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State Tax Credits for Private School Tuition: The Bill, How It Passed and What It Could Mean for Education in Alabama

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Alabama would provide income tax credits to help subsidize private or religious school tuition for parents of children zoned for “failing schools” beginning this fall if Gov. Robert Bentley signs the plan into law. The House and Senate [approved the measure, known as the Alabama Accountability Act](#), mere hours after it was first introduced on Feb. 28, 2013. Bentley declared his intention to sign it, but a state trial court on March 6, 2013, [issued a temporary restraining order](#) to prevent the bill from going to him.

Some details of the bill, which the Legislature passed after little debate and with no public estimate of its financial impact on the education budget, have begun to come into focus. But what the bill could mean for school funding and the future trajectory of K-12 education in Alabama remains uncertain.

This paper assesses the backdrop from which [the Alabama Accountability Act](#) emerged and summarizes its main provisions. The paper then considers what the plan could mean for the families who take advantage of the tax credits, the students who still attend “failing schools” after the law’s enactment, and the future of the state’s public education infrastructure as a whole.

How did tax credits for private school tuition pass in the Legislature?

Early in this year’s regular session, legislative leaders began to move a “school flexibility” bill – HB 84, sponsored by Rep. Chad Fincher, R-Semmes – that included several ideas from [the failed 2012 legislation that would have authorized charter schools in Alabama](#). Under [the original version of HB 84](#), school systems could ask the state Department of Education to waive certain state laws and regulations so their schools could explore more innovative educational models. School boards could not ask for waivers from civil rights laws, ethics or transparency laws, or health and safety standards. They also could not seek to slash employees’ pay below state minimums or require educators to give up tenure protections.

The House [voted 65-37](#) for the bill on Feb. 14 after adding a provision that would allow current or future educators to choose to waive tenure rights voluntarily. Two weeks later, the Senate [approved the measure 26-7](#) after amending it to remove the House's tenure language. Lawmakers then sent the bill to a six-member conference committee to hash out differences between the House and Senate versions.

What emerged from the conference committee late in the afternoon on Feb. 28 was far different from anything the House or Senate had considered. The measure ballooned from eight pages to 27, with brand-new language to provide state income tax credits to help parents transfer children from "failing schools" to private schools, religious schools or non-failing public schools. In addition, it gave income tax credits to businesses and individuals that donate to scholarship funds for such transfers. The bill also included the original school flexibility provisions along with the House's tenure waiver language. Many of the bill's new provisions, though not all, [closely resemble those found in model legislation](#) written by the American Legislative Exchange Council (ALEC), a nationwide group of legislators and businesses that is [funded almost entirely by corporations, trade groups and corporate foundations](#).

Hours after being unveiled, the tax credit plan cleared the Legislature. The conference committee voted 4-2 for the new bill, even though it had no fiscal note from the Legislative Fiscal Office (LFO) to estimate its effects on the Education Trust Fund (ETF). The House [voted 51-26 for it](#) after just an hour of debate.

Senate action came even more quickly. Supporters voted to cut off debate immediately after the bill arrived in the chamber, and the brief discussion that followed rapidly degenerated into a screaming match. Opponents shouted through roll call votes, and at one point some members said they were uncertain whether they were voting to pass the bill or to adjourn. (This [audio clip from AL.com](#) captured some of that night's heated emotions.) The Senate [approved the plan 22-11](#) on Feb. 28.

The Alabama Education Association (AEA) sued to block the legislation, claiming its passage violated the state open meetings law and Senate rules. Montgomery County Circuit Judge Charles Price [granted a temporary restraining order](#) on March 6 to block the bill from going to Bentley, who had announced plans to sign it. Republican lawmakers say they will appeal to the Alabama Supreme Court.

How would the parental tax credits work? Who would be eligible?

If the bill eventually becomes law, Alabama would offer income tax credits to parents of children zoned for a "failing school" who choose to send their children to a private school, religious school or a non-failing public school starting in fall 2013. Those parents would be eligible for a tax credit equal to the lesser of (1) 80 percent of the average state cost of educating a public K-12 student in Alabama or (2) the actual cost of sending the child to another school. That state cost was \$4,442 in 2010-11, [AL.com reports](#), which means the maximum credit that year would have been \$3,553 per child. The state's cost to educate a K-12 student likely is higher today and will continue to increase in the future.

Tax credits are a dollar-for-dollar reduction in a person's tax bill. Parental tax credits under the bill would be refundable, which means the state would send residents a rebate check for any portion of the credit that exceeds the amount they otherwise would owe in taxes. The plan [would resemble a school voucher program](#), except it would reimburse families for tuition instead of paying it up front. State checks likely would arrive long after any private school tuition bills come due, however. Eligible parents could claim the credits starting in this tax year, but 2013 tax filings will not be due until April 2014. Section 8 of the bill, which creates the credits, does not set a deadline for the state to send refund checks.

Parents could receive credits only for the grades taught at the "failing school" for which their children are zoned. For example, if a "failing school" covers grades 3-5, parents would be eligible for credits during those years, but they could not receive credits for sixth grade and beyond unless the school to which their child was assigned for those grades also was deemed "failing." They either would have to return their children to their original district, uprooting them from new friends and familiar teachers, or continue to pay private school tuition without state assistance.

Once parents began to receive credits, they would remain eligible to receive them for all grade levels at a "failing school," even if the school improved its standing and was deemed a non-failing school in the interim. The bill does not explicitly say whether parents would remain eligible to receive credits during those years even if they move out of a "failing school" zone.

Eligible parents could receive credits regardless of income and regardless of whether their children ever actually attended a public school. Everyone from low-income families to multi-millionaires would qualify for credits if they live in a "failing school" zone. Even if parents have sent their children to private school since kindergarten, they could receive state tax credits to help offset the tuition they already pay.

Alabama would be [one of only five states with a tax credit to help parents offset school costs](#) if the bill is enacted. (Illinois, Iowa, Minnesota and North Carolina are the others.) Alabama's credit would be more extensive than the others. Of those states, only Minnesota now offers a refundable credit. But unlike the Alabama plan, it is capped at \$1,000, is tied to household income and does not pay for private school.

Despite those relatively generous parameters, a \$3,500 credit [would not come close to covering tuition at many Alabama private schools](#). It would pay for only about a third of the yearly cost to attend St. Paul's Episcopal School in Mobile, for example. It would cover barely a fourth of kindergarten tuition at Huntsville's Randolph School. To help make up the difference, the bill would allow eligible students to apply for a state-subsidized scholarship.

How would the scholarship program work? How would it be funded?

Alabama [would join 16 other states and the District of Columbia in offering private school choice programs](#) if the bill becomes law. The state also would become one of 12 to offer tax credits for contributions to scholarship funds for those programs. The bill would allow businesses and individuals to

receive state income tax credits if they donate to organizations that provide scholarships to help eligible parents cover the portion of private school tuition above the \$3,500 parental credit.

Individuals and married couples could claim 100 percent of their contributions to scholarship-granting organizations as a state income tax credit, up to \$7,500 annually. Businesses could claim half of their donations and are not subject to an annual limit. Both businesses and individuals could wipe out up to half of their income tax liability with such credits. Both also could carry forward any unused credits for up to three years. The bill says Alabama would provide a total of no more than \$25 million of scholarship credits annually and orders the Department of Revenue to ensure that cap is not exceeded.

Under those provisions, many taxpayers effectively would be able to choose whether to pay taxes to the state to support public schools or to a scholarship program to support private schools. Taxpayers who made the maximum donation to a private school scholarship fund and earned \$150,000 in taxable income – the amount left over after deductions – would not owe the state a dime in income tax.

The bill's wording [makes it unclear whether an income limit would apply to scholarship recipients](#). Section 4 of the measure defines an "eligible student" as one from a household that makes no more than 150 percent of Alabama's median household income. The median was about \$43,000 over the last five years, putting the 150 percent level around \$64,000 a year. (The law does not specify if median household income should be determined annually or as a multi-year average.) But Section 9, which creates the scholarship program, does not explicitly state that all recipients must be "eligible students" from such households.

Numerous media reports have interpreted the bill to mean that scholarships are available only for children in households making below the 150 percent threshold. If that reading is correct, the income limit applies only to initial scholarship awards. Section 4's definition of "eligible student" states that scholarship recipients remain eligible until graduation or age 19, no matter how much money their families may earn later. The bill does not link continued scholarship eligibility to a minimum grade point average (GPA) or any other academic achievement standards.

Various nonprofits would be allowed to receive the scholarship money and distribute it to the schools that recipients' parents choose. Under the plan, groups must set aside part of the money for students from families who earn less than 200 percent of the federal poverty level, or \$46,100 a year for a family of four in 2012. Those students would receive a share of scholarship funds at least equal to the percentage of low-income students in the county where the group awards most of its scholarships. The low-income scholarship share would not be linked, however, to the poverty level in the zone or district of a "failing school," which may be substantially higher than in the county at large.

Scholarships would not be limited to students transferring from "failing schools." Up to 25 percent of the funds could benefit students who already attend private schools. Nonprofits that distribute the money also could retain up to 5 percent, for a cumulative total of up to \$1.25 million, annually for administrative costs. The bill would forbid organizations to provide scholarships to schools that have

paid staff or board members (or their relatives) in common with the nonprofit. However, it would not explicitly forbid nonprofits to award scholarships to children of their own staff, board or donors.

What are “failing schools”? Where could their students go under the bill?

At least 10 percent of Alabama’s public K-12 schools are guaranteed to be considered “failing schools” under the Alabama Accountability Act, no matter how well they perform. The bill defines a “failing school” as one that meets at least one of these criteria: (1) The state Department of Education listed it as “persistently low-performing” in its most recent application for the federal School Improvement Grant program, (2) it is among the bottom 10 percent of schools in the state’s standardized reading and math tests, (3) it has earned an *F* or three consecutive *D*s in a new state grading system that has not yet been developed, or (4) the state school superintendent has declared it a “failing school.”

No authoritative list of “failing schools” is yet available. Before the Feb. 28 vote, Senate President Pro Tem Del Marsh, R-Anniston, circulated [an unofficial list of 202 schools that he claimed would meet the definition of “failing school”](#) under the measure. More than a third are located in the districts that serve Alabama’s four largest cities: Birmingham, Huntsville, Mobile and Montgomery.

If the measure is enacted, school systems must provide students at “failing schools” the option to transfer to a non-failing school in the same system, regardless of that school’s capacity. The systems also would be required to cover any necessary transportation costs for those intra-system transfers. Such transfers [already are allowed from schools deemed to be failing under the No Child Left Behind Act](#).

The bill would not require public schools to accept students from “failing schools” in other systems. Instead, it would permit schools to choose to enroll eligible students from other systems “on whatever terms and conditions the system establishes” if the system has “available space.” (The bill does not define that term.) Parents would have to pay for transportation to a school outside their home system, but those systems still would be required to pay for support services for students with disabilities, even if their parents use a tax credit to transfer them elsewhere.

Private and religious schools also would not be required to accept transfer students from “failing schools” or take part in the scholarship program. If the schools chose to participate, however, they would have to obey federal anti-discrimination laws and disclose information on their financial viability. The law would not impose any limits on the tuition rates that participating private or religious schools can charge. It also would not require them to be accredited, though they must meet certain other standards. Parents of homeschooled children would not be eligible for tax credits under the plan.

The bill could pose special challenges for student-athletes. Alabama High School Athletic Association (AHSAA) leaders [say they would retain the power to set rules for athletic eligibility](#). Current AHSAA transfer policies [require transfer students to sit out a year](#) before participating in athletics at a new school unless their parents physically move to that school’s zone. But because schools would have wide

discretion in accepting transfer students, some coaches and administrators have warned [the bill could fuel intense recruiting wars for star athletes](#) at “failing schools.” “The best players are going to get recruited,” Center Point High School principal Van Phillips told AL.com. “Recruiting is going to be crazy. Period. You’re going to have academies popping up on every corner.”

What might the bill mean for education funding in Alabama?

The bill’s costs are unclear because it passed without an estimate of how it will affect the ETF budget. The tax credit plan went from a conference report to passage in both the House and Senate in a matter of hours, leaving the LFO no time to prepare a fiscal note before the votes. Back-of-the-envelope estimates of the ETF’s potential revenue loss range from tens of millions of dollars to hundreds of millions of dollars annually from a budget expected to be about \$5.8 billion next year.

For nearly 70 years, the Alabama Constitution has required all income tax revenues to go toward K-12 teacher salaries. Though parents would receive credits on their income taxes, the bill states that all payments to them from the Failing Schools Income Tax Credit Account would be funded from sales tax revenues, which also flow to the ETF. The bill has no similar provision for scholarship credits.

Total scholarship credits would be capped at \$25 million a year, but the bill does not limit the dollar amount of credits that parents could claim to transfer their children to another school. Those costs may range from \$80 million to \$240 million annually depending on participation rates, [the Alabama Association of School Boards \(AASB\) estimates](#). Full participation by eligible students could boost the cost as high as \$367 million a year, [according to the AASB](#).

If 100 students per school received a \$3,553 credit to leave each of 202 “failing schools,” Alabama would pay nearly \$72 million in tax credits to their parents. The state also would fork over an unknown amount of additional money, possibly up to hundreds of millions of dollars a year, to subsidize tuition for students who are zoned for “failing schools” but already attend private or religious schools.

Some supporters say the bill could save Alabama money by shifting education costs to private schools. “This is the first good sign to me that somebody is using that common sense to give somebody some tax credits for private schools,” [Madison Academy President Robert Burton told AL.com](#). “For any private school student on the books, that’s \$10,000 the state doesn’t have to pay public school tuition for.”

But critics warn the plan could be a major drain on public education revenues. “There are significant negative financial implications for all of Alabama’s public schools,” [state school Superintendent Tommy Bice wrote](#) in a letter withdrawing his support from the plan. “This is no longer the bill I gave my support to!” The AASB also revoked its backing after lawmakers added the tax credits.

Bentley downplayed criticism of the bill in [an interview days after legislators approved it](#). “If you don’t live in a failing school system, it’s not going to affect you,” Bentley said. “Don’t get all upset. It’s not

even going to affect you one way or the other unless you want to give scholarships to poor children who are in failing school systems.”

Despite the governor’s comments, the bill would affect all Alabamians by reducing the amount of money coming into an education budget that is still struggling mightily to recover from the Great Recession. The ETF spent about \$6.7 billion on K-12 and higher education in fiscal year (FY) 2008. (That amount would be nearly \$7.3 billion in today’s dollars.) Six years later, FY 2014 ETF spending is projected to be just over \$5.8 billion, a decline of almost 20 percent from the state’s pre-recession peak.

All levels of education in the state have felt the sting of lower revenues in recent years. Alabama [has slashed state higher education support by 28 percent](#) since 2008, the fourth highest cuts in the nation, according to an Illinois State University study. Average tuition at the state’s public universities for the 2012-13 school year is more than 50 percent higher than it was just five years ago. Alabama also has had by far [the nation’s deepest per-student K-12 state funding cuts since 2008](#), and draining hundreds of millions of dollars a year from the ETF would do nothing to reverse that downward slide.

What might the bill mean for the future of public education in Alabama?

Immediate reaction to the Alabama Accountability Act has been deeply divided. Supporters have hailed it as a historic achievement on behalf of low-income students in struggling schools. Detractors have condemned it as a scheme to starve public education by routing its support to private entities. With so little public debate before the bill cleared the Legislature, questions continue to swirl about its intentions and how effective the tax credit program would be in accomplishing its goals.

House Speaker Mike Hubbard, R-Auburn, [joined a chorus of Republican lawmakers in praising the bill](#). Hubbard said the prospect of losing students to other schools would force struggling schools to be more innovative to maintain their enrollment. “In the business world, if you are not doing a good job, and someone comes in and does a better job, you either get better or you go out of business,” Hubbard said.

Alabama Education Association executive director Henry Mabry [called the measure a “Rosemary’s Baby”](#) that would have devastating consequences for students who remain in “failing schools” after the departure of children whose parents can afford to transfer them. “This isn’t going to help failing schools,” Mabry said. “What this is going to do is make poor school systems even poorer. Because you are going to be taking money from already strapped school systems and giving it to a private outfit.”

Whether the Alabama Accountability Act eventually proves to be a landmark success that improves educational outcomes for thousands of children or a catastrophic disaster for public school funding remains to be seen. Either way, the measure, passed in a couple of hours on a chilly Thursday night after minimal debate, may have serious, lasting implications for the process by which a bill becomes a law on Goat Hill. It also could portend even bigger – and even riskier – changes ahead to the way Alabama pays for and carries out its mission to educate our children and grandchildren.