HB129

By Representatives Garrett, Ledbetter, Collins

RFD: Ways and Means Education

First Read: 06-Feb-24
SYNOPSIS:

This bill would direct the Department of Revenue to establish education savings accounts for the parent of an approved, participating student to offset the costs of qualifying educational expenses. The bill would establish various program requirements, including provisions to prevent fraud and other misuse of program funds. The ESAs would first be available for the 2025-2026 academic year.

The ESAs would be funded through the proceeds of a new, refundable income tax credit made available to certain parents of an eligible student. For the years beginning January 1, 2025, and January 1, 2026, the parent of an eligible student could receive the credit if his or her family had an adjusted gross income not exceeding 300 percent of the federal poverty level for the preceding year. For the years beginning on or after January 1, 2027, the credit could be available to any parent of an eligible student. The annual amount of the credit would be capped at $7,000 for participating students enrolled in a participating school. For participating students not enrolled in a participating school, the annual amount of the credit would be capped at $2,000, with a cap of $4,000 cap for the family.

The bill would establish a new fund in the State
The bill would establish a new fund in the State Treasury to be known as the CHOOSE Act Fund. Annually, the bill would require the Legislature to appropriate to this fund not less than $100 million. In allocating the newly established tax credits, the Department of Revenue would give priority to students already participating in the program and their siblings. The Department would also give priority based on the family’s adjusted gross income as a percentage of the federal poverty level. The first 500 tax credits would be reserved for the parent of an eligible student who is a special-needs student.

A BILL

TO BE ENTITLED

AN ACT

Relating to education; to enact the CHOOSE Act; to establish a refundable income tax credit to offset the cost of qualifying educational expenses; to direct the Department of Revenue to establish education savings accounts through which parents can access funds to direct the education of participating students through education service providers and participating schools; to establish CHOOSE Act program requirements for parents of participating students, education service providers, and participating schools; to specify powers and duties of the Department of Revenue in administering the CHOOSE Act program; to prevent fraud or other misuse of CHOOSE Act program funds; to establish the
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as the Creating Hope
and Opportunity for Our Students’ Education Act of 2024, or
the CHOOSE Act.

Section 2. As used in this act, unless otherwise
specified or unless the context requires otherwise, the
following terms shall have the following meanings:

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

(2) DEPARTMENT. The Alabama Department of Revenue.

(3) EDUCATION SAVINGS ACCOUNT or ESA. An account in
which funds are deposited by the department for the parent
of a participating student to pay qualifying expenses to an
education service provider.

(4) EDUCATION SERVICE PROVIDER. A school (including a
participating school), organization, vendor, or individual
other than the parent of the eligible student approved by
the department to provide educational goods and services,
including goods and services designed for use by homeschool
students, to eligible students.

(5) ELIGIBLE STUDENT. A child aged 5 to 19 years who
resides in this state who has not graduated high school or a
child aged 5 to 21 years who resides in this state and has
an individual education plan or accommodation plan issued
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according to Section 504 of the Rehabilitation Act of 1973; provided that a student receiving scholarship funds or a tax credit under the Alabama Accountability Act of 2013, Chapter 6D of Title 16, Code of Alabama 1975, shall not be an eligible student.

(6) PARENT. A resident of this state who is the parent, guardian, custodian, or other individual with authority to act on behalf of an eligible student.

(7) PARTICIPATING SCHOOL. An education service provider that is an accredited public K-12 school or an accredited private school, including church, parochial, or religious school, that provides education to K-12 students and that is approved by the department. The school must be accredited, or in the process of obtaining accreditation as determined by the department, by one of the six regional accrediting agencies or the National Council for Private School Accreditation, AdvancED, the American Association of Christian Schools, or one of their partner accrediting agencies.

(8) PARTICIPATING STUDENT. An eligible student who is approved by the department to participate in the program and receives services from an education service provider.
(9) PROGRAM. The Creating Hope and Opportunity for Our Students’ Education (CHOOSE) Act Tax Credit program established by this act.

(10) QUALIFYING EDUCATIONAL EXPENSES. Expenses incurred by a parent of an eligible student in one or more of the following categories:

a. Tuition and fees at a participating school.

b. Textbooks.

c. Fees for after-school or summer education programs provided by a participating school.

d. Private tutoring.

e. Curricula or instructional materials.

f. Tuition and fees for nonpublic online learning programs.

g. Educational software and applications.

h. Fees for standardized and nationally recognized assessments, including college admissions tests and advanced placement examinations and related preparatory courses.

i. Education services for students with disabilities from a licensed or accredited practitioner or education service provider.

j. Contracted services provided by a public school district including specific classroom instruction.
(11) RESIDENT SCHOOL DISTRICT. The public school district in which an eligible student resides.

(12) SPECIAL-NEEDS STUDENT. A student who has an individual education plan or 504 accommodation issued according to Section 504 of the Rehabilitation Act of 1973, including, but not limited to, a student who has an intellectual disability or is speech or language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, autistic, or hospitalized or home bound because of illness or disability.

Section 3. (a) To offset the cost of qualifying educational expenses, there is hereby established a refundable income tax credit subject to the provisions of this act and to the availability of monies in the CHOOSE Act Fund established pursuant to section 8 of this act.

(b)(1) For the years beginning on January 1, 2025, and January 1, 2026, the credit shall be available to the parent of an eligible student whose family had an adjusted gross income not exceeding 300 percent of the federal poverty level for the preceding tax year. The credit shall be awarded in an amount specified in subsection (c) and subject to the priorities specified in subsection (d).
(2) For the years beginning on or after January 1, 2027, the credit shall be available to any parent of an eligible student. The credit shall be awarded in an amount specified in subsection (c) and subject to the priorities specified in subsection (d).

(c)(1) For participating students enrolled in a participating school, the annual amount of the credit shall be $7,000 or the actual cost of the qualifying educational expenses, whichever is less.

(2) For participating students not enrolled in a participating school, the annual amount of the credit shall be $2,000 or the actual cost of the qualifying educational expenses, whichever is less; provided that the aggregate amount of all credits awarded to a parent for such students shall not exceed $4,000.

(d) In allocating the tax credits made available pursuant to subsection (b), the department shall give priority first to participating students and siblings of participating students and then based on the family’s adjusted gross income as a percentage of the federal poverty level; provided that the department shall reserve the first 500 tax credits for the parent of an eligible student who is a special-needs student.
(e) If the department awards a tax credit to a parent for one eligible student, the department shall award additional tax credits to the parent for any other eligible student in the family who is a sibling of the eligible student for whom a tax credit was previously awarded. Nothing in this act shall be construed to authorize the award of more than one tax credit per participating student.

(f) Failure to provide required documentation for the tax credits provided in this section shall result in the automatic denial of the respective tax credit.

(g) Amounts received pursuant to this section do not constitute taxable income to the parent of a participating student or to the participating student. The refundable income tax credit provided under this section shall not be subject to offset or debt collection against any liability.

(h) Participating students with disabilities who are eligible to receive special education or similar services from the local school system under federal or state law, and who participate in the program, remain eligible to receive those services from the local school system as provided by federal or state law.

Section 4.(a) To participate in the program, a parent of an eligible student must do all of the following:
(1) Submit to the department any information required by the department for implementation of the program, including the name of the eligible student.

(2) Agree to claim the credit only for qualified expenses to provide an education for an eligible student.

(3) Agree that, to the best of the parent’s knowledge, no other person is claiming a credit for the eligible student.

(4) Agree not to claim the credit for an eligible student who enrolls as a full-time student in a public school district unless the public school is a participating school within the meaning of this act and the public school charges tuition for the participating student.

(5) Agree to assume the full financial responsibility for the education of the participating student, including the balance of any expense incurred at an education service provider.

(6) Agree to comply with rules adopted by the department for the administration of the program.

(b) Fulfillment of the agreements made pursuant to subsection (a) is a requirement of continuing approval as a participating student. Failure to fulfill the agreements made pursuant to subsection (a) shall constitute grounds for the department, in its discretion, to revoke, recover,
suspend, or deny the credit otherwise made available pursuant to this act.

Section 5. (a) To be approved by the department, an education service provider must do all of the following:

1. Submit to the department any information required by the department for implementation of the program, including its address, contact information, and a summary of each program or service it proposes to provide to participating students.

2. Agree not to refund, rebate, or share any portion of program funds with a parent or student in any manner. Program funds may only be used for qualifying expenses.

3. Agree to submit quarterly reports to the department concerning implementation of the program, including the number of students participating, services provided, and other similar information requested by the department.

4. Agree not to discriminate based on grounds of race, color, or national origin in the provision of its services.

5. Agree to document amounts received for all qualifying expenses in a manner prescribed by the department.

(b) To be approved by the department, a participating school must do all of the following, in addition to satisfying the requirements of subsection (a):

(1) Agree to comply with all applicable health and safety laws or codes.

(2) Hold a valid occupancy permit if required by the municipality where the school is located.


(4) Provide financial statements that demonstrate, to the satisfaction of the department, the school’s ability to adequately provide for participating students’ continued receipt of educational services in the event the school suffers a financial failure. Alternatively, the school may file with the department a surety bond payable in an amount determined by the department to be equal to the aggregate amount of the program funds expected to be paid during the academic year from participating students enrolled at the participating school.

(5) Require all participating students receiving program funds to take a standardized assessment aligned to the curricula of the participating school, a nationally norm-referenced achievement assessment, or a nationally recognized aptitude assessment of the participating school’s
choice. Students with disabilities for whom testing is not appropriate are exempt from this requirement.

(6) Inform the department of a participating student’s graduation, withdrawal from the school, misuse of program funds, or other event affecting the student’s eligibility for the program.

(c) Fulfillment of the agreements made pursuant to subsections (a) or (b) is a requirement of continuing approval as an education service provider or participating school. Failure to fulfill the agreements made pursuant to subsections (a) or (b) shall constitute grounds for the department, in its discretion, to suspend or disqualify the education service provider or participating school from receiving program funds.

(d) A public school that becomes an education service provider under this act shall be given maximum flexibility to accommodate participating students and may create a process and establish requirements for accepting, selecting, or limiting the number of allowable participating students who are not assigned to that public school.

(e) No provision of this act shall be construed to require any public school, school system, or school district or any nonpublic school, school system, or school district to enroll any student.
(f) The Legislature finds and declares that education service providers, including participating schools, that accept program funds shall be given the maximum freedom possible to provide for the educational needs of students, consistent with state and federal law. To that end, unless clear from the text of this act, no provision of this act shall be construed to limit the independence or autonomy of any education service provider; to act as a restriction, direction, or mandate regarding instructional content or curriculum provided by any education service provider; to require an education service provider to alter its creed, practices, admissions policies, hiring policies, codes of conduct for employees or students, tuition, or fees; to expand the regulatory authority of the state, its officers, or any school district; or to otherwise deprive or diminish the protections for nonpublic schools, including nonpublic schools with a religious affiliation, available under any source of existing law, including section 16-1-11.1 or section 16-1-11.2, Code of Alabama 1975, or Executive Order No. 733 issued by the Governor on January 20, 2023.

(g) A resident school district shall provide a participating school or other education service provider that has admitted an eligible student under the program with the complete copy of the student’s school records consistent
Section 6. (a) It is the intent of the Legislature that educational savings accounts be made available to parents of participating students beginning with the 2025-2026 academic year.

(b) The department shall administer the program with respect to parents of eligible students by doing all of the following:

(1) Create and disseminate a standard application form for parents seeking to participate in the program.

(2) Establish and publicize a deadline by which application forms must be submitted to the department.

(3) Receive applications and approve applications for parents of eligible students to whom the department has awarded a tax credit under section 3 of this act and who meet the requirements of section 4(a) of this act.

(4) Create an ESA for the parent of the participating student and make deposits of the amount of any tax credits awarded under section 3.

(5) Establish a system by which a parent of a participating student can make payments from ESAs to an education service provider or participating school including by electronic or online fund transfer. Nothing in this act
shall be construed as authorizing the payment of program funds directly to a participating student or his or her parent.

(6) Provide to parents of participating students a written explanation of qualifying expenses, their responsibilities under the program, the duties and responsibilities of the department, and the provisions of this act related to misuse of program funds.

(7) At the expiration of an academic year, remit any unused ESA funds to the Choose Act Fund established pursuant to section 8 of this act.


(c) The department shall administer the program with respect to participating schools and education service providers by doing all of the following:

(1) Create and disseminate a standard application form for a person or entity to establish eligibility as a participating school or education service provider.

(2) Establish and publicize a deadline by which application forms must be submitted to the department.

(3) Receive applications and approve applications for participating schools and education service providers that meet the requirements of section 5(a) or 5(b) of this act.
(4) Provide to education service providers and participating schools a written explanation of qualifying expenses, their responsibilities under the program, and the duties and responsibilities of the department.

(5) Maintain and routinely update the list of approved participating schools and education service providers on the department’s website.

(d) The department shall make available on its website aggregate information regarding the number and amount of credits claimed each tax year pursuant to this act.

(e) The department shall adopt and enforce rules necessary to implement this act subject to the Alabama Administrative Procedure Act, Chapter 22, Title 41, Code of Alabama 1975. Notwithstanding the Alabama Administrative Procedure Act, the department shall adopt emergency rules necessary to promptly and effectively begin administration of the program. Any rule necessary for initial implementation of the program may be adopted as an emergency rule, which shall remain effective for as long as necessary to facilitate initial implementation of the program.

(f) The department may enter into contracts for the implementation of all or part of this act. Any procurement necessary for the initial implementation of the program
shall be considered a special procurement under Section 137, Chapter 4, Title 41, Code of Alabama 1975.

Section 7. (a) To identify fraud or other potential misuse of program funds, the department shall do all of the following:

(1) Conduct random financial audits of ESAs and education service providers, including participating schools. The random financial audits shall be conducted with sufficient frequency to adequately deter misuse of program funds.

(2) Establish and publicize means for citizens to report fraud or other potential misuse of program funds, including websites and a toll-free phone number.

(b) To address instances of suspected fraud or other misuse of program funds, the department shall have all of the following powers:

(1) The department may refer a case to local or state law enforcement agencies for further investigation. The program established by this act shall constitute a matter arising under the state revenue laws, and an application to participate in the program or a payment of qualifying expenses shall constitute a claim or other document, for purposes of the criminal prohibition against tax fraud in section 40-29-115.
(2) The department may stop making advance credit payments into the ESA or otherwise reduce the amount of money in an ESA of a parent of a participating student, either temporarily or permanently.

(3) The department may suspend or disqualify an education service provider. If an education service provider is suspended or disqualified, the department shall notify participating students and their parents of the decision as soon as practicable. The department shall coordinate the suspension or disqualification to coincide with the end of the academic school year.

(4) The department may recapture misused program funds from a parent, education service provider, or other person responsible for the misuse of program funds.

(c) For purposes of this act, misuse of program funds includes each of the following:

(1) Violation of the agreements made by a parent pursuant to section 4(a), by an education service provider pursuant to section 5(a), or by a participating school pursuant to section 5(b).

(2) The misrepresentation of information provided to the department in the course of implementing this act.

(3) The failure to return any misspent program funds upon request of the department.
(4) The repeated and substantial failure to provide a participating student with educational services promised in exchange for program funds.

(d) A parent, participating student, education service provider, or other recipient of a CHOOSE Act tax credit may ask the department to reconsider its decision and appeal any final decision of the department to the Alabama Tax Tribunal under Chapter 2B, Title 40, Code of Alabama 1975.

Section 8. (a) The CHOOSE Act Fund is created in the State Treasury for the purpose of providing funding for the tax credits authorized by this act. Notwithstanding any other provisions of law to the contrary, the Legislature shall appropriate not less than $100 million to this fund beginning with appropriations made for the fiscal year ending September 30, 2026, and continuing annually thereafter. Amounts in the CHOOSE Act Fund shall be budgeted and allotted in accordance with Section 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12. All funds received by the CHOOSE Act Fund shall remain in the CHOOSE Act Fund and shall not revert or be expended for any purpose other than the tax credits authorized by this act.

(b) It is not the intent of this act to make appropriations, but any appropriations required by this act shall be from revenue sources available for appropriation
under the Constitution of Alabama of 2022 notwithstanding any general law to the contrary.

Section 9. If any part of this act is challenged as violating either the state or federal constitutions, parents of eligible students and participating students shall be permitted to intervene as of right in the lawsuit for the purposes of defending the constitutionality of the program.

Section 10. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.