SENATE EDUCATION COMMITTEE SUBSTITUTE TO SB360

SYNOPSIS: This bill would amend the Alabama Accountability Act of 2013, to specify options available for students within a failing school.

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 3, 4, 8 and 9 of the Alabama Accountability Act of 2013, Act 2013-64, proposed by House Bill 84 of the 2013 Regular Session (Acts 2013); to make available options for students in failing schools.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 3, 4, 8 and 9 of the Alabama Accountability Act of 2013, Act-64, proposed by House Bill 84 of the 2013 Regular Session (Acts 2013), are amended to read as follows:

"Section 3. (a) The Legislature finds and declares all of the following:
"(1) To further the goals of public education throughout the state, each school system should be able to have maximum possible flexibility to meet the needs of students and the communities within its jurisdiction.

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

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

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

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

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

"(3) Encourage innovation in education by providing local school systems and school administrators with greater control over decisions including, but not limited to, budgetary matters, staffing, personnel, scheduling, and educational programming, including curriculum and instruction.
"(4) Provide financial assistance through an income tax credit to a parent who transfers a student from a failing public school to a nonfailing public school or nonpublic school of the parent's choice."

"Section 4. For the purposes of this act, the following terms shall have the following meanings:

"(1) EDUCATIONAL SCHOLARSHIPS. Grants to any qualifying school to cover all or part of the tuition and fees at the school for an eligible student.

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

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

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

"c. Resides in Alabama while receiving an educational scholarship.

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

"1. A school among the lowest five percent of schools in the State for three consecutive years based on the achievement of the "all students" group in terms of proficiency on the statewide assessments that are part of the State Department of Education's differentiated recognition, accountability, and support system. Each three years following the effective date of this act this figure shall increase by one percent (1%) to a maximum of ten percent (10%)."

"2. Notwithstanding any provision of law to the contrary, a failing school shall not be a school established pursuant to Chapter 39, of Title 16, Code of Alabama 1975.

"The State Superintendent of Education shall have the authority to remove the designation of a certain school as a failing school if he/she determines that such action is needed and/or warranted.

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

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

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

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

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

"(9) QUALIFYING NONPUBLIC SCHOOL. Any nonpublic or private school, including parochial schools, not under the jurisdiction of the State Superintendent of Education and the State Board of Education, providing educational services to children. A qualifying nonpublic school is accredited by a state recognized accrediting agency that provides education to elementary or secondary, or both, students and has notified the State Department of Revenue of its intention to participate in the scholarship program and comply with the requirements of the scholarship program. A nonpublic school does not include home schooling.
"(10) PARENT. The parent or legal guardian of a student, with authority to act on behalf of the student, who claims the student as a dependent on his or her federal income tax return.

"(11) QUALIFYING SCHOOL. Either a public school outside of the resident school district that is not considered failing under either state or federal standards or any nonpublic school as defined in this act or that satisfies the compulsory attendance requirements provided in Section 16-28-7, Code of Alabama 1975. A qualified nonpublic school shall be accredited by one of the six regional accrediting agencies or, if not so accredited, shall satisfy all of the following conditions, in addition to those set out in subsection (9) of this section:

"a. Be in existence for at least three years.

"b. Have daily attendance of at least 85 percent over a two-year period.

"c. Have a minimum 180-day school year, or its hourly equivalent.

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

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

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

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

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

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

"j. Annually affirm on forms prescribed by the scholarship granting organization and the department its status financially and academically and provide other relative information as required by the scholarship granting organization or as otherwise required in this act.

"(12) SCHOLARSHIP GRANTING ORGANIZATION. An organization that provides or is approved to provide educational scholarships to students attending qualifying schools of their parents' choice.

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

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

"(1) For tax years beginning on and after January 1, 2013, an Alabama income tax credit is made available to the parent of a student enrolled in or assigned to attend a failing school to help offset the cost of transferring the
student to a nonfailing public school or qualifying nonpublic school of the parent's choice. The income tax credit authorized by this section shall only be available to the parent of a student who is transferring after attending a failing school for two consecutive semesters or is assigned to a failing school for the first time and has been enrolled in public school for the previous two semesters. 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 tuition and other direct costs of attending a nonfailing public school or qualifying nonpublic school, whichever is less. A parent is allowed a credit against income tax for each taxable year under the terms established in this section. If income taxes owed by the parent are less than the total credit allowed for tuition and/or other costs under this subsection, the taxpayer shall be entitled to a refund or rebate, as the case may be, equal to the balance of the unused credit with respect to that taxable year.

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

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

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

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

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

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

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

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

"(3) For the purposes of continuity of educational choice, the tax credit shall be available to parents for those grade levels of the failing school from which the student transferred. The parent of a student who transfers from a failing school may receive income tax credits for expenditures of tuition and/or other direct costs as set forth in this act, for those grade levels enrolled in and attended in the nonfailing public school or a qualifying nonpublic school of the parent's choice transferred to that were was included in the failing school from which the student transferred, whether or not the failing school becomes a nonfailing school during those years. The student shall return
to his or her original local school system of attendance when he or she completes the highest grade level of the failing school transferred from in the nonfailing public school or the qualifying nonpublic school of the parent's choice. If the public school the student returns to is a failing school, the parent may again transfer the student to a nonfailing public school or qualifying nonpublic school of the parent's choice and request and receive an income tax credit as provided in this section.

"+(4)+(3) A local school system, for each student enrolled in or assigned to a failing school, shall do all of the following:

"a. Timely notify the parent of the student of all options available under this section as soon as the school of attendance is designated as a failing school.

"b. Offer the parent of the student an opportunity to enroll the student in another public school within the local school system that is not a failing school or a failing school to which the student has been assigned.

"+(5)+(4) The parent of a student enrolled in or assigned to a school that has been designated as a failing school, as an alternative to paragraph b. of subdivision (4), may choose to enroll the student in and transport the student to a nonfailing public school that has available space in any other local school system in the state, and that local school system is willing to accept the student on whatever terms and conditions the system establishes and report the student for
purposes of the local school system's funding pursuant to the
Foundation Program. Nothing in this act shall be construed to
force any school, whether public or nonpublic, to enroll any
student.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

  "h. Cooperate with the Department of Revenue to conduct criminal background checks on all of their employees and board members and exclude from employment or governance any individual who may reasonably pose a risk to the appropriate use of contributed funds.

  "i. Ensure that educational scholarships are portable during the school year and can be used at any school within the county of a failing school that accepts the eligible student according to the wishes of the parent. If a student transfers to another school within that same county during a school year, the educational scholarship amount may be prorated.

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

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

    "2. The total number and total dollar amount of contributions received during the previous calendar year.
"3. The total number and total dollar amount of educational scholarships awarded during the previous calendar year, the total number and total dollar amount of educational scholarships awarded during the previous year for students qualifying for the federal free and reduced-price lunch program under 42 U.S.C. §1751 et. seq., and the percentage of first-time recipients of educational scholarships who were enrolled in a public school during the previous year.

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

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

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

"n. Ensure that no donations are directly made to benefit specifically designated scholarship recipients.

"(2) Financial accountability standards.

"a. All scholarship granting organizations shall demonstrate their financial accountability by doing all of the following:
"1. Annually submitting to the Department of Revenue a financial information report for the scholarship granting organization that complies with uniform financial accounting standards established by the Department of Revenue and conducted by a certified public accountant.

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

"b. All participating nonpublic schools shall demonstrate financial viability, if they are to receive donations of fifty thousand dollars ($50,000) or more during the school year, by doing either of the following:

"1. Filing with the scholarship granting organization before the start of the school year a surety bond payable to the scholarship granting organization in an amount equal to the aggregate amount of contributions expected to be received during the school year.

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

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

"a. Comply with all health and safety laws or codes that otherwise apply to nonpublic schools.
"b. Hold a valid occupancy permit if required by the municipality.


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

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

2. Exclude from employment any person who may reasonably pose a threat to the safety of students.

(2) Academic accountability standards. There shall be sufficient information about the academic impact educational scholarship tax credits have on participating students in order to allow parents and taxpayers to measure the achievements of the tax credit scholarship program, and therefore:

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

1. Annually administer either the state achievement tests or nationally recognized norm-referenced tests that measure learning gains in math and language arts to all participating students in grades that require testing under the accountability testing laws of the state for public schools.
"2. Allow costs of the testing requirements to be covered by the educational scholarships distributed by the scholarship granting organizations.

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

"4. Provide the test results to the Department of Revenue or an organization chosen by the state on an annual basis, beginning with the first year of testing.

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

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

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

"1. Ensure compliance with all student privacy laws.

"2. Collect all test results.

"3. Provide the test results and associated learning gains to the public via a state website after the third year of test and test-related data collection. The findings shall be aggregated by the grade level, gender, family income level, number of years of participation in the tax credit scholarship program, and race of the student.
"(d)(1) The Department of Revenue shall adopt rules and procedures consistent with this section as necessary to implement the tax credit scholarship program.

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

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

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

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

"(6) If the Department of Revenue decides to bar a scholarship granting organization from the tax credit scholarship program, the Department of Revenue shall notify affected educational scholarship students and their parents of the decision as quickly as possible.
“(7) The Department of Revenue shall publish and
routinely update, on the website of the department, a list of
scholarship granting organizations in the state, by county.

“(e)(1) All schools participating in the tax credit
scholarship program shall be required to operate in Alabama.

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

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

Section 2. Any failing school from which a student
transfers pursuant to this act shall continue to receive
twenty percent (20%) of the average annual state cost of
attendance for a public K-12 student during the years for
which a tax credit applicable to that student is claimed.

Section 3. The provisions of this act are severable.
If any part of this act is declared invalid or
unconstitutional, that declaration shall not affect the part
which remains.

Section 4. Nothing in this act shall affect or
change the athletic eligibility rules of student athletes as
governed by the Alabama High School Athletic Association.

Section 5. This act shall become effective
immediately following its passage and approval by the
Governor, or its otherwise becoming law.