

# SB61 INTRODUCED



1 SB61  
2 TY4T951-1  
3 By Senators Orr, Waggoner, Livingston, Sessions, Allen, Price,  
4 Chesteen, Williams, Albritton, Stutts, Butler, Reed, Melson  
5 RFD: Finance and Taxation Education  
6 First Read: 06-Feb-24

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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

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

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A BILL

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TO BE ENTITLED

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AN ACT

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45 Relating to education; to enact the CHOOSE Act; to  
46 establish a refundable income tax credit to offset the cost of  
47 qualifying educational expenses; to direct the Department of  
48 Revenue to establish education savings accounts through which  
49 parents can access funds to direct the education of  
50 participating students through education service providers and  
51 participating schools; to establish CHOOSE Act program  
52 requirements for parents of participating students, education  
53 service providers, and participating schools; to specify  
54 powers and duties of the Department of Revenue in  
55 administering the CHOOSE Act program; to prevent fraud or  
56 other misuse of CHOOSE Act program funds; to establish the

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57 CHOOSE Act fund.

58 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

67 (2) DEPARTMENT. The Alabama Department of Revenue.

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

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

78 (5) ELIGIBLE STUDENT. A child aged 5 to 19 years who  
79 resides in this state who has not graduated high school or a  
80 child aged 5 to 21 years who resides in this state and has  
81 an individual education plan or accommodation plan issued

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82 according to Section 504 of the Rehabilitation Act of 1973;  
83 provided that a student receiving scholarship funds or a tax  
84 credit under the Alabama Accountability Act of 2013, Chapter  
85 6D of Title 16, Code of Alabama 1975, shall not be an  
86 eligible student.

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

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

101 (8) PARTICIPATING STUDENT. An eligible student who is  
102 approved by the department to participate in the program and  
103 receives services from an education service provider.

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104           (9) PROGRAM. The Creating Hope and Opportunity for Our  
105 Students' Education (CHOOSE) Act Tax Credit program  
106 established by this act.

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

110           a. Tuition and fees at a participating school.

111           b. Textbooks.

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

114           d. Private tutoring.

115           e. Curricula or instructional materials.

116           f. Tuition and fees for nonpublic online learning  
117 programs.

118           g. Educational software and applications.

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

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

125           j. Contracted services provided by a public school  
126 district including specific classroom instruction.

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127           (11) RESIDENT SCHOOL DISTRICT. The public school  
128 district in which an eligible student resides.

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

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

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

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150           (2) For the years beginning on or after January 1,  
151 2027, the credit shall be available to any parent of an  
152 eligible student. The credit shall be awarded in an amount  
153 specified in subsection (c) and subject to the priorities  
154 specified in subsection (d).

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

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

165           (d) In allocating the tax credits made available  
166 pursuant to subsection (b), the department shall give  
167 priority first to participating students and siblings of  
168 participating students and then based on the family's  
169 adjusted gross income as a percentage of the federal poverty  
170 level; provided that the department shall reserve the first  
171 500 tax credits for the parent of an eligible student who is  
172 a special-needs student.



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173           (e) If the department awards a tax credit to a parent  
174 for one eligible student, the department shall award  
175 additional tax credits to the parent for any other eligible  
176 student in the family who is a sibling of the eligible  
177 student for whom a tax credit was previously awarded.  
178 Nothing in this act shall be construed to authorize the  
179 award of more than one tax credit per participating student.

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

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

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

194           Section 4.(a) To participate in the program, a parent  
195 of an eligible student must do all of the following:

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196           (1) Submit to the department any information required  
197 by the department for implementation of the program,  
198 including the name of the eligible student.

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

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

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

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

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

215           (b) Fulfillment of the agreements made pursuant to  
216 subsection (a) is a requirement of continuing approval as a  
217 participating student. Failure to fulfill the agreements  
218 made pursuant to subsection (a) shall constitute grounds for  
219 the department, in its discretion, to revoke, recover,

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220 suspend, or deny the credit otherwise made available  
221 pursuant to this act.

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

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

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

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

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

238 (5) Agree to document amounts received for all  
239 qualifying expenses in a manner prescribed by the  
240 department.

241 (6) Agree to comply with the Family Educational Rights  
242 and Privacy Act, 20 U.S.C. § 1232g.

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

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

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

250 (3) Agree to comply with the Alabama Child Protection  
251 Act of 1999, Chapter 22A of Title 16, Code of Alabama 1975.

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

262 (5) Require all participating students receiving  
263 program funds to take a standardized assessment aligned to  
264 the curricula of the participating school, a nationally  
265 norm-referenced achievement assessment, or a nationally  
266 recognized aptitude assessment of the participating school's

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267 choice. Students with disabilities for whom testing is not  
268 appropriate are exempt from this requirement.

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

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

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

287 (e) No provision of this act shall be construed to  
288 require any public school, school system, or school district  
289 or any nonpublic school, school system, or school district  
290 to enroll any student.

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

311           (g) A resident school district shall provide a  
312           participating school or other education service provider  
313           that has admitted an eligible student under the program with  
314           the complete copy of the student's school records consistent

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315 with the Family Educational Rights and Privacy Act of 1974,  
316 20 U.S.C. § 1232g.

317 Section 6. (a) It is the intent of the Legislature that  
318 educational savings accounts be made available to parents of  
319 participating students beginning with the 2025-2026 academic  
320 year.

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

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

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

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

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

335 (5) Establish a system by which a parent of a  
336 participating student can make payments from ESAs to an  
337 education service provider or participating school including  
338 by electronic or online fund transfer. Nothing in this act

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339 shall be construed as authorizing the payment of program  
340 funds directly to a participating student or his or her  
341 parent.

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

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

350 (8) Comply with the Family Educational Rights and  
351 Privacy Act, 20 U.S.C. § 1232g.

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

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

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

360 (3) Receive applications and approve applications for  
361 participating schools and education service providers that  
362 meet the requirements of section 5(a) or 5(b) of this act.



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363 (4) Provide to education service providers and  
364 participating schools a written explanation of qualifying  
365 expenses, their responsibilities under the program, and the  
366 duties and responsibilities of the department.

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

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

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

383 (f) The department may enter into contracts for the  
384 implementation of all or part of this act. Any procurement  
385 necessary for the initial implementation of the program

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386 shall be considered a special procurement under Section 137,  
387 Chapter 4, Title 41, Code of Alabama 1975.

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

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

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

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

402 (1) The department may refer a case to local or state  
403 law enforcement agencies for further investigation. The  
404 program established by this act shall constitute a matter  
405 arising under the state revenue laws, and an application to  
406 participate in the program or a payment of qualifying  
407 expenses shall constitute a claim or other document, for  
408 purposes of the criminal prohibition against tax fraud in  
409 section 40-29-115.

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410           (2) The department may stop making advance credit  
411 payments into the ESA or otherwise reduce the amount of  
412 money in an ESA of a parent of a participating student,  
413 either temporarily or permanently.

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

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

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

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

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

432           (3) The failure to return any misspent program funds  
433 upon request of the department.

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434           (4) The repeated and substantial failure to provide a  
435 participating student with educational services promised in  
436 exchange for program funds.

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

442           Section 8. (a) The CHOOSE Act Fund is created in the  
443 State Treasury for the purpose of providing funding for the  
444 tax credits authorized by this act. Notwithstanding any  
445 other provisions of law to the contrary, the Legislature  
446 shall appropriate not less than \$100 million to this fund  
447 beginning with appropriations made for the fiscal year  
448 ending September 30, 2026, and continuing annually  
449 thereafter. Amounts in the CHOOSE Act Fund shall be budgeted  
450 and allotted in accordance with Section 41-4-80 through  
451 41-4-96 and Sections 41-19-1 through 41-19-12. All funds  
452 received by the CHOOSE Act Fund shall remain in the CHOOSE  
453 Act Fund and shall not revert or be expended for any purpose  
454 other than the tax credits authorized by this act.

455           (b) It is not the intent of this act to make  
456 appropriations, but any appropriations required by this act  
457 shall be from revenue sources available for appropriation

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458 under the Constitution of Alabama of 2022 notwithstanding  
459 any general law to the contrary.

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

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