



ACT #2023 - 418

- 1 SBKD85-3
- 2 By Senators Chesteen, Sessions, Melson, Williams, Reed,
- 3 Scofield
- 4 RFD: Finance and Taxation Education
- 5 First Read: 27-Apr-23
- 6 2023 Regular Session



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Enrolled, An Act,

Relating to the Alabama Accountability Act of 2013; to amend Sections 16-6D-3, 16-6D-4, 16-6D-6, 16-6D-8, and 16-6D-9, Code of Alabama 1975; to change the terms failing school and nonfailing school to priority school and qualifying school, respectively; to revise and add definitions; to expand scholarships for eligible students attending nonfailing or qualifying schools; to revise the poverty threshold for determining the qualifications of an eligible student; to provide for the qualifying expenses of eligible students with unique needs; to revise the method of determining the amount of educational scholarship awards; to increase the maximum cumulative amount of tax credits that may be issued each year; to require a scholarship granting organization to maintain a reserve balance and to verify the qualifications of an eligible student with unique needs; and to authorize the Department of Revenue to bar qualifying schools or educational service providers from participating in the program under certain circumstances.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 16-6D-3, 16-6D-4, 16-6D-6, 16-6D-8, and 16-6D-9 of the Code of Alabama 1975, are amended to read as follows:

"§16-6D-3

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



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(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



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57 priority public school to a ~~nonfailing~~ qualifying public
58 school or nonpublic school of the parent's choice."

59 "§16-6D-4

60 For the purposes of this chapter, the following terms
61 shall have the following meanings:

62 (1) ACADEMIC YEAR. The 12-month period beginning on
63 July 1 and ending on the following June 30.

64 (2) DEPARTMENT OF REVENUE. The Alabama Department of
65 Revenue.

66 (3) EDUCATIONAL SCHOLARSHIP. A grant made by a
67 scholarship granting organization to an eligible student to
68 cover all or part of the tuition and mandatory fees for one
69 academic year charged by a qualifying school to the eligible
70 student receiving the scholarship; provided, however, that an
71 educational scholarship shall not exceed ~~six thousand dollars~~
72 ~~(\$6,000)~~ ten thousand dollars (\$10,000) per ~~for~~ an elementary
73 ~~school~~ student, ~~eight thousand dollars (\$8,000)~~ ~~for~~ a middle
74 ~~school~~ student, ~~or ten thousand dollars (\$10,000)~~ ~~for~~ a high
75 ~~school~~ student per academic year. The term does not include a
76 lump sum, block grant, or similar payment by a scholarship
77 granting organization to a qualifying school that assigns the
78 responsibility in whole or in part for determining the
79 eligibility of scholarship recipients to the ~~qualifying~~ school
80 or any person or entity other than the scholarship granting
81 organization.

82 (4) EDUCATIONAL SERVICE PROVIDER. A licensed and
83 accredited program or service providing educational services
84 for students with unique needs and approved by the State



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Department of Education.

~~(4)~~(5) ELIGIBLE STUDENT.

a. A student who satisfies all of the following:

1. Is a member of a family whose total annual income the calendar year before he or she receives an educational scholarship under this program does not exceed ~~185~~ 250 percent of the federal poverty level, ~~the federally recognized threshold for receiving free or reduced priced lunch, as~~ established from time to time by the U.S. Department of Health and Human Services.

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

3. Resides in Alabama while receiving an educational scholarship.

b. A scholarship granting organization shall determine the eligibility of a student under subparagraph 1. of paragraph a. every other academic year in which a student receives an educational scholarship; provided that if the annual income of the family of a student who has received at least one educational scholarship exceeds ~~185~~ 250 percent of the federal poverty level, the existing student shall remain eligible to receive educational scholarships until and unless the annual income of the family of the student exceeds ~~275~~ 350 percent of the federal poverty level; provided, further that no student who has received at least one educational scholarship shall be eligible to receive educational scholarships if the annual income of his or her family exceeds



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113 ~~275~~ 350 percent of the federal poverty level.

114 (14) PRIORITY ~~(5) FAILING~~ SCHOOL. A public K-12 school
115 that is either of the following:

116 a. Is designated as a failing priority school by the
117 State Superintendent of Education.

118 b. Does not exclusively serve a special population of
119 students and ~~is listed in the lowest six percent of public~~
120 ~~K-12 schools based on the state standardized assessment in~~
121 reading and math has received a D or an F on the most recent
122 state report card.

123 (6) ELIGIBLE STUDENT WITH UNIQUE NEEDS.

124 a. A student who satisfies all of the following:

125 1. Is the subject of a current Individual Education
126 Plan, as defined in the Individuals with Disabilities Act, or
127 504 accommodation that has been issued according to Section
128 504 of the Rehabilitation Act of 1973. This includes, but is
129 not limited to, a student who has an intellectual disability
130 or is speech or language impaired, deaf or hard of hearing,
131 visually impaired, dual sensory impaired, physically impaired,
132 specific learning disabled, autistic, or hospitalized or home
133 bound because of illness or disability.

134 2. Has attended a primary or secondary school in this
135 state during the immediately preceding school year.

136 3. Is not currently enrolled in a public school or
137 public school program.

138 4. Is eligible to participate in the program regardless
139 of the academic performance of the resident school district.

140 5. Resides in Alabama while receiving an educational



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141 scholarship.

142 ~~(6)~~ (7) FAMILY. A group of two or more people related by
143 birth, marriage, or adoption, including foster children, who
144 reside together.

145 ~~(7)~~ (8) FLEXIBILITY CONTRACT. A school flexibility
146 contract between the local school system and the State Board
147 of Education wherein a local school system may apply for
148 programmatic flexibility or budgetary flexibility, or both,
149 from state laws, regulations, and policies, including
150 regulations and policies promulgated adopted by the State
151 Board of Education and the State Department of Education.

152 ~~(8)~~ (9) INNOVATION PLAN. The request of a local school
153 system for flexibility and plan for annual accountability
154 measures and five-year targets for all participating schools
155 within the school system.

156 ~~(9)~~ (10) LOCAL BOARD OF EDUCATION. A city or county
157 board of education that exercises management and control of a
158 local school system pursuant to state law.

159 ~~(10)~~ (11) LOCAL SCHOOL SYSTEM. A public agency that
160 establishes and supervises one or more public schools within
161 its geographical limits pursuant to state law.

162 ~~(11)~~ (12) NONPUBLIC SCHOOL. Any nonpublic or private
163 school, including parochial schools, not under the
164 jurisdiction of the State Superintendent of Education and the
165 State Board of Education, providing educational services to
166 children. A nonpublic school provides education to elementary
167 or secondary, or both, students and has notified the
168 Department of Revenue of its intention to participate in the



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scholarship program and comply with the requirements of the scholarship program. A nonpublic school does not include home schooling.

~~(12)~~ (13) PARENT. The parent or guardian of a student, with authority to act on behalf of the student. For purposes of Section 16-6D-8, the parent or guardian shall claim the student as a dependent on his or her Alabama state income tax return.

(15) PRIVATE TUTORING. Tutoring services provided by a tutor certified by the state or accredited by a regional or national accrediting organization.

(16) PROGRAM. The Alabama Accountability Act Scholarship Program.

(17) QUALIFYING EXPENSES TO EDUCATE AN ELIGIBLE STUDENT WITH UNIQUE NEEDS:

- a. Tuition and fees at a qualifying school.
- b. Textbooks required by a qualifying school.
- c. Payment to a licensed or accredited tutor.
- d. Payment for the purchase of curriculum or instructional material.
- e. Tuition and fees for an approved nonpublic online learning program.
- f. Educational services for an eligible student with unique needs from a licensed or accredited practitioner or provider.
- g. Contracted services from a public school district, including individual classes.

~~(13)~~ (18) QUALIFYING SCHOOL.

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197 a. Either a public school outside of the resident
198 school district that is not considered ~~failing~~ within the
199 ~~meaning of subdivision (5)~~ a priority school or any nonpublic
200 school ~~as defined in subdivision (11)~~ and that satisfies the
201 requirements of this subdivision. A qualifying nonpublic
202 school shall be accredited by one of the six regional
203 accrediting agencies or the National Council for Private
204 School Accreditation, AdvancEd, the American Association of
205 Christian Schools, or one of their partner accrediting
206 agencies. A nonpublic school shall have three years from the
207 later of the date the nonpublic school notified the Department
208 of Revenue of its intent to participate in the scholarship
209 program or June 10, 2015, to obtain the required accreditation
210 and shall thereafter maintain accreditation as required by
211 this subdivision. During the three-year period described in
212 the immediately preceding sentence, a nonpublic school that is
213 not accredited shall satisfy all of the following conditions
214 until the nonpublic school obtains accreditation:

- 215 1. Has been in existence for at least three years.
- 216 2. Has daily attendance of at least 85 percent over a
217 two-year period.
- 218 3. Has a minimum 180-day school year, or its hourly
219 equivalent.
- 220 4. Has a day length of at least six and one-half hours.
- 221 5. Requires all students to take the Stanford
222 Achievement Test, or its equivalent.
- 223 6. Requires all candidates for graduation to take the
224 American College Test before graduation.



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7. Requires students in high school in grades nine through 12 to earn a minimum of 24 credits before graduating, including 16 credits in core subjects, and each awarded credit shall consist of a minimum of 140 instructional hours.

8. Does not subject ~~special education~~ eligible students with unique needs to the same testing or curricular requirements as regular education students if it is not required in the individual plan for the student.

9. Maintains a website that describes the school, the instructional program of the school, and the tuition and mandatory fees charged by the school, updated prior to the beginning of each semester.

10. Annually affirms on forms prescribed by the scholarship granting organization and the Department of Revenue its status financially and academically and provide other relative information as required by the scholarship granting organization or as otherwise required in this chapter.

b. A nonpublic school that is not accredited and that has not been in existence for at least three years shall nevertheless be considered a qualifying school if, in addition to satisfying the requirements in subparagraphs 2. to 10., inclusive, of paragraph a., the nonpublic school operates under the governance of the board of directors or the equivalent thereof of an accredited nonpublic school. For purposes of the immediately preceding sentence, the term governance shall include, but not be limited to, curriculum oversight, personnel and facility management, and financial



management. If, at the conclusion of the three-year period in which a nonpublic school is required to obtain accreditation, a nonpublic school is not accredited, the nonpublic school shall not be considered a qualifying school and shall not receive any funds from a scholarship granting organization until the nonpublic school obtains the accreditation required by this subdivision.

(19) RESIDENT SCHOOL DISTRICT. The public school district in which the student resides.

~~(14)~~ (20) SCHOLARSHIP GRANTING ORGANIZATION. An organization that provides or is approved to provide educational scholarships to eligible students and eligible students with unique needs attending qualifying schools of their parents' choice."

"§16-6D-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~~ adopted 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



281 innovative schools, under state and federal accountability
282 requirements.

283 (c) A local school system may not, pursuant to this
284 chapter, waive requirements imposed by federal law,
285 requirements related to the health and safety of students or
286 employees, requirements imposed by ethics laws, requirements
287 imposed by the Alabama Child Protection Act of 1999, Chapter
288 22A of this title, requirements imposed by open records or
289 open meetings laws, requirements related to financial or
290 academic reporting or transparency, requirements designed to
291 protect the civil rights of students or employees,
292 requirements related to the state retirement system or state
293 health insurance plan, or requirements imposed by Act
294 2012-482. This chapter may not be construed to allow a local
295 school system to compensate an employee at an annual amount
296 that is less than the amount the employee would otherwise be
297 afforded through the State Minimum Salary Schedule included in
298 the annual Education Trust Fund Appropriations Act. No local
299 school system shall involuntarily remove any rights or
300 privileges acquired by any employee under the Students First
301 Act of 2011, Chapter 24C of this title. Except as provided for
302 a failing priority school pursuant to subsection (e), no plan
303 or program submitted by a local board of education may be used
304 to deny any right or privilege granted to a new employee
305 pursuant to the Students First Act of 2011.

306 (d) Any provision of subsection (c) to the contrary
307 notwithstanding, upon recommendation by the local
308 superintendent and approval of the local board of education, a



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309 priority school shall have the same flexibility provided to a
310 public conversion charter school so long as the priority
311 school shows growth in student assessments. If student growth
312 does not occur within five years, flexibility shall be
313 revoked.

314 ~~(d)~~ (e) No provision of this chapter shall be construed
315 or shall be used to authorize the formation of a charter
316 school.

317 ~~(e)~~ (f) Any provision of subsection (c) to the contrary
318 notwithstanding, nothing in this chapter shall be construed to
319 prohibit the approval of a flexibility contract that gives
320 potential, current, or future employees of a failing priority
321 school within the local school system the option to
322 voluntarily waive any rights or privileges already acquired or
323 that could potentially be acquired as a result of attaining
324 tenure or nonprobationary status, provided, however, that any
325 employee provided this option is also provided the option of
326 retaining or potentially obtaining any rights or privileges
327 provided under the Students First Act, Chapter 24C of this
328 title.

329 ~~(f)~~ (g) The State Department of Education shall finalize
330 all school data and the local school system shall seek
331 approval of the local board of education before final
332 submission to the State Department of Education and the State
333 Board of Education.

334 ~~(g)~~ (h) The final innovation plan, as recommended by the
335 local superintendent of education and approved by the local
336 board of education, shall accompany the formal submission of



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the local school system to the State Department of Education.

~~(h)~~ (i) 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)~~ (j) The State Board of Education shall promulgate any necessary rules and regulations required to implement this chapter 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."

"§16-6D-3



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(a) To provide educational flexibility and state accountability for students in failing priority 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 priority school to help offset the cost of transferring the student to a nonfailing qualifying 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 qualifying public school or nonpublic school, whichever is less. The actual cost of attending a nonfailing qualifying public school or nonpublic school shall be calculated by adding together any tuition amounts or mandatory fees charged by the school to the student as a condition of enrolling or of maintaining enrollment in the school. The average annual state cost of attendance for a public K-12 student shall be calculated by dividing the state funds appropriated to the Foundation Program pursuant to Section 16-13-231(b)(2) by the total statewide number of pupils in average daily membership during the first 20 scholastic days following Labor Day of the preceding school year. For each student who was enrolled in and attended a failing priority school the previous semester whose parent receives an income tax credit under this section, an amount equal to 20 percent of the average annual state cost of attendance for a public K-12 student during the applicable tax



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year shall be allocated, for as long as the parent receives the tax credit, to the ailing priority school from which the student transferred if the student transfers to and remains enrolled in a nonpublic school. No such allocation shall be made in the event the student transfers to or enrolls in a nonailing qualifying public school. The Department of Education shall determine the best method of ensuring that the foregoing allocation provisions are properly implemented. 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 such a 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 ailing priority school, certification by the parent that the student was subsequently transferred to, and was enrolled and attended, a nonailing qualifying 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 nonailing qualifying public school or



nonpublic school. For purposes of the tax credit authorized by this section, costs of attendance does not include any such costs incurred for an academic year prior to the 2013-2014 academic year. 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 Priority Schools Income 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.

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

(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 priority school to a nonfailing qualifying 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 priority school and the attendance of the student occurred



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449 during a school year in which the designation was in effect.

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

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

455 (2) This section does not apply to a student who is
456 enrolled in the Department of Youth Services School District.

457 (3) For the purposes of continuity of educational
458 choice, the tax credit shall be available to parents for those
459 grade levels of the ~~failing~~ priority school from which the
460 student transferred. The parent of a student who transfers
461 from a ~~failing~~ priority school may receive income tax credits
462 for those grade levels enrolled in and attended in the
463 ~~nonfailing~~ qualifying public school or nonpublic school of the
464 parent's choice transferred to that were included in the
465 ~~failing~~ priority school from which the student transferred,
466 whether or not the ~~failing~~ priority school becomes a
467 ~~nonfailing~~ qualifying school during those years. The parent of
468 such a student shall no longer be eligible for the income tax
469 credit after the student completes the highest grade level in
470 which he or she would otherwise have been enrolled at the
471 ~~failing~~ priority school. Notwithstanding the foregoing, as
472 long as the student remains enrolled in or assigned to attend
473 a ~~failing~~ priority school, the parent may again transfer the
474 student to a ~~nonfailing~~ qualifying public school or nonpublic
475 school of the parent's choice and request and receive an
476 income tax credit as provided in this section.



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477 ~~(4)~~(c) A local school system, for each student enrolled
478 in or assigned to a failing priority school, shall do ~~all~~ both
479 of the following:

480 ~~a.~~(1) Timely notify the parent of the student of all
481 options available under this section as soon as the school of
482 attendance is designated as a failing priority school.

483 ~~b.~~(2) Offer the parent of the student an opportunity to
484 enroll the student in another public school within the local
485 school system that is not a failing priority school or a
486 failing priority school to which the student has been
487 assigned.

488 ~~(5)~~(d) The parent of a student enrolled in or assigned
489 to a school that has been designated as a failing priority
490 school, who decides to transfer the student to a ~~nonfailing~~
491 qualifying public school, shall first attempt to enroll the
492 student in a ~~nonfailing~~ qualifying public school within the
493 same local system in which the student is already enrolled or
494 assigned to attend before attempting to enroll the student in
495 a ~~nonfailing~~ qualifying public school that has available space
496 in any other local school system in the state. A local school
497 system may accept the student on whatever terms and conditions
498 the system establishes and report the student for purposes of
499 the local school system's funding pursuant to the Foundation
500 Program.

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



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~~(7)~~(f) ~~Students with disabilities~~ Eligible students with unique needs 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. The local school system shall be reimbursed by the scholarship granting organization for all contracted services provided to an eligible student and an eligible student with unique needs.

~~(8)~~(g) If a parent enrolls a student in a ~~nonfailing~~ qualifying public school within the same local school system, and that system provides transportation services for other enrolled students, transportation costs to the ~~nonfailing~~ qualifying public school shall be the responsibility of the local school system. Local school systems may negotiate transportation options with a parent to minimize system costs. If a parent enrolls a student in a nonpublic school or in a ~~nonfailing~~ qualifying public school within another local school system, regardless of whether that system provides transportation services for other enrolled students, transportation of the student shall be the responsibility of the parent.

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

~~(e)~~(i) There is created within the Education Trust Fund a separate account named the ~~Failing~~ Priority Schools Income



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Tax Credit Account. The Commissioner of Revenue shall certify to the Comptroller the amount of income tax credits due to parents under this section and the Comptroller shall transfer into the Failing Priority 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 distribute the funds in the Failing Priority Schools Income Tax Credit Account to parents pursuant to this section.

~~(d)~~ (j) (1) Nothing in this section or chapter shall be construed to force any public school, school system, or school district or any nonpublic school, school system, or school district to enroll any student.

(2) A public school, school system, or school district or any nonpublic school, school system, or school district may develop the terms and conditions under which it will allow a student whose parent receives an income tax credit pursuant to this section to be enrolled, but such terms and conditions may not discriminate on the basis of the race, gender, religion, color, disability status, or ethnicity of the student or of the student's parent.

(3) Nothing in this section shall be construed to authorize the violation of or supersede the authority of any court ruling that applies to the public school, school system, or school district, specifically any federal court order related to the desegregation of the local school system's student population."



561 "§16-6D-9

562 (a)(1) An individual taxpayer who files a state income
563 tax return and is not claimed as a dependent of another
564 taxpayer, a taxpayer subject to the corporate income tax
565 levied by Chapter 18 of Title 40, an Alabama S corporation as
566 fined in Section 40-18-160, or a Subchapter K entity as
567 fined in Section 40-18-1 may claim a credit for a
568 contribution made to a scholarship granting organization. If
569 the credit is claimed by an Alabama S corporation or
570 Subchapter K entity, the credit shall pass through to and may
571 be claimed by any taxpayer eligible to claim a credit under
572 this subdivision who is a shareholder, partner, or member
573 thereof, based on the taxpayer's pro rata or distributive
574 share, respectively, of the credit.

575 (2) The tax credit may be claimed by an individual
576 taxpayer or a married couple filing jointly in an amount equal
577 to 100 percent of the total contributions the taxpayer made to
578 a scholarship granting organization for educational
579 scholarships during the taxable year for which the credit is
580 claimed, up to 100 percent of the tax liability of the
581 individual taxpayer, not to exceed one hundred thousand
582 dollars (\$100,000) per individual taxpayer or married couple
583 filing jointly. For purposes of this section, an individual
584 taxpayer includes an individual who is a shareholder of an
585 Alabama S corporation or a partner or member of a Subchapter K
586 entity that made a contribution to a scholarship granting
587 organization.

588 (3) The tax credit may be claimed by a taxpayer subject



to the Alabama corporate income tax in an amount equal to 100 percent of the total contributions the taxpayer made to a scholarship granting organization for educational scholarships during the taxable year for which the credit is claimed, up to 100 percent of the tax liability of the taxpayer.

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

(5) The cumulative amount of tax credits issued pursuant to subdivision (2) and subdivision (3) shall not exceed ~~thirty million dollars (\$30,000,000)~~ forty million dollars (\$40,000,000) annually, based on the calendar year. If the cumulative amount of tax credits issued exceeds 90 percent of the set cap for three out of four consecutive years, there will be an automatic increase of ten million dollars (\$10,000,000) until the cumulative amount of tax credits issued reaches sixty million dollars (\$60,000,000). A taxpayer making one or more otherwise tax-creditable contributions before the due date, with extensions, of a timely filed 2014 tax return may elect to treat all or a portion of such contributions as applying to and creditable against its 2014 Alabama income tax liability, if the taxpayer properly reserves the credit on the website of the Department of Revenue or another method provided by the Department of Revenue. The amount creditable against the taxpayer's 2014 income tax liability shall be limited to the lesser of the amount so designated or the remaining balance, if any, of the



617 cumulative amount of the twenty f million dollars
 618 (\$25,000,000) of tax credits available for the 2014 calendar
 619 year. No such contribution and election by a taxpayer to
 620 reserve tax credits against t remaining balance of the
 621 cumulative amount of tax credits available for 2014 shall
 622 preclude the taxpayer from making additional contributions in
 623 2015 and reserving those amounts against the cumulative amoun
 624 of tax credits available for 2015. The Department of Revenue
 625 shall velop a procedure to ensure that this cap is not
 626 exceeded and shall also prescr the various methods by which
 627 these credits are to be issued.

628 (6) No credit may be claimed for a contribution ma to
 629 a scholarship granting organization if the contribution is
 630 restricted or conditioned in any way by the donor including,
 631 but not limited to, requiring the scholarship granting
 632 organization to direct all or rt of the contribution to a
 633 particular qualifying school or to grant an educational
 634 scholarship to a particular eli le student.

635 (b)(1) ADMINISTRATIVE ACCOUNTABIL TY STANDARDS. All
 636 scholarsh granting organizations shall do all of the
 637 following:

638 a. Notify the Department of Revenue of their intent to
 639 provide educational scholarships to eligible students.

640 b. Demonstrate to the rtment of Revenue that they
 641 have been granted exemption from the federal income tax as an
 642 organization described in Section 501(c)(3) of the Internal
 643 Revenue Code, as in effect from t to time.

644 c. Distribute periodic educational scholarship payments



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as checks made out and mailed to or directly deposited with 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 all determinations with respect to the eligibility of a student to receive an educational scholarship shall be made by the scholarship granting organization. A scholarship granting organization shall not delegate any responsibility for determining the eligibility of a student for an educational scholarship or any other requirements it is subject to under this chapter to any qualifying school or an entity affiliated therewith.

f. Verify that a student who is receiving an educational scholarship as an eligible student with unique needs satisfies the qualifications provided in subdivision (6) of Section 16-6D-4, before the first day of every other instructional year for which the student receives the educational scholarship.

~~f.g.~~ Ensure that at least 95 percent of their revenue from donations is expended on educational scholarships, and that all revenue from interest or investments is expended on educational scholarships. A scholarship granting organization may expend up to five percent of its revenue from donations on administrative and operating expenses in the calendar year of the donation or in any subsequent calendar year.

~~g.h.~~ Ensure that scholarship funds on hand at the beginning of a calendar year are expended on educational



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scholarships within three calendar years. Any scholarship funds on hand at the beginning of a calendar year that are not expended on educational scholarships within three calendar years shall be turned over to and deposited with the State Department of Education for the benefit of its At-Risk Student Program to be distributed to local boards of education on the basis determined by the State Department of Education in furtherance of support to underperforming schools.

h.i. Ensure that at least 75 percent of first-time recipients of educational scholarships were not continuously enrolled in a private school during the previous academic year. To ensure compliance with this paragraph, the local board of education of the local school system in which an eligible student applying for an educational scholarship resides, upon written request by a parent, shall provide written verification that a particular address is in the attendance zone of a specified public school. The State Department of Education shall provide written verification of enrollment in a priority school under this chapter. With respect to first time educational scholarship recipients, scholarship granting organizations shall give priority to eligible students who are zoned to attend a priority school over eligible students who are not zoned to attend a priority school.

j. Ensure that 25 percent of first-time recipients of educational scholarships are not zoned for a priority school and were not continuously enrolled in a private school during the previous academic year.



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701 ~~i.~~k. Cooperate with the Department of Revenue to
702 conduct criminal background checks on all of their employees
703 and board members and exclude from employment or governance
704 any individual who may reasonably pose a risk to the
705 appropriate use of contributed funds.

706 ~~j.~~l. Ensure that educational scholarships are portable
707 during the academic year and can be used at any qualifying
708 school that accepts the eligible student according to the
709 wishes of the parent. If an eligible student transfers to
710 another qualifying school during an academic year, the
711 educational scholarship amount may be prorated.

712 ~~k.~~m. Publicly report to the Department of Revenue by
713 September 1 of each year all of the following information
714 prepared by a certified public accountant regarding their
715 educational scholarships funded in the previous academic year:

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

718 2. The total number and total dollar amount of
719 contributions received during the previous academic year.

720 3. The total number and total dollar amount of
721 educational scholarships awarded and funded during the
722 previous academic year, the total number and total dollar
723 amount of educational scholarships awarded and funded during
724 the previous academic year for students qualifying for the
725 federal free and reduced-price lunch program, and the
726 percentage of first-time recipients of educational
727 scholarships who were enrolled in a public school during the
728 previous academic year.



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729 ~~l.n.~~ Publicly report to the Department of Revenue, by
730 the 15th day after the close of each calendar quarter, all of
731 the following information about educational scholarships
732 granted during the quarter:

733 1. The total number of scholarships awarded and funded.

734 2. The names of the qualifying schools that received
735 funding for educational scholarships, the total amount of
736 funds paid to each qualifying school, and the total number of
737 scholarship recipients enrolled in each qualifying school.

738 3. The total number of eligible students zoned to
739 attend a failing priority school who received educational
740 scholarships from the scholarship granting organization.

741 4. The total number of first time scholarship
742 recipients who were continuously enrolled in a nonpublic
743 school prior to receiving an educational scholarship from that
744 scholarship granting organization.

745 ~~m.o.~~ Ensure that educational scholarships are not
746 provided for eligible students to attend a school with paid
747 staff or board members, or relatives thereof, in common with
748 the scholarship granting organization.

749 ~~n.p.~~ Ensure that educational scholarships are provided
750 in a manner that does not discriminate based on the gender,
751 race, or disability status of the scholarship applicant or his
752 or her parent.

753 e. Ensure that educational scholarships are provided
754 only to eligible students who are zoned to attend a failing
755 school so that the eligible student can attend a qualifying
756 school. To ensure compliance with the immediately preceding



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757 sentence, the local board of education for the county or
758 municipality in which an eligible student applying for an
759 educational scholarship resides, upon written request by a
760 parent, shall provide written verification that a particular
761 address is in the attendance zone of a specified public
762 school. The State Department of Education shall provide
763 written verification of enrollment in a failing school under
764 this chapter. With respect to first time educational
765 scholarship recipients, scholarship granting organizations
766 shall give priority to eligible students zoned to attend
767 failing schools over eligible students not zoned to attend
768 failing schools.

769 q. Any scholarship funds unaccounted for on July 31st
770 June 30 of each calendar year may be made available to
771 eligible students to defray the costs of attending a
772 qualifying school, whether or not the student is zoned to
773 attend a failing priority school. Any provision of this
774 section to the contrary notwithstanding, once an eligible
775 student receives an educational scholarship under this
776 program, scholarship funds may be made available to the
777 student for educational scholarships until the student
778 graduates from high school or reaches 19 years of age,
779 regardless of whether the student is zoned to attend a failing
780 priority school, subject to the income eligibility
781 requirements of paragraph (5)b. of ~~subdivision~~ (4) of Section
782 16-6D-4.

783 r. An eligible student who enrolls in a public school
784 or public school program is considered to have terminated his



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785 or her participation in the program. Any remaining scholarship
786 funds shall be paid to the public school system in which the
787 eligible student enrolls.

788 p.s. Ensure that no donations are directly made to
789 benefit specifically designated scholarship recipients or to
790 particular qualifying schools.

791 q.t. Submit to the Department of Revenue annual
792 verification of the scholarship granting organization's
793 policies and procedures used to determine scholarship
794 eligibility. The verification shall confirm that the
795 scholarship granting organization, and not one or more
796 qualifying schools accepting educational scholarship
797 recipients or scholarship funds, is determining whether
798 scholarship applicants are eligible to receive educational
799 scholarships. The verification shall also confirm that the
800 scholarship granting organization is giving priority to
801 receive an educational scholarship to eligible students zoned
802 to attend falling priority schools.

803 r.u. Submit to the Department of Revenue annual
804 verification that none of its actions or policies restricts a
805 parent's educational choice by limiting or prohibiting the
806 enrollment of eligible students in a qualifying school if
807 those eligible students received educational scholarships from
808 other scholarship granting organizations.

809 (2) FINANCIAL ACCOUNTABILITY STANDARDS.

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



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813 1. Maintaining a 10 percent reserve balance.

814 ~~1.~~2. Annually submitting to the Department of Revenue a
815 financial information report for the scholarship granting
816 organization that complies with uniform financial accounting
817 standards established by the Department of Revenue and
818 conducted by a certified public accountant.

819 ~~2.~~3. Having the auditor certify that the report is free
820 of material misstatements.

821 b. All qualifying nonpublic schools shall demonstrate
822 financial viability, if they are to receive donations of fifty
823 thousand dollars (\$50,000) or more during the academic year,
824 by doing either of the following:

825 1. Filing with the scholarship granting organization
826 prior to receipt of the first educational scholarship payment
827 for that academic year a surety bond payable to the
828 scholarship granting organization in an amount equal to the
829 aggregate amount of scholarship funds expected to be received
830 during the academic year.

831 2. Filing with the scholarship granting organization
832 prior to receipt of the first educational scholarship payment
833 for that academic year financial information that demonstrates
834 the financial viability of the qualifying nonpublic school.

835 c. A qualifying school, private tutor, or other
836 educational service provider may not refund, rebate, or share
837 a student's scholarship with a parent or the student in any
838 manner.

839 (c)(1) Each scholarship granting organization shall
840 annually collect and submit to the Department of Revenue with



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the annual report required by paragraph ~~k.~~ of subdivision (1) of subsection (b) (1)m. written verification from qualifying 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.

c. Certify compliance with nondiscrimination policies set forth in 42 U.S.C. §1981.

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) By August 1 of each year, each qualifying nonpublic school shall provide to each scholarship granting organization from which it receives educational scholarships verification that the qualifying nonpublic school is in compliance with the Alabama Child Protection Act of 1999, Chapter 22A of this title. Any qualifying nonpublic school failing to timely provide such annual verification shall be prohibited from participating in the scholarship program. Each scholarship granting organization shall annually submit to the Department of Revenue with the annual report required by paragraph ~~k.~~ of subdivision (1) of subsection (b) (1)m. copies of the written verifications it receives from each qualifying nonpublic



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school.

(3) ACADEMIC ACCOUNTABILITY STANDARDS. There shall be sufficient information about the academic impact educational scholarship tax credits have on students participating in the tax credit scholarship program 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 qualifying schools that accept its educational scholarship students 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 students receiving an educational scholarship in grades that require testing under the accountability testing laws of the state for public schools, in order that the state can compare the academic achievement and learning gains of students receiving educational scholarships with students of the same socioeconomic and educational backgrounds who are taking the state achievement tests or nationally norm-referenced tests. An eligible student with unique needs for whom standardized testing is not appropriate, as outlined in his or her individualized education plan (IEP), is exempt from the requirements of this subparagraph.

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

3. Provide the parents of each student who was tested



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897 with a copy of the results of the tests on an annual basis,
898 beginning with the first year of testing.

899 4. Provide the test results to the Department of
900 Revenue on an annual basis, beginning with the first year of
901 testing.

902 5. Report student information that allows the state to
903 aggregate data by grade level, gender, family income level,
904 and race.

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

909 7. Ensure that a student who receives an educational
910 scholarship conforms to the attendance requirements of the
911 qualifying school. If a student fails to conform, the
912 qualifying school shall immediately communicate the failure to
913 the applicable scholarship granting organization.

914 8. Ensure that an eligible student with unique needs
915 who satisfies the requirements outlined in subparagraph 1., is
916 exempt from taking state achievement tests.

917 9. Ensure that an eligible student with unique needs is
918 not enrolled in a public school or public school program while
919 participating in the scholarship program.

920 b. The Department of Revenue may bar a qualifying
921 school or educational service provider from the program if the
922 Department of Revenue discovers that the qualifying school or
923 educational service provider has done any of the following:

924 1. Routinely failed to comply with the accountability



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standards established in this chapter.

2. Failed to provide the eligible student with the educational services funded by the program.

c. If the Department of Revenue makes the determination to bar a qualifying school or educational service provider from the program, the Department of Revenue shall notify eligible students and their parents of this decision as soon as practicable. The Department of Revenue shall coordinate the timing to coincide with the end of the school year.

b.d.1. The Department of Revenue shall select an independent research organization, which may be a public or private entity or university, to analyze the results of the testing required by paragraph a. every other academic year. The cost of analyzing and reporting on the test results to the Department of Revenue by the independent research organization shall be borne by all scholarship granting organizations in proportion to the total scholarship donations received for the two calendar years prior to the report being published. Scholarship granting organizations may receive and use funds from outside sources to pay for its share of the biennial report.

2. The independent research organization shall report to the Department of Revenue every other year on the learning gains of students receiving educational scholarships and the report 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 receiving an educational scholarship. The report shall also include, to



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the extent possible, a comparison of the learning gains of students participating in the tax credit scholarship program to the statewide learning gains of public school students with socioeconomic and educational backgrounds similar to those students participating in the tax credit scholarship program.

3. The first report under this paragraph shall be submitted to the Department of Revenue by September 1, 2016. Each biennial report thereafter shall be submitted to the Department of Revenue on September 1 of the year the report is due. All biennial reports required by this paragraph shall be published on the website of the Department of Revenue.

4. Each scholarship granting organization shall collect all test results from qualifying schools accepting its scholarship recipients and turn over such test results to the independent research organization described in this paragraph by August 15 of each calendar year.

5. The sharing and reporting of student learning gain data under this paragraph shall conform to the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g., and shall be for the sole purpose of creating the biennial report required by this paragraph. All parties shall preserve the confidentiality of such information as required by law. The biennial report shall not disaggregate data to a level that could identify qualifying schools participating in the tax credit scholarship program or disclose the academic level of individual students.

6. At the same time the biennial report under subparagraph 2. is submitted to the Department of Revenue, it



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shall be submitted to the Chair of the Senate Education Policy Committee and the Chair of the House Education Policy Committee.

(d)(1) The Department of Revenue shall adopt rules and procedures consistent with this section as necessary.

(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 paragraphs ~~k. and l.~~ of ~~subdivision (1) of subsection~~ (b)(1)m. and (b)(1)n.

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

(5) The Department of Revenue may bar a scholarship granting organization or a qualifying school from participating in the tax credit scholarship program if the Department of Revenue establishes that the scholarship granting organization or the qualifying school 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 or a qualifying school from the tax credit scholarship program, the Department of Revenue



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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.

(8) The Department of Revenue shall publish and make publicly available on its website all annual and quarterly reports required to be filed with it by scholarship granting organizations under paragraphs k. and l. of subdivision (1) of subsection (b).

(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.

(3) All qualifying nonpublic schools participating in the tax credit scholarship program shall maintain a website that describes the school, the instructional program of the school, and the tuition and mandatory fees charged by the school, updated prior to the beginning of each semester.

(4) The amount of a scholarship awarded a student to attend a nonpublic school may not exceed the total sum of tuition and mandatory fees normally charged a student to attend the nonpublic school for the same attendance period. The amount of a scholarship awarded a student to attend a public school may not exceed the total state appropriation



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provided for a student to attend the public school for the same attendance period.

(f) The tax credit provided in this section may be first claimed for the 2013 tax year, but may not be claimed for any tax year prior to the 2013 tax year.

(g) (1) Nothing in this section shall be construed to force any public school, school system, or school district or any nonpublic school, school system, or school district to enroll any student. No qualifying school may enter into any agreement, whether oral or written, with a scholarship granting organization that would prohibit or limit an eligible student from enrolling in the school based on the identity of the scholarship granting organization from which the eligible student received an educational scholarship.

(2) A public school, school system, or school district or any nonpublic school, school system, or school district may develop the terms and conditions under which it will allow a student who receives a scholarship from a scholarship granting organization pursuant to this section to be enrolled, but such terms and conditions may not discriminate on the basis of the race, gender, religion, disability status, or ethnicity of the student or of the student's parent.

(3) Nothing in this section shall be construed to authorize the violation of or supersede the authority of any court ruling that applies to the public school, school system, or school district, specifically any federal court order related to the desegregation of the local school system's student population.



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1065 (h) Nothing in this chapter shall affect or change the
1066 athletic eligibility rules of student athletes governed by the
1067 Alabama High School Athletic Association or similar
1068 association."

1069 Section 2. This act shall become effective on the first
1070 day of the third month following its passage and approval by
1071 the Governor, or its otherwise becoming law.



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President and Presiding Officer

Senate

Speaker of the House of Representatives

SB263

Senate 23-May-23

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives

Passed: 31-May-23

By: Senator Chesteen

APPROVED

TIME

GOVERNOR

Alabama Secretary Of State

Act Num....: 2023-418
Bill Num....: S-263

Recv'd 06/08/23 10:54amSLF

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PONSORS

ssions 19

nelson 20

williams 21

Seed 22

cafield 23

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SENATE ACTION

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 263.

yeas 25 nays 8 abstain 0

PATRICK HARRIS,
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB _____ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,
Secretary

CONFERENCE COMMITTEE

Senate Conferees _____

HOUSE ACTION

DATE: 5-24 2023

RD 1 RFD NAME

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on Ways & Means Education was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed, w/amend(s) _____ w/sub _____. This 25th day of May, 2023.

Danny Garrett Chairperson

DATE: 5-25 2023

RF RD 2 CAL

DATE: 20__

RE-REFERRED ☐ RE-COMMITTED ☐

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 263

YEAS _____ NAYS _____

JOHN TREADWELL,
Clerk