

# 2021 South Carolina School Boards Association Legislative Preview Webinar

## Agenda

Wednesday, November 10  
Noon to 1p.m.

### **Welcome and purpose**

Scott T. Price, *SCSBA Executive Director*

### **Legislative issues discussion**

Debbie Elmore, *SCSBA Director of Governmental Relations and Advocacy*

### **Closing comments**

Scott T. Price, *SCSBA Executive Director*

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## Top issues to advocate for passage

SCSBA hit the road in September and October to meet with school board members in four regional meetings around the state to discuss the General Assembly's passage of the bill revising the state's education accountability system that includes the dissolution of the locally-elected school boards in districts declared to be a state of education emergency. No other elected body in the state can be dissolved for not meeting certain state standards.

A major part of the discussion focused on seeking board members' top three or four legislative issues that they believe can help to strengthen school board governance in response to the new law. The legislative issues were identified from the existing SCSBA legislative resolutions that are voted on by the membership each year.

The following are the top legislative issues identified during the regional meetings that SCSBA and local school boards can advocate for in response to the new law.

### 1. Board training in underachieving school districts

State-funded board training must be a key element of any recommendation by the state superintendent regarding district improvement well before the takeover stage. The training should be tailored to address the board's specific issues that are identified through a thorough diagnostic review of board operations, board and superintendent relationships and governance structure.

- Removing voter control through takeovers should not be considered without technical assistance to school districts to include the school board.
- State-funded board training must be one option available to the state superintendent prior to the declaration of emergency in a district not meeting the state accountability standards.

### 2. Fiscal autonomy/affairs

All elected school boards should have full fiscal autonomy.

- State law establishes the powers and duties of local boards of trustees, including the authority to govern fiscal affairs of school districts.
- Taxing authority is a logical requirement and natural extension of the funding partnership between the state legislature and the local school board. Nationally, nearly all school boards have taxing authority.
- As elected officials, school boards need authority for financial decisions to enable them to bear the accountability for the district's instructional programs.
- There are 23 out of 77 school districts that have no taxing authority.
- Following passage of the Property Tax Relief Act of 2006, known as Act 388, no school district has full fiscal autonomy because of the local cap set in the law.

### 3. Local legislation

Prior to introducing any local legislation, members of the legislative delegation, should be required to attach a statement that the local affected school board as a whole was notified of the intent to file the bill and include a statement of the board's support of the proposed legislation.

- South Carolina's current system of lawmaking provides for the authority of local legislative delegations to pass laws that apply only to a specific school district. Local bills can pass both legislative chambers in a matter of days.
- Local laws can change the makeup of a district board; change board election procedures; forgive missed days from the defined minimum plan requirement; and have an impact on a board's authority to set and fund its budget. Too often, these bills are filed without the knowledge and consent of the affected board.

- Some question exists about the legality of local laws as being unconstitutional special legislation under Article III, Section 34 of the South Carolina Constitution.
- The end result of local laws is a state whose variety of school district and board governance structures does not easily lend itself to statewide initiatives relating to public education.
- Local school boards as the governmental body elected or appointed to operate a school district must at the very least be consulted prior to the filing of a local bill or, at the most, should be the driving force behind such a bill's introduction.

#### 4. Impact fees

SCSBA believes public schools should be authorized to collect impact fees on new home and commercial development.

- State government must remain sensitive to the fact that existing taxpayers often face increased school debt-service property taxes to pay for the high growth that they did not cause. This may negatively impact the economy and potential taxpayer support for future school district referendums.
- Funding tools such as impact fees can help districts cope with community growth and unique educational demands.
- Under local laws, only one school district may levy impact fees. Another district's local law regarding impact fees is in litigation.

## Legislation likely to be debated in 2022

### Education Scholarship Accounts House bill 3976

With more than 60 sponsors, a bill to enact the Education Scholarship Account (ESA) Act that would provide public school funding for expenses of eligible students to attend private schools will likely be front and center in the House in 2022.

The bill, which currently resides in the House Ways and Means Committee, received a hearing late in the 2021 legislative session. During the hearing, Chairman Murrell Smith stated that the bill would most likely pass the committee in 2022 and be placed on the floor for debate.

Under the proposed program, state tax dollars allocated to school districts will be deposited in a government-established ESA account for parents of students who are not enrolled in public schools to pay for a range of private educational options.

Funds can be used for tuition, fees and other eligible expenses for "education service providers" such as private and religious schools and/or approved products and services, such as online courses, textbooks and tutoring related to educating their child to include home-based instruction. The home-based education, however, cannot be a homeschooling option that is approved by local district, a homeschool program that is under the auspices of the SC Association of Independent Home Schools or a homeschooling program under the auspices of a home school association with no fewer than 50 members.

### Eligible students

Students who are eligible to participate in the program must reside in any school district of the state and attain the age of five on or before September 1 of the school year and have at least one of the following criteria:

- an annual adjusted gross family income of 200 percent or less of the federal poverty

guidelines as promulgated annually by the United States Department of Health and Human Services or a statement of Medicaid eligibility;

- participated in the South Carolina Early Reading Development and Education program; or,
- previously received an ESA scholarship or an Educational Credit for Exceptional Needs Children (ECENC) scholarship.

Once a student becomes eligible, his/her siblings are automatically eligible.

Parents of ESA students are directed to sign an agreement with the Department of Administration (DOA) to do the following:

- provide their child, at a minimum, a program of academic instruction in at least the subjects of English language arts to include writing, mathematics, social studies and science;
- ensure their student takes a nationally norm-referenced test approved by the EOC (for students in grades 3-8) that measures learning gains in math and language arts and provides value-added assessment, provides high school graduation information or provides assessments in a similar manner through other means if their student does not receive full-time instruction from an education service provider;
- use program funds for qualifying expenses only for an approved provider to educate their child;
- not enroll their student in a public school as a full-time student;
- not participate in certain home instruction programs;
- release their child's resident school district from an obligation to educate their student while enrolled in the program (parental placement under Section 1414 of Individuals with Disabilities Education Act (IDEA));
- relinquish their student's numerous federal protections that children have in public schools under the IDEA; and,

- comply with the conditions and requirements of the program as established by the DOA or EOC.

### ***Public school districts fund scholarships***

The state treasurer is directed under the bill to transfer the per pupil state funding that is allocated to an ESA student's resident public school district to the South Carolina Education Scholarship Account Fund established under the bill that is administered and managed by the Department of Administration (DOA). From the fund, the DOA issues scholarships in an amount equal to the state average of state funding per pupil in public schools to an individual student's online ESA account. Payments to an ESA student's account are done on a quarterly basis with the first payment by July 31 of each year. The DOA is allowed to deduct up to four percent of funds in ESA students' accounts for costs to oversee and administer the accounts.

Payments to the ESA student's accounts must continue until a parent or ESA student is proven to have misused funds or participated in a prohibited activity, an ESA student returns to his resident or other public school district or his public charter school or an ESA student graduates from high school or attains 22 years of age, whichever occurs first.

### ***Qualifying expenses***

The Education Oversight Committee is charged with approving "education service providers" and other educational related services that include:

- tuition and fees of an education service provider;
- textbooks, curriculum or other instructional materials, including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;
- tutoring services;
- payment to an educational consultant who is an advisor in education curriculum, finance, scholarships or achievement, or who has

experience necessary to provide guidance to parents of eligible ESA students;

- tuition and fees for a nonpublic online education service provider or course; and contracted teaching services and education classes.

The DOA is directed to approve vendors for eligible products including computer hardware or other technological devices that are used primarily for an ESA student's educational needs (may be approved by student's licensed physician) or for fees for an ESA account management by private financial management firms.

Other qualifying expenses are fees for the following:

- national norm-referenced examinations, advanced placement examinations or similar assessments;
- industry certification exams; or
- examinations related to college or university admission;
- educational services for pupils with disabilities from a licensed or accredited practitioner or provider including, but not limited to, occupational, behavioral, physical and speech-language therapies;
- tuition and fees at an eligible state postsecondary institution that is an accredited community college, technical college, university or independent postsecondary institution;
- textbooks required for instruction at an eligible postsecondary institution;
- approved contracted services from a public school district, including individual classes, after school tutoring services, transportation or fees or costs associated with participation in extracurricular activities; and,
- transportation paid to a fee-for-service transportation provider for travel to and from an eligible provider but not to exceed \$750 for each school year.

### ***Phase-in of participation***

The program would be implemented beginning with school year 2022-2023, and would be limited to 5,000 ESA students in K-3 grades. For three years thereafter, the program capacity increases as follows:

- 10,000 ESA students in K-5 grades in first year;
- 15,000 ESA students in K-8 grades in second year;
- 20,000 ESA students in K-12 grades in third year; and
- in all subsequent years, there may be no limit on the number of ESA students if the program remains in effect and contingent upon the amount of funds in the program.

### ***Fiscal impact***

The fiscal impact statement has not been released yet. However, a similar bill that was debated and passed out of a subcommittee in the Senate this past year was estimated to result in the loss of up to \$457 million to public schools by the third year of the phase-in participation and an unknown amount for the years when the program was open to students statewide. Per pupil state funding included Education Finance Act (EFA) funds, Education Improvement Act (EIA) funds, reimbursements for Act 388 of 2006 and other state resources the district would normally receive for the student. The per pupil state average was estimated to be about \$6,670 in year one and \$6,850 in year two.

### ***Other states with ESA programs***

Only six states have enacted education savings account programs: Arizona, Florida, Mississippi, Nevada, North Carolina and Tennessee. Nevada's ESA program remains unfunded and non-operational. Tennessee's program was ruled unconstitutional this past May 2020, halting the program from being launched. ESA programs in Florida, Mississippi and North Carolina are limited to students with special needs. Arizona's ESA is the most expansive to include students with special needs, foster children, children of active-duty military personnel, students

assigned to district schools rated D or F and children living on Native American reservations.

### Position statement

SCSBA strongly opposes state or federally mandated efforts to directly or indirectly subsidize elementary or secondary private, religious or home schools with public funds.

### Talking points

- On October 7, 2020, the State Supreme Court in *Adams v. McMaster*, struck down a similar program by ruling that, "No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution." The proposed ESA program would also likely be ruled unconstitutional because state funding allocated for public schools would be used to directly benefit private and religious schools in the form of tuition and fees, which are eligible expenses under the legislation.
- If the ESA student already attends a private school, how can the state treasurer transfer per pupil state funds from the student's resident public school district in which he is not enrolled? This cannot be legal.
- There is no evidence to confirm existing ESA programs in other states increase student achievement for students participating in the program or for students remaining in the public schools that would justify the loss of education funding to public schools that enroll a majority of the state's children.
- The loss of funding for public schools threatens academic programs and services for students who remain in public schools.
- The ESA proposal requires parents of special needs students to relinquish all of the protections provided to their child under the Individuals with Disabilities Education Act (IDEA). After a student enrolls in a private school, there is no guarantee that the school will provide the support outlined in the student's Individualized Education Plan (IEP) or that it will remain in place.
- There is no requirement for private schools to administer the same assessments administered in public schools. There would be no test score data to determine whether students in the program have improved, remained the same, or declined. Not requiring the same assessments makes it very difficult to compare the quality of schools or to verify what is being taught and what services and accommodations are being offered.
- The state is not funding public schools at the level required by law, yet lawmakers continue to consider expanding publicly-funded, private school voucher programs that do not hold participating private schools to the same academic and financial accountability laws mandated for public schools.
- Proponents claim to be empowering parents by providing choices; however, it is the private schools that choose which students they will accept.