The expense fund shall consist of monies received pursuant to this section, or any governmental or private grants and any state Education Trust Fund appropriations, if any, for the program. Any funds
appropriated annually to the Parent's Choice Program Expense Fund that remain unexpended on September 30 of each fiscal year, shall be reappropriated annually and used for the purposes authorized by this act.

(2) All expenses incurred by the treasurer or the board in developing and administering the program shall be payable from the Parent's Choice Program Expense Fund.

Section 8. (a) The parent of a participating student shall agree to use the funds deposited in the education savings account of his or her participating student only for the following qualifying expenses to educate the student:

(1) Ongoing services provided by a public school district pursuant to Section 9 including, but not limited to, individual classes and extracurricular activities and programs.

(2) Tuition or fees, or both, at a participating school.

(3) Tutoring services provided by an individual or a tutoring facility. Tutoring services may not be provided by an immediate family member of the participating student.

(4) Fees for nationally standardized tests, advanced placement examinations, any examinations related to college or university admission, and tuition or fees, or both, for preparatory courses for the assessments or exams in the same manner as these fees are paid by the parents of nonparticipating public school students.
(5) Tuition or fees, or both, for programs of study or the curriculum of vocational courses, including, but not limited to, courses that lead to an industry recognized credential that satisfies a workforce need.

(6) Tuition or fees, or both, for nonpublic online learning programs.

(7) Tuition or fees, or both, for alternative education programs.

(8) Fees for after school or summer education programs.

(9) Educational services and therapies including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies.

(10) Curriculum.

(11) Any other qualified expenses approved by the board.

(b) The funds in an education savings account may only be used for educational purposes in accordance with subsection (a). Nothing in this section shall require that a participating student be enrolled in either a private school or nonpublic online school.

(c) Education savings account funds may not be refunded, rebated, or shared with a parent or student in any manner. Any refund or rebate for goods or services purchased with education savings account funds shall be credited directly to the education savings account of a participating student.
(d) Nothing in this section shall prohibit the parent of a participating student from making payments for the costs of educational goods and services not covered by the funds in the education savings account of his or her student. Personal deposits into an education savings account are prohibited.

Section 9. (a) Before enrolling his or her child in a kindergarten program, a parent may apply for an education savings account on behalf of that child. Every year thereafter, the parent may renew the enrollment of the child in the program pursuant to this section.

(b) Annual renewal of the education savings account of an eligible recipient shall be on a date, on or before July 15, as annually determined by the board. Notwithstanding any changes in eligibility, a participating student who has previously qualified for an education savings account remains eligible to apply for renewal until one of the conditions provided in subsection (f) of Section 7 occurs. The board shall verify with the department and participating nonpublic schools all of the following information by July 1 of each year:

(1) A list of all active education savings accounts.

(2) The resident school district of each participating student.

(3) For a participating student who chooses to attend a participating school, annual confirmation of his or her continued attendance at a nonpublic school that complies
with all requirements that other nonpublic school students are required to satisfy.

(c) During the initial year of operation of the program, on or before July 15, each local superintendent of education shall submit the determinations reported to him or her pursuant to subsection (b) to the department. During subsequent years, the submission date shall be determined by the board.

(d) If a parent fails to renew the education savings account of an eligible recipient, the board shall notify the parent that the education savings account of the eligible recipient shall be closed in 45 calendar days. If a parent chooses not to renew or does not respond within 30 calendar days after receipt of notice, the board shall close the education savings account and any remaining monies shall be returned to the state.

(e) If an eligible recipient decides to return to the program after failing to renew, he or she shall reapply.

(f) The board, in consultation with the State Board of Education, may adopt rules and policies to provide the least disruptive process for participating students who desire to stop receiving education savings account payments and return full-time to a public school. A participating student may only opt into or out of a participating school program in between semesters, unless the participating school undergoes a substantial change in operation that results in a hardship to the participating student or his or her parent. In the event
of a hardship, the parent may petition the board to transfer
the participating student to another participating school and
may request a refund of any unexpended or prorated monies. The
board shall act upon a petition submitted pursuant to this
subsection within 30 calendar days after receipt.

(g) The board, in consultation with the State Board
of Education, may adopt rules and policies for participating
students who want to continue to receive services provided by
a public school or school district, including individual
classes and extracurricular programs. The board, in
consultation with the department, shall ensure that any public
school or school district providing services receives the
appropriate pro rata share of the education savings account
funds of a student based on the percentage of total
instruction provided to the student by the public school or
school district. Local boards of education may charge tuition
to participating students who enroll for services in a public
school from outside of the student's resident school district.
Participating students who enroll for services part-time in a
public school shall not be included in the number of students
in average daily membership used to determine the cost of the
Foundation Program. Nothing in this subsection prohibits a
participating student from using the funds deposited in his or
her education savings account on both services provided by a
public school or school district and other qualifying expenses
as provided for in Section 8.
Section 10. In addition to the duties, obligations, and authority provided by this act, the board has the following duties, obligations, and authority with respect to the administration of education savings accounts:

(1) To maintain an updated list of participating schools and ensure that the list is publicly available through various sources including, but not limited to, the Internet.

(2) To provide parents with a written explanation of the allowable uses of education savings account funds, the responsibilities of parents, the duties of the treasurer and the board, and the role of any private financial management firms or other private organizations that the board may contract with to administer the program, or any aspect of the program.

(3) To ensure that parents of students with a disability receive notice, that participation in the program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act, along with an explanation of the rights that parentally placed students possess under that act and any applicable state law.

(4) The board may contract with private organizations to administer the program. This includes, but is not limited to, private financial management firms to manage education savings accounts.

(5) The board shall implement, or contract with a private organization to implement, a commercially viable, cost effective, and parent friendly system for payment for services
from education savings accounts to participating schools or education service providers including, but not limited to, the use of debit cards or other electronic or online fund transfers. An education savings account may not be reduced for debit card or electronic payment fees.

(6) The board shall seek to implement a commercially viable, cost effective, and parent friendly system for publicly rating, reviewing, and sharing information about participating schools and education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and participating students.

(7) If an education service provider requires partial payment of tuition or fees before the start of the academic year to reserve space for a participating student admitted to the education service provider, the partial payment may be paid before the start of the school year in which the education savings account funds are awarded, and deducted in an equitable manner from subsequent education savings account deposits to ensure adequate funds remain available throughout the school year. If a participating student decides not to use the education service provider, the partial reservation payment shall be returned to the treasurer by the education service provider and credited to the education savings account of the student.

(8) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public
about the program, or to provide additional funding for education savings accounts. These funds shall be deposited in the Parent's Choice Program Expense Fund.

(9) The board may adopt rules, including emergency rules if necessary, to meet timelines provided by this act, that are not inconsistent with this act, and that are necessary for the administration of this act including, but not limited to, all of the following:

a. Establishing or contracting for the establishment of a fraud reporting system.

b. Policies that require a surety bond for education service providers receiving more than one hundred thousand dollars ($100,000) in education savings account funds.

c. Procedures for refunding payments from education service providers back to education savings accounts.

d. Procedures for entering into reciprocal agreements with other state education savings account agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from education savings accounts under this act.

(10) Any rules or policies adopted by the board should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and participating students with a broad array of educational options.
Section 11. (a) The board may adopt rules for the auditing of individual education savings accounts and shall conduct or contract for the random auditing of individual education savings accounts as needed to ensure compliance with this act and rules adopted pursuant to this act.

(b) As part of the auditing process, the board may remove a parent or eligible recipient from the program and close an education savings account for failure to comply with the terms of the parental agreement, failure to comply with applicable laws, failure of the student to remain eligible, or intentional and fraudulent misuse of education savings account funds. The board shall adopt procedures pursuant to the Alabama Procedure Act, Chapter 22, Title 41, Code of Alabama 1975, to ensure that a fair process exists to determine the removal of a parent or eligible recipient from the program and provide for the appeal of an ineligibility determination to the board.

(c) The board may conduct or contract for the audit of education service providers accepting payments from education savings accounts if the board determines that the education service provider has done any of the following:

(1) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner.

(2) Routinely failed to provide students with promised educational goods or services.
(d) If the board determines that an education service provider has intentionally and substantially misused education savings account funds, the board may bar the education service provider from continuing to receive payments. The board shall create procedures to ensure that a fair process exists to determine whether an education service provider should be barred from receiving payment from education savings accounts and provide for the appeal of a determination to bar the education service provider to the board. If the board bars an education service provider from receiving payments from education savings accounts, the board shall notify parents and students of its decision as quickly as possible.

(e) If the board obtains evidence of potential fraudulent use of education savings account funds, the board may refer suspected cases to the Attorney General for purposes of investigation, collection, and potential criminal investigation.

Section 12. (a) To be eligible to accept payments from an education savings account, an education service provider shall do all of the following:

(1) Submit a notice of intent to participate in the program to the treasurer.

(2) Provide participating parents with a receipt for all qualifying education expenses for a participating student.

(3) Agree not to refund, rebate, or share education savings account funds with parents or students in any manner,
except that funds may be remitted or refunded to an education savings account in accordance with Section 8.

(4) Certify that the education service provider will not discriminate on any basis prohibited by 42 U.S.C. § 1981.

(5) Agree to require any employee who will have contact with a participating student to submit to a criminal history background check.

(6) In the case of a participating school, provide notice of enrollment annually to the local superintendent of education or participating nonpublic school of any student for which tuition is being paid through the program.

(b) This act does not limit the independence or autonomy of an education service provider or make the actions of an education service provider the actions of the state.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of participating students without governmental control.

(d) A participating school or education service provider is not required to alter its creed, practices, admission policy, tuition, fees, hiring policy, or curriculum in order to accept eligible recipients whose parents pay tuition or fees from an education savings account pursuant to this act. Nothing in this act shall prohibit a participating school from requesting additional funds from a parent to cover ordinary student costs related to attendance at the participating school.
(e) This act does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

Section 13. (a) The resident school district, school district in which a participating student was last enrolled, or participating nonpublic school, as applicable, shall provide an education service provider that has enrolled the student with a complete copy of the school records of the student, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232.

(b) A participating school district may refuse to provide educational services to a participating student who resides outside of the school district or may establish a policy to provide educational services to nonresident students under certain conditions including, but not limited to, the payment of reasonable fees for attendance.

Section 14. Transferring participating students and participating schools shall maintain compliance with the constitution and bylaws established by the Alabama High School Athletic Association member schools.

Section 15. (a) In any legal proceeding challenging the application of this act to a participating education service provider, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary
and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the board, the state, or any local school district based on the award or use of an education savings account pursuant to this act.

(c) If any part of this act is challenged in a state court as violating either the state or federal constitution, the parent of any eligible participating student may intervene in the lawsuit for the purposes of defending the constitutionality of this act. For the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.

Section 16. This act shall become effective on the first day of the first month following its passage and approval by the Governor, or its otherwise becoming law.