

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

EDUCATIONAL FREEDOM ACT

INITIATIVE LANGUAGE

SECTION 1. STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE

The People of California find and declare as follows:

(a) Our future depends on the education of our children from kindergarten through high school and, for those students who desire it, the completion of college or vocational training. Yet, many parents feel their children are trapped in underperforming schools, with no ability to save for post-secondary education.

(b) Education is critical to empowering individuals, breaking cycles of poverty, and reducing income inequalities. Parents of every racial and economic demographic want alternatives to the failing public education system. However, only those who can afford tuition for private, parochial, religious, or homeschool options are able to obtain better outcomes for their children.

(c) The State of California has a de facto monopoly on K-12 education, with no school choice programs available for its students. This lack of competition and innovation in education has resulted in rapidly rising costs and deterioration in the quality of K-12 education in this state.

(d) The State of California currently budgets about \$21,000 per student on K-12 public education, including federal, state, and local funds to educate about 5.9 million children in public schools. Of this amount, the State provides about \$80 billion, pursuant to the minimum funding guarantee in the California Constitution (Proposition 98), which is about \$14,000 per pupil. Over the past decade, the amount spent on K-12 public education has nearly doubled, while total enrollment in our public schools has declined.

(e) Even as academic test standards have eroded, student performance, by any measure, has steadily deteriorated. California public schools, once among the best, are now among the worst in the nation. Families are leaving the system at record rates. Studies show that in many California urban census districts almost one-third of public school teachers send their children to private school.

(f) Claims that more money put into the broken system will yield better results have proved false. Spending more on the current system will not solve the crisis in education. All children must have

equal access to quality education without further delay, especially the poorest and most vulnerable among us who have suffered most under the current system. Only competition in education will ensure that all schools, both public and private, will pursue excellence, and that every child will be able to attain the education best suited for their needs.

(g) There are many private schools, charter schools and homeschools that provide quality education to children, usually at much lower cost per student. However, even the modest cost of private education is simply out of reach for many parents.

(h) The current system undermines the family and impedes the natural right of parents to choose the best educational opportunity for their children and to set aside any savings derived from that choice for their children's college or vocational education. Parents are the first educators. As such, they must be able to direct the moral, intellectual and religious formation of their children without the interference or economic coercion of government. Henceforth, educational funding must follow the child.

(i) Therefore, the people hereby enact the Educational Freedom Act to do all of the following:

(1) Create an Education Savings Account for every school age child upon the request of that child's parents or legal guardian, or upon the request of the eligible student themselves if they have attained the age of 18 or are emancipated;

(2) Fund the Education Savings Account with \$14,000 for each student, using the funds the State is currently obligated to spend on public education, at no additional cost to taxpayers;

(3) Empower parents to use the funds in the Education Savings Account to enroll and pay tuition and other education expenses in any eligible private school of their choice;

(4) Ensure that funds can only be used for an eligible student's educational expenses necessary to attend accredited private schools that meet the requirements to become an eligible school; and

(5) Allow any unused funds in the Education Savings Account and the investment earnings of such funds to rollover for future school years, and allow any savings in the student's account to be used for post-secondary education.

SECTION 2. ESTABLISHMENT OF THE EDUCATION SAVINGS ACCOUNT PROGRAM

Article 19.1 (commencing with Section 69995) is added to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, to read:

Article 19.1 Education Savings Account Program

69995. (a) This article shall be known, and may be cited, as the Educational Freedom Act of 2022.

(1) This act shall be construed liberally in order to effectuate its legislative intent. The purposes of this act and all of its provisions with respect to powers granted shall be broadly interpreted to effectuate that intent and purposes and not as to any limitation of powers.

(b) There is hereby established an instrumentality of the State of California to be known as the Education Savings Account Trust (“ESA Trust”).

(c) Every eligible student eligible to be enrolled in public school kindergarten (“K”) and grades 1-12, inclusive, shall be entitled to an Education Savings Account, pursuant to this article, upon the request of that eligible student’s parent or legal guardian, or upon the request of the eligible student themselves if they have attained the age of 18 or are emancipated.

(d) Every person for whom an Education Savings Account has been created and a participation agreement has been submitted, shall receive a credit to their account for grades K-12 to be expended at the discretion of the parent, legal guardian, or the beneficiary, if the beneficiary has attained the age of 18 or is emancipated for eligible K-12 and post-secondary tuition and eligible education expenses.

(e) Commencing with the first fiscal year following the enactment of this Act, on July 1 of each year, the Department of Finance shall determine the annual Education Savings Account deposit amount for the upcoming school year. The Education Savings Account deposit amount for the 2023-2024 school year shall be \$14,000. Thereafter, the Department of Finance shall adjust the annual Education Savings Account deposit amount by the same percentage increase or decrease in the calculated Per-Pupil funding to be expended for the support of K-12 education in the current fiscal year as required by Section 8 of Article XVI of the California Constitution (Proposition 98).

(f) For each school year, the State Controller shall transfer an amount from the General Fund to the ESA Trust equal to the Education Savings Account deposit amount multiplied by the number of accounts established pursuant to subdivision (c). The deposit amount may be less than the full amount to adjust for an account created during a school year and for a partial school year pursuant to an application under the second sentence of section 69995.2(b). The State Controller shall make two equal transfers to the ESA Trust in each fiscal year, the first occurring by August 1, the second occurring by December 31. Such transfer amounts shall be adjusted to ensure that there are sufficient funds in the ESA accounts to pay eligible schools monthly pursuant to this article. The State Controller shall report to the Department of Finance and the Legislature the total transfer amount on or before June 15 of each year. Nothing in this article prohibits the Legislature from appropriating additional funds to the ESA Trust.

(g) Within the ESA Trust, there shall be two funds, which shall be identified as the ESA Trust Program Fund and the ESA Trust Administrative Fund. Notwithstanding Section 13340 of the Government Code, the ESA Trust Program Fund is hereby continuously appropriated, without regard to fiscal years, to the Education Savings Account Trust Board for the purposes of this article. Moneys in the ESA Trust Administrative Fund shall be available for expenditure, upon appropriation, for the purposes specified in this article. Monies in the ESA Trust may be used only for the purposes of this Act and may not be taken, used, borrowed, or collateralized for any other purpose.

ESA TRUST BOARD

Powers and Duties

69995.1. (a) The purposes, powers, and duties of the ESA Trust are vested in, and shall be exercised by, the Education Savings Account Trust Board (“ESA Trust Board”), which is hereby established.

(b) The ESA Trust Board shall consist of the members of the Scholarshare Investment Board as provided in subparagraph (B) of paragraph (2) of subdivision (a) of Section 69984, the Superintendent as an ex officio non-voting member, and one member from each of the following who is actively affiliated with and nominated by: a Charter school, a non-sectarian private school, a parochial/religious school, and a parent or legal guardian of a homeschooled child, each appointed by the Governor for a maximum one four-year term.

(c) The ESA Trust Board shall have all the necessary powers and duties provided to the Scholarshare Investment Board under Article 19 (commencing with Section 69980), including, but not limited to, all of the following:

(1) The investment of monies in the ESA Trust for the benefit of the program, the beneficiaries of accounts within the Trust, and the public reporting of investments and investment performance. Investment strategies shall ensure the availability of monies necessary to fully fund each ESA Trust account as determined in this act;

(2) The distribution of funds from individual eligible ESA, and the audit of accounts to ensure that all funds disbursed to eligible schools are used by and for the beneficiary of the account and in furtherance of the program;

(3) Accepting any grants, gifts, appropriations, and other monies from any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund, or the program fund;

(4) Redistribution of unclaimed funds within the ESA Trust for purposes imposed by this Act;

(5) Adopting regulations to implement this article.

(d) Monies transferred by the State Controller pursuant to subdivision (f) of Section 69995 shall be segregated by the ESA Trust Board into the program fund and administrative fund. All monies paid into the program fund shall be promptly invested and accounted for separately for each ESA. All costs of administration, including investment management fees, of the ESA Trust shall be paid out of the administrative fund, which shall not exceed, on an annual basis, one percent (1%) of the total amount of the program fund.

(e) “Notwithstanding the express language of said article, the powers and duties granted herein do not extend to the creation, management or disposition of any account other than an ESA. Nor shall this grant apply to the exercise of any power or duty which shall conflict with the express language or implied purpose of this act.”

CREATION AND MANAGEMENT OF ACCOUNT APPLICATIONS ELIGIBLE K-12 STUDENTS

69995.2. (a) The ESA Trust Board shall create an online application for a parent or legal guardian to request an Education Savings Account and a participation agreement, pursuant to this article. The application and agreement shall also be accepted by the ESA Trust Board by mail.

(b) Pursuant to section 69995(f) applications shall be accepted, and participation agreements executed on an ongoing basis. An application and execution of a participation agreement must be completed by April 1 in order to receive the full ESA deposit amount for the next succeeding school year. Applications and participation agreements executed between April 2 through October 1 shall receive an ESA deposit on December 31 in an amount prorated for the remaining number of months in the school year beginning with January. Any applications received between October 2 through the following April 1 shall receive the full ESA deposit amount for the following school year.

(c) The parent or legal guardian shall identify the eligible student as the beneficiary of the account and execute the participation agreement.

(d) Once an application and participation agreement have been completed, the ESA Trust Board shall transmit information necessary to confirm the eligibility of the applicant to the Superintendent who shall confirm that the applicant is an eligible student eligible to be or is enrolled in an eligible school and upon confirmation shall transmit a copy of the participation agreement to the eligible school.

(e) So long as the beneficiary remains eligible to receive the Education Savings Account deposit amount and to direct the expenditure of funds pursuant to this article, no additional application or agreement shall be required. However, an application and agreement shall be amended by the parent or legal guardian if the beneficiary enrolls in a different eligible school.

(f) The Superintendent shall create an online process for any person or eligible school to report that a beneficiary is no longer eligible or no longer enrolled in an eligible school. Such process shall provide for establishing identification of the reporting party and safeguards against malicious actors. Upon receipt of a report, the Superintendent shall provide adequate notice to the parent or legal guardian of the beneficiary and the school, that the beneficiary's eligibility is under review and provide an opportunity for both to be heard. As part of the eligibility review process the Superintendent shall verify whether the beneficiary is enrolled in a K-12 public school and confirm the eligibility status of the beneficiary. If the Superintendent determines that a beneficiary is no longer eligible, written findings of the determination shall be provided to the parent or legal guardian, or the beneficiary, if the beneficiary has attained the age of 18 or is emancipated, the school, and the ESA Trust Board. Such a determination may be appealed by the parent or legal guardian on behalf of the beneficiary, or by the beneficiary if the beneficiary has attained the age of 18 or is emancipated, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(g) Any account balance shall be maintained in the account and continue to be available for use by the beneficiary at an eligible school, provided the beneficiary meets the requirements of eligibility under this act. Should the parents or legal guardians subsequently enroll the student in a public school the Education Savings Account funding and participation agreement shall be suspended during the student's period of public school enrollment, but the account balance shall be preserved in the account for future education expenses at an eligible school.

CREATION AND MANAGEMENT OF ACCOUNT APPLICATIONS PARTICIPATING SCHOOLS

69995.3. (a) The State Superintendent of Public Instruction shall create an online application for a school to become eligible to receive funds from an account pursuant to this article and shall receive said applications and verify eligibility under this act.

(b) The State Superintendent of Public Instruction shall publish, and update semi-annually, on both the California Department of Education website and in writing, a list of eligible schools by name that includes address, contact information, web address, grades served, and the tuition charged for each grade level for each eligible school.

(c) The State Superintendent of Public Instruction shall provide to the parent or legal guardian of every student enrolled in a California public school at the mailing address on file written notice of the rights and benefits afforded to all eligible students under this act. The Superintendent shall ensure that a notice regarding the rights and benefits afforded to all eligible students under this act is posted on the department website and at each public school site in conspicuous locations that can be seen by parents, legal guardians, and by students enrolled in the school. The notice of rights and benefits, as well as the list of eligible schools described in section (b) of this provision, shall be made available either digitally or in print at each public school site upon request by a parent, legal guardian, or student.

(d) No agent or employee of a public school, school district, county office of education, or of the Department, shall intimidate, harass, malign, abuse, retaliate against or in any other way inhibit a parent, legal guardian, or student who inquiries regarding the rights and benefits afforded under this act, nor shall they attempt to dissuade a parent, legal guardian, or student from exercising their respective rights under this act.

(e) The Superintendent shall create an online process for a parent or legal guardian, public school district, eligible school, or any other person, to report that a school is no longer eligible to receive funds pursuant to this article. Such process shall provide for establishing identification of the reporting party and safeguards against malicious actors. Upon receipt of such a report, the Superintendent shall inquire and confirm the eligibility status of the school by providing adequate notice to the school and the parents or legal guardians of the beneficiary enrolled in the school, and an opportunity for both to be heard. If the Superintendent determines that a school is no longer eligible written findings of the determination shall be provided to the parent or legal guardian, or the beneficiary, if the beneficiary has attained the age of 18 or is emancipated, the school, and the ESA Trust Board. Such determination may be appealed by the school pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

69995.4. (a) The ESA Trust Board shall provide for the creation of accounts within the program fund for each eligible pupil who has requested an account, shall enter into participation agreements pursuant to this article, shall credit each account with the appropriate Education Savings Account deposit amount for that eligible pupil, and shall credit investment earnings of the program fund to each account, as appropriate.

(b) The ESA Trust Board shall provide parents and legal guardians, or the beneficiary if the beneficiary has attained the age of 18 or is emancipated, with secure online review of account activity, including account deposits or credits, investment earnings, and disbursements to an eligible school on behalf of the beneficiary. The Board shall protect the privacy of parents, legal guardians, and the beneficiary of an account.

(c) The ESA Trust Board shall, pursuant to the terms of the participation agreement, distribute funds on behalf of the beneficiary to an eligible school in nine (9) equal monthly installments commencing August 15 and ending May 15. However, the Board may, by agreement with an eligible school, provide for a different distribution schedule.

(d) The ESA Trust Board shall provide for the random audit of funds distributed from accounts to ensure student eligibility, student enrollment, student attendance, and school eligibility.

(e) The ESA Trust Board shall obtain the refund from the participating school of any ineligible payment made. No refund, reimbursement, or recovery of ineligible payments shall be sought or recovered from a parent or legal guardian, or from the beneficiary unless it is determined that such payments were obtained fraudulently or illegally.

(f) The ESA Trust Board shall provide a uniform participation agreement for use by the Superintendent of Public Instruction, the Board, parents and legal guardians, and the eligible student if the student has attained the age of 18 or is emancipated. An eligible school identified in a participation agreement shall be a third-party beneficiary of the agreement.

(g) The ESA Trust Board shall adopt regulations to implement this article.

PROTECTIONS – LIMITATIONS ON REFUSAL TO FUND

69995.5. (a) The ESA Trust Board shall only distribute funds from an account to an eligible school selected by a parent, or legal guardian, or beneficiary. No funds shall be distributed to a parent or legal guardian, or beneficiary, except as provided in section 69995.8(a). Disbursement of funds for tuition and K-12 eligible education expenses shall only be paid to the eligible school identified as the third-party beneficiary on the participation agreement.

(b) The State shall not limit the number of eligible schools, the number of students enrolled in an eligible school, nor impose any condition on the eligibility of any private school, college, or university to receive funds other than the following:

(1) Periodic certification that an eligible student is enrolled and attending the eligible school.

(2) Periodic certification that the amount paid is only used for tuition and eligible education expenses.

(3) Annual certification of accreditation as defined in section 69995.9(f)(2).

(4) Annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles. An eligible school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year to the Board by December 15 of each year.

(5) Compliance with the general health and safety standards applicable to the facilities of all private schools operating in California if students are served in-person at a physical location owned and operated by the school.

(c) The State shall not limit the number of eligible schools, the number of eligible students enrolled in an eligible school, nor impose upon private schools, homeschools, college, or university any curriculum mandates, student or faculty disciplinary policies, admission policies, or teacher credentialing requirements as a condition of eligibility or funding. Nor shall any private school, homeschool, college, or university be denied participation in the program because of faith or religious conduct requirements of the students or faculty.

(d) Neither the ESA Trust Board nor any agency of the state shall withhold, suspend or interrupt the accrual or expenditure of trust funds mandated by this act, or otherwise deprive an eligible student of the benefits of this legislation for any reason or on any grounds other than (1) failure to meet the eligibility criteria set forth in Section 69995.9 (g); (2) Engage in prohibited transactions as set forth in Section 69995.8; or (3) engage in any other conduct prohibited by this act.

STATE-RUN EDUCATIONAL INSTITUTIONS

Mandated acceptance

69995.6. (a) The California Community Colleges, the California State University, and the University of California, and each campus, branch, and function thereof, shall accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account admitted to the school.

(b) A private school, including a private college or university, may choose to become an eligible school upon application filed with the Superintendent, and may accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account and admitted to the school.

(c) A vocational education or training school may choose to become an eligible school upon application filed with the Superintendent and may accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account and admitted to the school.

HOME SCHOOLER ELIGIBILITY

69995.7. (a) Notwithstanding Sections 69995, a student who is being educated at home pursuant to an affidavit filed pursuant to section 33190 and in lieu of enrollment in a school eligible to receive funds from an account under this article, shall be entitled to an Education Savings Account and to have that account funded each year according to the dates and requirements of this act. However, no disbursements of funds shall be made unless or until the beneficiary of the account enrolls in an eligible school as defined herein. The funds credited to the account shall remain in the account and accrue each year and be available for use at an eligible school in accordance with the provisions of this act.

(b) A student enrolled in an eligible private school to facilitate homeschooling shall be eligible for an Education Savings Account in accordance with this act and use those funds for qualified educational expenses for K-12 education and post-secondary education.

PROHIBITED TRANSACTIONS

69995.8. (a) An eligible school shall not share, refund, or rebate any funds received from an account with or to the parent, legal guardian, or eligible student in any manner. Nothing in this section shall be construed to prohibit reimbursement or credits for verified eligible expenses or tuition paid or advanced by such persons.

(b) The ESA Trust Board may terminate and suspend an account and participation agreement if the parent, legal guardian, or eligible student fails to comply with the terms of the participation agreement with the intent to defraud or misuse the funds distributed on behalf of a beneficiary upon notice to the parent, legal guardian, and eligible student and an opportunity to be heard. If the Board terminates or suspends an account, that determination may be appealed by the parent, legal guardian, or eligible student pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

DEFINITIONS

69995.9. For purposes of this article, the following terms are defined as follows:

(a) “Administrative fund” means the fund within the Education Savings Account Trust from which the costs of administration, including investment management fees, of the ESA Trust shall be paid.

(b) “Audit” means annual, independent financial audit report which shall employ generally accepted accounting principles, conducted by an independent auditor, the cost of which is born by the school seeking eligibility under this act.

(c) “Beneficiary of the account” means the eligible student for whom an account was created by the ESA Trust Board.

(d) “Costs of administration” means the actual costs of the ESA Trust Board to administer Education Savings Accounts, subject to the statutory limit.

(e) “Education Savings Account deposit amount” means the amount calculated pursuant to subdivision (e) of Section 69995.

(f) “Eligible school” means any of the following:

(1) the California Community College, the California State University, and the University of California.

(2) An accredited K-12 school, whether for-profit or not-for-profit, as described in section 48222, operating in California, and accredited by a regional accrediting agency recognized by the State or the United States Department of Education, or a school that has applied for accreditation, but such application is pending, and the school has not been denied accreditation in the prior two years by the same accrediting agency.

(3) A private college or university, in-state or out-of-state, accredited by a regional accrediting agency recognized by the State or the United States Department of Education.

(4) A public college or university, in-state or out-of-state, accredited by a regional accrediting agency recognized by the State that operates it or the United States Department of Education.

(5) A vocational education or training institution, in-state or out-of-state, accredited by a regional accrediting agency recognized by the State or the United States Department of Education.

(g) “Eligible student” means every person eligible to enroll in a K-12 public school or enrolled in a K-12 eligible school. This includes emancipated minors or otherwise eligible students who have achieved the age of majority.

(h) “ESA Trust” means the Education Savings Account established by subdivision (b) of Section 69995.

(i) “ESA Trust Board” means the Education Savings Account Trust Board established by subdivision (a) of Section 69995.1.

(j) “Parent or legal guardian” includes an eligible student who is either emancipated or has achieved the age of majority.

(k) “Participation agreement” means the uniform contract created by the ESA Trust Board that must be executed by the ESA Trust and the parent or legal guardian of an eligible student that directs the ESA Trust to disburse funds to an eligible school on behalf of the beneficiary of the account.

(l) “Post-secondary eligible education expenses” mean the expenses typically associated with vocational training, undergraduate or graduate education at an eligible school, other than tuition, including, but not limited to, books, school supplies and equipment, academic tutoring, special needs services of a special needs beneficiary, any additional school fees, and room and board.

(m) “Program fund” means the fund created in the Education Savings Account Trust from which monies transferred from the General Fund and investment earnings, and other grants, gifts, or appropriations are maintained and segregated into accounts for eligible beneficiaries.

(n) “K-12 eligible education expenses” mean the expenses typically associated with the education of a K-12 pupil in an eligible school, other than tuition, including, but not limited to, curriculum, books, online courses, religious and academic course materials, school supplies and equipment, academic tutoring, academic testing fees, special needs services of a special needs beneficiary, and transportation to and from school and school functions charged by an eligible school in which an eligible student is enrolled. A faith-based educational curriculum shall not be excluded.

(o) “Tuition” means the amount charged by an eligible school to enroll a student at the school for a particular grade level and registration fees associated with application and enrollment.

(p) “Unclaimed funds” means funds remaining in an account that are not disbursed to an eligible school after the beneficiary attains the age of 30.

ALLOCATION OF CERTAIN COSTS OF ADMINISTRATION

69995.10

(a) The Legislature shall provide for the allocation of costs associated with this Act as follows:

(1) For the cost of providing ESA deposits for an eligible student not enrolled in a K-12 public school prior to the enactment of this Act, the Legislature shall rebase, as necessary, the minimum funding guarantee for K-12 schools as provided in ~~article~~ section 8 of article XVI of the California

Constitution, including the inclusion of such eligible children in the definition of “average daily attendance” as amended by this Act.

(2) For the costs of providing ESA deposits for an eligible student, the program cost for that deposit shall be apportioned between the General Fund and the public school district in which the student resides, on the same ratio of General Fund and local property tax revenue that would have been used to educate that student in their public school district. The Legislature shall provide for the transfer of funds from a school district or the State as necessary to carry out this provision.

INCOME TAX TREATMENT

SECTION 3. INCOME TAX EXCLUSION

Section 17132.2 is added to the Revenue and Taxation Code to read:

17132.2. (a) For purposes of this section, the following terms have the following meanings:

(1) “Beneficiary of the account” has the same meaning as set forth in subdivision (b) of Section 69995.9 of the Education Code.

(2) “Education Savings Account” means an education savings account established under the Educational Freedom Act (Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code).

(3) “Parent or legal guardian” has the same meaning as set forth in subdivision (l) of Section 69995.9 of the Education Code.

(4) “Participation agreement” has the same meaning as set forth in subdivision (h) of Section 69995.9 of the Education Code.

(b) For taxable years beginning on or after the enactment of the Educational Freedom Act, gross income of a beneficiary of the account or the parent or legal guardian of a beneficiary of the account shall not include any of the following:

(1) Any distribution or earnings under an Education Savings Account participation agreement, as provided in Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code.

(2) Any contribution to an Education Savings Account.

AMENDMENT OF CONSTITUTION
SECTION 4. AMENDMENT OF CONSTITUTION

Section 8.5 of Article IX is added to the California Constitution to read:

8.5. Notwithstanding any other provision of this Constitution, including Section 8 of this article and Section 5 of Article XVI, the State, and every agency or political subdivision of the State, may disburse funds pursuant to an agreement between the State and a parent or legal guardian of an eligible student for tuition and education related expenses, as provided by statute, and to provide tax or other public benefits to educational institutions, irrespective of religious affiliation, to further the purposes of Section 1 of this article.

Section 8.1 of Article XVI is added to the California Constitution to read:

8.1 For purposes of section 8 of this article and section 8 of article XIII B, the term “average daily attendance” shall include all students enrolled in a K-12 public school and all students who are otherwise eligible to enroll in a K-12 public school but have chosen to fund K-12 education with an Education Savings Account funded pursuant to Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code. Notwithstanding any other provision of this Constitution, including section 25.5 of article XIII, the Legislature may, by statute, require the allocation of ad valorem property tax revenue pursuant section 69995.10 of the Education Code.

GENERAL PROVISIONS
SECTION 5. GENERAL PROVISIONS

(a) If any provision of this act, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

(b) This act is intended to be comprehensive. It is the intent of the people that in the event this act or acts relating to the same subject shall appear on the same statewide election ballot, the provisions of the other act or acts shall be deemed to be in conflict with this act. In the event that this act receives a greater number of affirmative votes, the provisions of this act shall prevail in their entirety, and all provisions of the other act or acts shall be null and void.

(c) Section 2 and 3 of this Act may be amended by a statute passed by each house of the Legislature by roll call vote entered into the journal, seven-eighths of the membership concurring, provided that the statute is consistent with and furthers the purposes of this Act.

(d) If an action is brought challenging, in whole or in part, the validity of this act, in addition to the complying with the mandates of California Government Code section 12511.7, the following shall apply:

(1) The Executive Branch and Legislature shall continue to comply with the act unless it is declared unconstitutional pursuant to a final judgment of an appellate court.

(2) Except as provided in paragraph (3) below, the Attorney General shall defend against any action challenging, in whole or in part, the validity of this act, and shall have an unconditional right to intervene in any action to defend the validity of this act.

(3) If the Attorney General declines to defend the validity of the act in any action, the Attorney General shall nonetheless file an Answer or other responsive pleading in any action challenging the act, as well as an appeal from, or seek review of, any judgment of any court that determines that the act is invalid, in whole or in part, if necessary or appropriate to preserve the State's standing to defend the law in conformity with the Attorney General's constitutional duty to see that the laws of the State are adequately enforced.

(4) The official proponent(s) of the act have an unconditional right to participate, either as interveners or real parties in interest, in any action affecting the validity or interpretation of the act. Where the Governor and Attorney General have declined to defend the validity of the act, the official proponents are also authorized to act on the State's behalf in asserting the State's interest in the validity of the act in any such action and to appeal from any judgment invalidating the act.

(5) Nothing in this section precludes other public officials from asserting the State's interest in the validity of the act.