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August 14, 2025

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Anabel Renteria
Initiative Coordinator
Office of the Attorney General
1300 I Street, 17th Floor
Sacramento, CA 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Title and Summary for the Children's Educational Opportunity Act for year 2026

Dear Ms. Renteria:

Enclosed is the Initiative Measure for the Children's Educational Opportunity Act (CEO Act), scheduled for the November 2026 ballot, for your review, title, and summary.

There are three recognized school choice models: Education Savings Accounts (ESAs), Tax Credits, and Vouchers. The 2023 summary of the CEO Act incorrectly described the payments as vouchers; this initiative does not use the voucher model.

In addition, homeschools were omitted from the summary. Please include homeschools as a recognized and included education model.

*Requires state to provide yearly **voucher** payments (\$17,000 initially, adjusted annually) into Education Savings Accounts for California residents in grades TK-12 attending religious and nonreligious private schools **and homeschools** anywhere in the United States.*

Any questions, my cell number is 818-434-7234

Email communication is at DrKevinMcNamee@gmail.com

Thank you for your attention processing this request.

Sincerely,



Kevin McNamee

encl: 1) Text of the Proposed Measure - Children's Educational Opportunity Act (CEO Act)
2) Proponents Affidavits
Kevin McNamee, Marion A. Marshall, Maria Flores, Cecilia Iglesias, Benito Bernal

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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

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The Attorney General of California has prepared the following circulating title and summary of the chief purpose and points of the proposed measure:

(Here set forth the unique numeric identifier provided by the Attorney General and circulating title and summary prepared by the Attorney General. Both the Attorney General's unique numeric identifier and the circulating title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

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We, the undersigned, registered, qualified voters of California, residents of _____ County, hereby propose amendments to the Constitution of California, the Education Code, and the Revenue and Taxation Code, relating to private and public education, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or as otherwise provided by law. The proposed statutory and constitutional amendments read as follows:

Children's Educational Opportunity Act of 2026

SECTION 1. The People of California find and declare all of the following:

(a) Our future depends on the education of our children. Quality education empowers individuals, breaks the poverty cycle, and reduces inequalities. Parents are seeking alternatives to failing public schools. However, charter schools are limited, private schools are unaffordable, and home-based education demands a stay-at-home parent.

(b) California government-run schools have 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 the state.

(c) California spends about \$23,000 per student each year on K–12 public education, including about \$17,000 per student each year from state funds, primarily Proposition 98 funds. Over the past decade, spending on K–12 public education has nearly doubled, while total enrollment has declined.

(d) California's public schools, once among the best in the nation, have declined to become among the nation's worst, with deteriorating student performance and eroding academic standards.

(e) Increased funding has not solved California's public education crisis. Empowering parents to select the best school for their child will foster competition, leading to improved quality education in all school types.

(f) The current government-run education system undermines the family and impedes the natural right of parents to choose the best educational opportunity for their children. California laws limit parental input or control over curriculum, books, medical consent, policies, and activities. Parents, as the first educators, should have the freedom to guide their children's education and development. Parents should be allowed to select the best school for their child. Hence, funding should follow the child, ensuring parental control without government interference or economic coercion.

(g) Therefore, the people hereby enact the Children's Educational Opportunity Act of 2026 to do all of the following:

(1) Create an Education Savings Account (ESA) for every schoolage child upon the request of that child's parent or legal guardian or upon the request of the eligible student if that student has attained the age of majority or is emancipated.

(2) Fund each ESA, in the amount of \$17,000 for each student in the first year, with subsequent annual adjustments based on state and local revenue and the number of eligible students, 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 ESA to enroll students in, and pay education-related expenses, including tuition, necessary to attend the private religious or nonreligious school of their choice, including home-based education through a private school.

(4) Ensure that funds can only be used to pay for other TK–12 and postsecondary eligible education expenses for the eligible student.

(5) Allow any unused funds in the ESA, and the investment earnings of those funds, to roll over in the account for future education expenses, including for postsecondary education.

SEC. 2. Section 8 of Article IX of the California Constitution is amended to read:

~~SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine shall be taught, or instruction thereon be permitted, directly or indirectly, in any of the common public schools of this State.~~

SEC. 3. Section 8.1 is added to Article IX of the California Constitution, to read:

SEC. 8.1. Parents and guardians of California minors shall have the right to direct the primary and secondary education enrollment of their children. They shall have the option to enroll their child in a public school of this State, or a private school, or provide home-based education through a home private school, private tutor, or a private school satellite program.

SEC. 4. Section 8.2 is added to Article IX of the California Constitution, to read:

SEC. 8.2. The State shall not forbid or restrict religious instruction that is provided in private schools or private home-based education. Parents and guardians of students in public and private schools shall have the right to opt their children out

of instruction that the parents or legal guardians find morally offensive or contrary to their convictions.

SEC. 5. Section 8.3 is added to Article IX of the California Constitution, to read:

SEC. 8.3. The state and local governments of California shall not restrict the number of private schools and home private schools or the number of students who can attend those schools. The state and local governments of California shall not apply building codes or health and safety standards to home schools that are more onerous than those that apply to similarly situated private residences or businesses in the community in which the home schools are located.

SEC. 6. Section 8.4 is added to Article IX of the California Constitution, to read:

SEC. 8.4. (a) A parent or legal guardian of any California child who is eligible to attend a California public school serving pupils in transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, may enroll their child in a religious-based school or home-based education program that has been approved pursuant to state programs that expend public money for private education. These programs shall include, but not be limited to, the Children's Educational Opportunity Act of 2026 (Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code).

(b) If the Legislature provides funding that guarantees preschool access for every age-eligible pupil or student in California, regardless of income, then subdivision (a) shall also apply to a parent or legal guardian of a child eligible to attend a California school serving preschool children. Funding described in this subdivision may include, but is not limited to, funding required by Section 8 of Article XVI of the California Constitution, as that section read on January 1, 2025.

(c) The Legislature shall not limit the right to participate in the programs described in subdivisions (a) and (b) based on the income of a parent, legal guardian, or child.

SEC. 7. Section 8.5 is added to Article IX of the California Constitution, to read:

SEC. 8.5. Notwithstanding any other provision of this Constitution, including Section 5 of Article XVI, the State, and every agency or political subdivision of the State, may disburse funds (a) pursuant to an agreement between the State and a parent or legal guardian of an eligible student for education-related expenses, including tuition, irrespective of religious affiliation, as provided by statute, including, but not limited to, the Children's Educational Opportunity Act of 2026 (Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code), and (b) to provide tax or other public benefits to educational institutions, irrespective of religious affiliation, as provided by statute, to further the purposes of Section 1 of this article.

SEC. 8. Section 8.1 is added to Article XVI of the California Constitution, to read:

SEC. 8.1. (a) (1) For purposes of Section 8 of this article and Section 8 of Article XIII B, the term "average daily attendance" shall include both of the following:

(A) The average daily attendance of all children enrolled in transitional kindergarten, kindergarten, and grades 1 to 12, inclusive, of a public school.

(B) The average daily attendance of all children who are otherwise eligible to enroll in transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, of a public school but who choose to fund their transitional kindergarten, kindergarten, elementary, or secondary education with an Education Savings Account established pursuant to the Children's Educational Opportunity Act of 2026 (Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code), either by enrolling in a private school that is eligible pursuant to that act or by directing Education Savings Account funds for other educational expenses that are eligible pursuant to that act.

(2) 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 to Section 69995.11 of the Education Code.

(b) (1) If the Legislature provides funding that guarantees preschool access for every age-eligible pupil or student in California, regardless of income, then, for purposes of Section 8 of this article and Section 8 of Article XIII B, the term "average daily attendance" shall also include both of the following:

(A) The average daily attendance of all children enrolled in public preschool.

(B) The average daily attendance of all children otherwise eligible to be enrolled in public preschool but who choose to fund their preschool education with an Education Savings Account established pursuant to the Children's Educational Opportunity Act of 2026 (Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code), either by enrolling in a private school that is eligible pursuant to that act or by directing Education Savings Account funds for other educational expenses that are eligible pursuant to that act.

(2) Funding described in this subdivision may include, but is not limited to, funding required by Section 8 of this article, as that section read on January 1, 2025.

(3) 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 to Section 69995.11 of the Education Code.

SEC. 9. 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. Children's Educational Opportunity Act of 2026

69995. This article, together with Section 17132.2 of the Revenue and Taxation Code, shall be known, and may be cited, as the Children's Educational Opportunity Act of 2026.

69995.1. For purposes of this article, the following definitions apply:

(a) "Administrative Fund" or "ESA Trust Administrative Fund" means the fund established within the Education Savings Account (ESA) Trust pursuant to subdivision (h) of Section 69995.2 from which the costs of administering the ESA Trust, including investment management fees, are paid.

(b) "Annual independent financial audit" means an annual, independent financial audit report that employs generally accepted accounting principles and is conducted by an independent auditor, the cost of which is borne by the school seeking eligibility under this article.

(c) "Beneficiary," "beneficiary of the account," or "trust beneficiary" means the eligible student for whom an ESA was created by the ESA Trust Board.

(d) "Costs of administration" means the actual costs of the ESA Trust Board to administer ESAs, subject to the limit established in subdivisions (d) and (e) of Section 69995.3.

(e) "Eligible school" means any of the following:

(1) Any campus of the California Community Colleges, the California State University, or the University of California.

(2) (A) A private primary or secondary school, providing education for students in transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, whether for profit or not for profit, as described in Section 48222, operating in California or any other state. To be eligible, the school shall have a minimum enrollment of six students and meet either of the following qualifications:

(i) Be accredited by a regional, national, or religious accreditation organization and do either of the following:

(I) Perform nationally norm-referenced academic testing of all students, except for students with an individualized education program, to occur, at a minimum, biennially, beginning no later than grade 4.

(II) Engage a competency-based assessment expert or a similarly qualified professional to assess students' proficiency in demonstrating the essential skills, knowledge, and behaviors required by the educational program, to occur, at a minimum, biennially, beginning no later than grade 4.

(ii) Perform nationally norm-referenced academic testing of all students, except for students with an individualized education program, to occur, at a minimum, biennially, beginning no later than grade 4, or engage a competency-based assessment expert or a similarly qualified professional to assess students' proficiency in demonstrating the essential skills, knowledge, and behaviors required by the educational program, to occur, at a minimum, biennially, beginning no later than grade 4.

(B) If the Legislature funds universal preschool, then a private school providing education for students in preschool that meets the other requirements of subparagraph (A) shall also qualify as an eligible school.

(3) (A) A school that has a current private school affidavit on file with the State Department of Education pursuant to Section 33190, provides education for students in transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, whether for profit or not for profit, operates in the United States, and does either of the following:

(i) Performs nationally norm-referenced academic testing of all students, except for students with an individualized education program, to occur, at a minimum, biennially, beginning no later than grade 4.

(ii) Engages a competency-based assessment expert or a similarly qualified professional to assess students' proficiency in demonstrating the essential skills, knowledge, and behaviors required by the educational program, to occur, at a minimum, biennially, beginning no later than grade 4.

(B) A school qualifying as an eligible school pursuant to this paragraph may include, but is not limited to, a home school or tutor-based model described in Section 48224 that meets the requirements of this paragraph.

(C) If the Legislature funds universal preschool, then a private school providing education for students in preschool that meets the other requirements of subparagraph (A) shall also qualify as an eligible school.

(4) A private college or university, in-state or out-of-state, accredited by an accrediting agency recognized by any state or the United States Department of Education.

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

(6) A vocational education or training institution, whether secondary or postsecondary, in-state or out-of-state, accredited by an accrediting agency recognized by any state or the United States Department of Education.

(f) "Eligible student" means every person enrolled in, or eligible to enroll in, a California public school serving pupils in transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive. "Eligible student" shall include emancipated minors or otherwise eligible students who have attained the age of majority. If the Legislature funds universal preschool, then "eligible student" shall also include every person enrolled in, or who meets the age requirements to be enrolled in, a public preschool program.

(g) "ESA" means an education savings account in the Program Fund established by the ESA Trust Board on behalf of a beneficiary.

(h) "ESA deposit amount," "annual ESA deposit amount," or "per-ESA deposit amount" means the amount calculated pursuant to subdivision (e) of Section 69995.2.

(i) "ESA Trust" means the Education Savings Account Trust established by subdivision (b) of Section 69995.2.

(j) "ESA Trust Board" means the Education Savings Account Trust Board established by subdivision (a) of Section 69995.3.

(k) "Funds universal preschool" means provides state funding for preschool to guarantee preschool access for every age-eligible pupil or student in California, regardless of income. This state funding may include, but is not limited to, funding required by Section 8 of Article XVI of the California Constitution, as that section read on January 1, 2025.

(l) "Parent or legal guardian" includes an eligible student who is either emancipated or has attained the age of majority.

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

(n) "Postsecondary eligible education expenses" means all of the following:

(1) The expenses typically associated with vocational training, undergraduate, or graduate education at an eligible school, including, but not limited to, tuition, books, school supplies and equipment, academic tutoring, special needs services of a special needs beneficiary, any additional school fees, and room and board.

(2) The expenses incurred by a beneficiary to attend, before high school graduation, any eligible postsecondary institution, including, but not limited to, a community college or vocational training school, including tuition.

(3) Other expenses associated with eligible vendors incurred on behalf of a student, regardless of whether the student is enrolled in an eligible school.

(o) "Public school" means a school operated by a school district, county office of education, or a charter school, or the state special schools operated by the State Department of Education.

(p) "Program Fund" or "ESA Trust Program Fund" means the fund established within the ESA Trust pursuant to subdivision (h) of Section 69995.2 from which moneys transferred from the General Fund and investment earnings, and other grants, gifts, or appropriations, are maintained and segregated into separate ESAs.

(q) (1) "TK-12 eligible education expenses" means all of the following:

(A) The expenses typically associated with the education of a student in transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, in an eligible school, including, but not limited to, tuition, 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 activities.

(B) Other expenses associated with eligible vendors incurred on behalf of a student, regardless of whether the student is enrolled in an eligible school.

(C) Expenses associated with a religious educational curriculum.

(2) If the Legislature funds universal preschool, then "TK-12 eligible education expenses" shall also include the expenses typically associated with the education of a student in preschool that otherwise meet the requirements of paragraph (1), and other expenses associated with eligible vendors incurred on behalf of a student, regardless of whether the student is enrolled in an eligible school.

(r) "Total ESA funding amount" means the amount calculated by multiplying the annual ESA deposit amount by the number of ESAs established, pursuant to subdivision (f) of Section 69995.2.

(s) "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.

(t) "Unclaimed funds" means funds remaining in an ESA that are not disbursed, pursuant to Section 69995.12, to an eligible school or another ESA at the time of the ESA Trust beneficiary's death.

(u) "Vendor" or "eligible vendor" means those vendors, including, but not limited to, tutors, identified by the ESA Trust Board pursuant to paragraph (1) of subdivision (g) of Section 69995.6 or approved by eligible schools pursuant to paragraph (3) of subdivision (g) of Section 69995.6 to which parents or legal guardians may direct expenditures from the ESA for TK-12 and postsecondary eligible education expenses pursuant to a vendor participation agreement.

(v) "Vendor participation agreement" means the uniform contract created by the ESA Trust Board that must be executed by the ESA Trust Board and the parent or legal guardian of an eligible student that directs the ESA Trust Board to disburse funds from an ESA to an eligible vendor or vendors on behalf of the beneficiary of the account, pursuant to regulations adopted by the ESA Trust Board. A vendor participation agreement may be executed on behalf of an eligible student, regardless of whether the student is enrolled in an eligible school and notwithstanding the prohibition described in paragraph (1) of subdivision (j) of Section 69995.2.

69995.2. (a) This article shall be construed liberally in order to effectuate the intent as described in Section 1 of the act that added this article. The purposes of this article and all of its provisions with respect to powers granted shall be broadly interpreted to effectuate that intent and those purposes and shall not be broadly interpreted as to any limitation of powers on the ESA Trust Board or the ESA Trust.

(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 shall be entitled to the creation of an ESA, pursuant to this article, upon the request of the eligible student's parent or legal guardian.

(d) (1) (A) Every eligible student for whom an ESA has been created and is not enrolled in a public school and for whom a participation agreement to enroll in an eligible school has been submitted or for whom a vendor participation agreement has been submitted, shall receive a deposit to their account to be expended at the discretion of the parent or legal guardian for TK–12 and postsecondary eligible education expenses, as provided in this article.

(B) A parent or guardian may direct ESA funds pursuant to a participation agreement affiliated with an eligible school and a vendor participation agreement affiliated with an eligible vendor. An ESA for a student with a participation agreement and a vendor participation agreement shall only receive a single annual ESA deposit amount, as calculated pursuant to subdivision (e).

(2) Unused funds remaining in an ESA at the end of a fiscal year may be carried over for use for TK–12 and postsecondary eligible education expenses in subsequent years, consistent with this article.

(3) A person, firm, partnership, or corporation shall not deposit any money into an ESA. A person, firm, partnership, or corporation may, consistent with paragraph (3) of subdivision (c) of Section 69995.3, make deposits into the Administrative Fund or the Program Fund.

(e) (1) Commencing with the first fiscal year following the enactment of this article, on July 1 of each year, the Department of Finance shall determine the annual per-ESA deposit amount for the upcoming school year. The per-ESA deposit amount for the 2027–28 fiscal year shall be seventeen thousand dollars (\$17,000). In each following fiscal year, the Department of Finance shall calculate the annual per-ESA deposit amount by dividing the figure in subparagraph (A) by the figure in subparagraph (B). This amount shall then be adjusted pursuant to paragraph (3) of subdivision (d) of Section 69995.3.

(A) The total amount of funding required to be received for the support of school districts in the state in the current fiscal year for purposes of satisfying the requirements of Section 8 of Article XVI of the California Constitution, as that section read on January 1, 2025, inclusive of appropriated General Fund revenues and allocated local proceeds of taxes. If the Legislature suspends the minimum funding obligation for school districts pursuant to subdivision (h) of Section 8 of Article XVI of the California Constitution, the number identified pursuant to this subparagraph shall be the total amount of funding that would have been required to be received for the support of school districts in the state in the current fiscal year for purposes of satisfying the requirements of Section 8 of Article XVI of the California Constitution, as that section read on January 1, 2025, inclusive of appropriated General Fund revenues and allocated

local proceeds of taxes, had the Legislature not suspended the minimum funding obligation.

(B) The estimated number of eligible students for the upcoming fiscal year.

(2) If the state provides additional funding to government-run primary and secondary schools in a fiscal year that exceeds the amount initially calculated pursuant to subparagraph (A) of paragraph (1), based on revised, changed, or updated calculations applicable to subparagraph (A) of paragraph (1), then the state shall provide additional funds to the ESA Trust in that fiscal year based on those revised, changed, or updated figures.

(f) For each school year, on July 8, the Controller shall transfer an amount from the General Fund to the Program Fund equal to one-half of the annual per-ESA deposit amount calculated pursuant to subdivision (e) multiplied by the number of ESAs established. On or before November 30 of each school year, the ESA Trust Board shall submit to the Controller an updated number of ESAs. On or before December 15 of each school year, the Controller shall transfer to the Program Fund one-half of the annual per-ESA deposit amount calculated pursuant to subdivision (e) multiplied by the updated estimated number of ESAs. The individual ESAs shall be funded from the Program Fund as soon as reasonably possible and no later than August 1 and December 31, respectively, of each school year. The Controller shall adjust the amount of moneys transferred from the General Fund to the Program Fund to ensure that the total amount of moneys transferred in a school year equals exactly the amount required to be transferred pursuant to this article.

(g) (1) The Legislature may appropriate additional funds to the Program Fund, which shall be divided equally among all ESAs, except as provided for in paragraph (2).

(2) The Legislature may appropriate additional funds to the ESA Trust for special needs students, which shall be divided equally among all special needs students with ESAs. The ESA Trust Board shall, as part of the regulations adopted pursuant to Section 69995.14, define special needs students for these purposes.

(h) (1) As part of the ESA Trust, there shall be two funds created in the State Treasury, which shall be identified as the ESA Trust Program Fund and the ESA Trust Administrative Fund. Moneys in those funds shall be used only for the purposes of this article and shall not be taken, used, borrowed, or collateralized for any other purpose.

(2) Notwithstanding Section 13340 of the Government Code, the ESA Trust Program Fund is hereby continuously appropriated, without regard to fiscal year, to the ESA Trust Board for purposes of this article.

(3) Notwithstanding Section 13340 of the Government Code, the ESA Trust Administrative Fund is hereby continuously appropriated, without regard to fiscal year, to the ESA Trust Board. Moneys in the Administrative Fund shall be used consistent with subdivision (i) of this section and subdivisions (d) and (e) of Section 69995.3.

(i) All reasonable and necessary start-up costs for the ESA Trust, as determined by the Department of Finance, are hereby continuously appropriated, without regard to fiscal year, from the General Fund to the ESA Trust Board. Without limitations to the total amount of reasonable and necessary start-up costs, the state shall pay that determined amount to the Administrative Fund on or before December 15, 2026. The ESA Trust shall repay from the Administrative Fund the start-up costs paid by the state

evenly amortized without interest over 10 years, in annual installments beginning December 15, 2027.

(j) (1) An eligible school or an eligible vendor shall not receive funds from the ESA of a beneficiary who is either of the following:

(A) Related through blood, marriage, or adoption to an employee, independent contractor, corporate officer, or owner of the school or vendor.

(B) A foster child of, or whose legal guardian is, an employee, independent contractor, corporate officer, or owner of the school or vendor.

(2) A parent or guardian of a pupil enrolled in an eligible school that is prohibited from receiving funds pursuant to paragraph (1) may direct ESA funds to eligible vendors or otherwise use them consistent with this article, pursuant to a vendor participation agreement.

69995.3. (a) The purposes, powers, and duties of the ESA Trust are vested in, and shall be exercised by, the ESA Trust Board, which is hereby established.

(b) (1) The ESA Trust Board shall consist of nine members. Three members shall be actively affiliated with eligible nonreligious private schools, five members shall be actively affiliated with eligible parochial or religious private schools of different religions or denominations, and one member shall be a parent or legal guardian of a child with an ESA receiving home-based education. ESA Trust Board members shall be appointed consistent with paragraphs (2) to (6), inclusive.

(2) The Governor shall appoint one member actively affiliated with an eligible nonreligious private school, three members actively affiliated with eligible parochial or religious private schools, and a parent or legal guardian of a student with an ESA receiving home-based education.

(3) The Speaker of the Assembly shall appoint one member actively affiliated with an eligible nonreligious private school.

(4) The minority leader of the Assembly shall appoint one member actively affiliated with an eligible parochial or religious private school.

(5) The Senate President pro Tempore shall appoint one member actively affiliated with an eligible nonreligious private school.

(6) The minority leader of the Senate shall appoint one member actively affiliated with an eligible parochial or religious private school.

(7) Except as provided in this paragraph, board members may be appointed for a maximum of two four-year terms. However, members initially appointed pursuant to paragraphs (3) to (6), inclusive, shall serve a two-year term and shall be eligible to be appointed to two additional four-year terms. If a board member vacates the ESA Trust Board during the board member's term, the replacement shall be appointed to a new four-year term. The ESA Trust Board may appoint additional ex officio nonvoting members, including members of the Scholarshare Investment Board created pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 69984.

(c) Without limitation, the ESA Trust Board shall have all the powers and duties provided to the Scholarshare Investment Board under Article 19 (commencing with Section 69980), with regard to the administration of the ESA Trust, including, but not limited to, all of the following:

(1) The power to invest moneys in the Program Fund for the benefit of the ESA Trust and the beneficiaries of ESAs within the Program Fund, and the duty to publicly

report investments and investment performance. Investment strategies shall ensure the availability of moneys necessary to fully fund each ESA, as determined in this article.

(2) The duty to disburse funds from ESAs, and to audit accounts to ensure that all funds disbursed to eligible schools and eligible vendors are used by and for the beneficiary of the ESA and in furtherance of the purposes of this article.

(3) The power to accept any grants, gifts, appropriations, and other moneys from any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit into the Administrative Fund or the Program Fund.

(4) The duty to redistribute unclaimed funds within the Program Fund for purposes of this article.

(d) (1) The ESA Trust Board may allocate funds appropriated to the Program Fund to the Administrative Fund consistent with paragraph (2).

(2) (A) If there are 500,000 or fewer ESAs, the ESA Trust Board may allocate 3 percent of the total ESA funding amount to the Administrative Fund.

(B) If there are from 500,001 to 700,000 ESAs, inclusive, the ESA Trust Board may allocate 2.75 percent of the total ESA funding amount to the Administrative Fund.

(C) If there are from 700,001 to 900,000 ESAs, inclusive, the ESA Trust Board may allocate 2.5 percent of the total ESA funding amount to the Administrative Fund.

(D) If there are from 900,001 to 1,100,000 ESAs, inclusive, the ESA Trust Board may allocate 2.25 percent of the total ESA funding amount to the Administrative Fund.

(E) If there are from 1,000,001 to 1,300,000 ESAs, inclusive, the ESA Trust Board may allocate 2 percent of the total ESA funding amount to the Administrative Fund.

(F) If there are from 1,300,001 to 1,500,000 ESAs, inclusive, the ESA Trust Board may allocate 1.75 percent of the total ESA funding amount to the Administrative Fund.

(G) If there are from 1,500,001 to 1,700,000 ESAs, inclusive, the ESA Trust Board may allocate 1.5 percent of the total ESA funding amount to the Administrative Fund.

(H) If there are from 1,700,001 to 1,900,000 ESAs, inclusive, the ESA Trust Board may allocate 1.25 percent of the total ESA funding amount to the Administrative Fund.

(I) If there are more than 1,900,000 ESAs, the ESA Trust Board may allocate 1 percent of the total ESA funding amount to the Administrative Fund.

(3) The remainder of the total ESA funding amount, as calculated pursuant to subdivision (f) of Section 69995.2, not allocated pursuant to the applicable subparagraph of paragraph (2) shall be apportioned equally among all ESAs.

(e) All costs of administration, including investment management fees, of the ESA Trust shall be paid out of the Administrative Fund.

69995.4. (a) The ESA Trust Board shall create an online application for a parent or legal guardian to request that an ESA be established for an eligible student and submit an executed participation agreement or executed vendor participation agreement, pursuant to this article. The ESA Trust Board shall also accept applications and executed participation agreements and executed vendor participation agreements submitted by mail.

(b) Pursuant to subdivision (c) of Section 69995.2, applications shall be accepted, and participation agreements and vendor participation agreements executed, on an

ongoing basis. An application, executed participation agreement, or executed vendor participation agreement shall be completed by April 1 in order for the beneficiary to receive the full annual ESA deposit amount for the next succeeding school year. For applications, participation agreements, and vendor participation agreements executed between April 2 and October 1, inclusive, the beneficiary 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. For applications, executed participation agreements, and executed vendor participation agreements executed between October 2 and April 1 of the following year, inclusive, the beneficiary shall receive the full annual ESA deposit amount for the following school year.

(c) The parent or legal guardian of an eligible student shall identify the eligible student as the trust beneficiary of the ESA and execute the participation agreement or vendor participation agreement. The parent or legal guardian may also designate a contingent beneficiary for the ESA until the trust beneficiary attains the age of majority or is emancipated, at which time the trust beneficiary has the sole right to designate a contingent beneficiary.

(d) (1) Once an application and participation agreement have been completed, the ESA Trust Board shall confirm that the applicant is eligible to be, or is already, enrolled in an eligible school. Upon confirmation, the ESA Trust Board shall transmit a copy of the participation agreement to the eligible school. If the trust beneficiary is transferring from a public school, including a charter school, the ESA Trust Board shall notify the public school of the student's disenrollment from the public school.

(2) Once an application and vendor participation agreement have been completed, the ESA Trust Board shall confirm the eligibility of the vendor or vendors. Upon confirmation, the ESA Trust Board shall transmit a copy of the participation agreement to the eligible vendor or vendors.

(e) So long as the beneficiary remains eligible to receive the ESA deposit amount and to direct the expenditure of funds pursuant to this article, no additional application, participation agreement, or vendor participation agreement shall be required. However, the parent or legal guardian shall amend an application and participation agreement if the beneficiary enrolls in a different eligible school, and shall amend an application and vendor participation agreement if the beneficiary uses funds for different eligible vendors.

(f) The ESA Trust Board shall create an online process for any person, school, or vendor to report that a beneficiary is no longer eligible or is no longer enrolled in an eligible school, or that the ESA funds are no longer being directed to eligible vendors. This process shall provide for establishing identification of the reporting party and safeguards against malicious actors. Upon receiving a report, the ESA Trust Board shall inquire and confirm the eligibility status of the beneficiary by providing adequate notice to the parent or legal guardian of the beneficiary, and to the school or vendor, that the beneficiary's eligibility is under review, and providing an opportunity for the parent or legal guardian of the beneficiary, and the school or vendor, to be heard. If the ESA Trust Board determines that a beneficiary is no longer eligible, written findings of the determination shall be provided to the parent or legal guardian of the beneficiary and the school or vendor. This determination may be appealed by the parent or legal guardian on behalf of the beneficiary 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 balance in an ESA shall be maintained in the ESA and continue to be available for use by the beneficiary for TK–12 and postsecondary eligible education expenses, provided the beneficiary meets the requirements of eligibility under this article. Should the parents or legal guardians subsequently enroll the student in a public school, the ESA and participation agreement or vendor participation agreement shall be suspended during the student's period of public school enrollment, but the balance of the ESA shall be preserved in the ESA for future use, consistent with this article.

69995.5. (a) The ESA Trust Board shall create an online application for a school to become eligible to receive funds from an ESA pursuant to this article and shall receive applications and verify eligibility under this article.

(b) The ESA Trust Board shall publish, and update biannually, both online and in writing, a list of eligible schools by name that includes the address, contact information, internet website address, grades served, accreditation information, academic testing results summary or competency-based assessment results, as applicable, and tuition charged for each grade level for each eligible school. The disclosed tuition charge shall include the school's administrative costs for servicing the ESA program for the student.

(c) The ESA Trust Board shall create a written notice of the rights and benefits afforded to all eligible students under this article. The Superintendent and public schools shall ensure that this notice regarding the rights and benefits afforded to all eligible students under this article is mailed to the parents and guardians of eligible students and posted on the State Department of Education's internet website, the internet websites of public schools, and at each physical public schoolsite in conspicuous locations that can be seen by parents, legal guardians, and pupils enrolled in the school. The notice of rights and benefits, and the list of eligible schools described in subdivision (b), shall be made available, either digitally or in print, at each physical public schoolsite upon request by a parent, legal guardian, or pupil.

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

(e) The ESA Trust Board shall create an online process for any person or school to report that a school is no longer eligible to receive funds pursuant to this article. This process shall provide for establishing identification of the reporting party and safeguards against malicious actors. Upon receipt of a report, the ESA Trust Board 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 beneficiaries enrolled in the school, and an opportunity for both to be heard. If the ESA Trust Board determines that a school is no longer eligible, written findings of the determination shall be provided to the school and those parents or legal guardians. The 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).

(f) Eligible schools participating pursuant to this article shall ensure that annual independent financial audits are conducted. An eligible school shall submit a copy of

its annual independent financial audit report for the preceding fiscal year to the ESA Trust Board by December 15 of each year.

(g) Eligible schools participating pursuant to this article shall annually provide certification of accreditation, if applicable, and a summary of academic testing results or competency-based assessment results, as applicable, to the ESA Trust Board and to parents of enrolled and prospective students.

69995.6. (a) The ESA Trust Board shall do all of the following:

(1) Provide for the creation of an ESA within the Program Fund for each eligible student for whom an ESA has been requested.

(2) Enter into participation agreements and vendor participation agreements pursuant to this article.

(3) Credit each ESA with the appropriate ESA deposit amount for the trust beneficiary.

(4) Credit investment earnings of the Program Fund to each account, as appropriate.

(b) The ESA Trust Board shall provide parents and legal guardians of account beneficiaries with the ability to securely review online ESA account activity, including account deposits or credits, investment earnings, and disbursements to eligible schools and eligible vendors on behalf of the beneficiary. The ESA Trust Board shall protect the privacy of parents, legal guardians, and beneficiaries.

(c) (1) The ESA Trust Board shall, pursuant to the terms of an executed participation agreement or vendor participation agreement, distribute funds on behalf of the beneficiary to an eligible school or eligible vendor in 10 equal monthly installments commencing August 15 and ending May 15.

(2) Notwithstanding paragraph (1), the ESA Trust Board may, by agreement with an eligible school or eligible vendor, provide for a different distribution schedule.

(3) Notwithstanding any other law, ESA funds may be used on behalf of beneficiaries during any time of the year.

(d) The ESA Trust Board shall provide for the random audit of student eligibility, student enrollment, student attendance, school eligibility, and vendor eligibility.

(e) The ESA Trust Board shall obtain a refund from an eligible school or eligible vendor 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 those payments were obtained with the fraudulent or illegal participation of the parent or legal guardian, or of the beneficiary.

(f) (1) The ESA Trust Board shall provide a uniform participation agreement for use by the ESA Trust Board and parents or legal guardians of eligible students. An eligible school identified in an executed participation agreement shall be a third-party beneficiary of the agreement for any payments that are directed to the eligible school from an ESA on behalf of a trust beneficiary.

(2) The ESA Trust Board shall provide a uniform vendor participation agreement for use by the ESA Trust Board and parents or legal guardians of eligible students. An eligible vendor identified in an executed vendor participation agreement shall be a third-party beneficiary of the agreement for any payments that are directed to the eligible vendor from an ESA on behalf of a trust beneficiary.

(g) (1) The ESA Trust Board shall establish a process to determine, and establish and maintain an online list of, eligible vendors, including, but not limited to, tutors, to which parents or legal guardians may make direct expenditures from the ESA for TK-12 and postsecondary eligible education expenses, pursuant to a vendor participation agreement. This list shall be regularly updated based on recommendations of participating schools and parents or legal guardians of participating ESA students. The ESA Trust Board shall develop a mechanism to reimburse a parent or legal guardian from the beneficiary's ESA for TK-12 and postsecondary eligible education expenses for the beneficiary, for which a direct ESA payment was not made.

(2) The ESA Trust Board shall develop a process to allow those vendors, including, but not limited to, tutors, described in paragraph (1), to directly invoice an eligible student's ESA.

(3) (A) An eligible school may approve vendors not on the list described in paragraph (1) to which parents or legal guardians may direct expenditures from the ESA for TK-12 and postsecondary eligible education expenses, pursuant to a vendor participation agreement. Following approval by an eligible school, a parent or legal guardian who made a payment, other than a direct ESA payment, to the vendor for TK-12 and postsecondary eligible education expenses shall be reimbursed from the beneficiary's ESA.

(B) The ESA Trust Board shall, as part of the regulations adopted pursuant to Section 69995.14, provide guidelines for eligible schools to comply with in approving vendors pursuant to subparagraph (A).

(h) (1) The ESA Trust Board shall establish the following processes for an eligible school described in paragraph (3) of subdivision (e) of Section 69995.1:

(A) A process to verify claimed eligible expenses.

(B) A process to verify the existence of enrolled students, which may include verification through birth certificates, medical records, or other documentation as determined by the ESA Trust Board.

(2) The processes described in paragraph (1) shall only apply to schools that only meet the eligibility criteria of paragraph (3) of subdivision (e) of Section 69995.1 and shall not apply to those schools that also meet the eligibility criteria of paragraph (2) of subdivision (e) of Section 69995.1.

(i) The ESA Trust Board shall develop a process to allow for the execution of vendor participation agreements by eligible schools that are prohibited from receiving funds pursuant to paragraph (1) of subdivision (j) of Section 69995.2. Vendor participation agreements executed pursuant to this subdivision shall be consistent with the prohibitions of paragraph (1) of subdivision (j) of Section 69995.2 and shall allow the parent or legal guardian to direct funds in an ESA to eligible vendors.

69995.7. (a) The ESA Trust Board shall only distribute funds from an ESA to an eligible school or eligible vendor selected by a parent or legal guardian. No funds shall be distributed to a parent or legal guardian, except as provided in subdivision (g) of Section 69995.6.

(b) The state shall not limit the number of eligible schools or the number of students enrolled in an eligible school, and shall not impose any condition on the eligibility of a private school, college, or university to receive funds, other than conditions related to the following:

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

(2) Periodic certification that the amount disbursed from an ESA is only used for TK–12 and postsecondary eligible education expenses.

(3) Annual certification of accreditation, if applicable, and submission of the school's academic testing results or competency-based assessment results, as applicable, as described in subdivision (e) of Section 69995.1.

(4) An annual independent financial audit showing gross financial irregularities, or failure to submit an annual independent financial audit pursuant to subdivision (f) of Section 69995.5.

(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 or operated by the school.

(c) Participating private schools and parents or legal guardians providing home-based education through a private school may teach or not teach subject, content, and information as the participating private school deems appropriate.

(d) The state shall not, as a condition of becoming or remaining an eligible school, impose upon private eligible schools any curriculum or subject matter mandates, student or faculty disciplinary policies, academic policies, or teacher credentialing requirements, other than the eligibility requirements described in subdivision (e) of Section 69995.2. No private religious school shall be denied participation as an eligible school because of faith or religious requirements of the students or faculty. Educational institutions controlled by a religious organization shall have the protections of Section 221 in regard to Section 220 and any similar provisions in California law or the California Constitution. This protection includes participating in and receiving money as eligible schools under this article.

(e) Academic and disciplinary policies and standards of private eligible schools are not unlawful or discriminatory based on disparate impact for purposes of Section 220 or any other similar law if those policies and standards are subject to reasonably diligent efforts to apply them equally to all persons concerned.

(f) (1) Neither the ESA Trust Board nor any agency of the state shall withhold, suspend, or interrupt the accrual or expenditure of ESA funds mandated by this article, or otherwise deprive an eligible student of the benefits of this article for any reason or on any grounds other than any of the following:

(A) Failure to meet the eligibility criteria set forth in subdivision (f) of Section 69995.1. Students who no longer meet the eligibility criteria set forth in subdivision (f) of Section 69995.1 may still, pursuant to paragraph (2) of subdivision (d) of Section 69995.2, use funds in their ESA that accumulated from prior years of ESA deposits, consistent with this article.

(B) Engaging in prohibited transactions as set forth in Section 69995.10.

(C) Engaging in any other conduct prohibited by this article.

(2) A student enrolled in a participating private school for home-based education shall not be deprived of eligibility or funding of their ESA because of state immunization requirements, consistent with the exemption described in subdivision (f) of Section 120335 of the Health and Safety Code.

(g) The state, any other governmental bodies or agencies, and the ESA Trust Board shall not impose undue burdens or undue regulations on participating schools,

providers of educational services or products, families, or trust beneficiaries regarding participation under this article.

69995.8. (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 ESA for postsecondary eligible education expenses of a beneficiary attending that school.

(b) A private college or university, in-state or out-of-state, may choose to become an eligible school by filing an application with the ESA Trust Board and, if approved, may accept funds from an ESA for postsecondary eligible education expenses of a beneficiary attending that school.

(c) A vocational education or training school, in-state or out-of-state, may choose to become an eligible school by filing an application with the ESA Trust Board and, if approved, may accept funds from an ESA for postsecondary eligible education expenses of a beneficiary attending that school.

(d) Any public college or university outside of California may choose to become an eligible school by filing an application with the ESA Trust Board and, if approved, may accept funds from an ESA for postsecondary eligible education expenses of a beneficiary attending that school.

69995.9. (a) A student enrolled in an eligible private school to facilitate home-based education, or an eligible private school that provides a hybrid program in which the student is partly on campus and partly participating in home-based education, shall be eligible for an ESA in accordance with this article and may use those funds for TK-12 and postsecondary eligible education expenses.

(b) Private schools with current private school affidavits on file with the State Department of Education pursuant to Section 33190 that are eligible pursuant to paragraph (3) of subdivision (e) of Section 69995.1 shall verify student existence through birth certificates, medical records, or other documentation as determined by the ESA Trust Board pursuant to subdivision (h) of Section 69995.6.

(c) Private-school-facilitated home-based or hybrid education shall not be subject to any of the following:

(1) The California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30) of Division 2 of the Health and Safety Code).

(2) The jurisdiction of the State Department of Social Services.

(3) Any licensing requirements of the state, counties, or municipalities.

69995.10. (a) An eligible school shall not share, refund, or rebate any funds received from an ESA, either directly or indirectly, with or to the parent, legal guardian, or trust beneficiary in any manner.

(b) The ESA Trust Board may terminate and suspend an ESA, participation agreement, or vendor participation agreement if the parent, legal guardian, or beneficiary fails to comply with the terms of the participation agreement or vendor 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 beneficiary and an opportunity to be heard. If the ESA Trust Board terminates or suspends an ESA, that determination may be appealed by the parent, legal guardian, or beneficiary 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).

69995.11. The Legislature shall provide for the allocation of costs associated with this article as follows:

(a) For the cost of providing an ESA deposit amount for an eligible student not enrolled in a TK–12 public school before the operative date of this article, the Legislature shall rebase, as necessary, the minimum funding guarantee for school districts, as provided in Section 8 of Article XVI of the California Constitution, to include those eligible students in the definition of “average daily attendance” as defined in Section 8.1 of Article XVI of the California Constitution.

(b) Funding provided for purposes of this article shall be included for purposes of the computations required by Section 8 of Article XVI of the California Constitution.

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

69995.12. A trust beneficiary of an ESA may do all of the following:

(a) Transfer, either partially or in its entirety, the balance of their ESA to another ESA held by a family member related by blood or marriage or a participating eligible school at any time during their lifetime after the age of majority or emancipation. This transfer may be made without incurring any tax or penalty. Any funds transferred pursuant to this subdivision shall only be used for TK–12 and postsecondary eligible education expenses, consistent with this article.

(b) Direct the balance of their ESA to another ESA of a family member or family members, as described in subdivision (a), or participating eligible schools, upon the death of the beneficiary by designating a contingent beneficiary or contingent beneficiaries on the ESA participation agreement or through estate planning instruments, including, but not limited to, wills or trusts, at their death. This subdivision ensures that the trust beneficiary can leave a lasting educational legacy by designating a recipient who will benefit from ESA funds for TK–12 and postsecondary education eligible education expenses. Any funds transferred pursuant to this subdivision shall only be used for TK–12 and postsecondary education eligible expenses, consistent with this article.

(c) Designate or change the contingent beneficiary at any time during their lifetime once the beneficiary has reached the age of majority or is emancipated.

69995.13. Notwithstanding any other law, if the requirements of Section 8 of Article XVI of the California Constitution are amended after January 1, 2025, in a manner that results in a higher per-pupil funding amount for public school pupils than had previously been required pursuant to its provisions, the per-ESA deposit amount shall be equivalent to that new per-pupil funding amount.

69995.14. The ESA Trust Board shall adopt regulations to implement this article.

SEC. 10. Section 17132.2 is added to the Revenue and Taxation Code, to read:
17132.2. (a) For purposes of this section, the following definitions apply:

(1) “Beneficiary of the account” has the same meaning as set forth in subdivision (c) of Section 69995.1 of the Education Code.

(2) "Education Savings Account" or "ESA" means an education savings account established under 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 (f) of Section 69995.1 of the Education Code.

(b) For taxable years beginning on or after January 1, 2027, gross income of a beneficiary of the account or the parent or legal guardian of a beneficiary of the account shall not include any distributions or earnings from an ESA.

(c) For taxable years beginning on or after January 1, 2027, gross income of a beneficiary of the account, the parent or legal guardian of a beneficiary of the account, or a participating educational institution shall not include any account balances of an ESA transferred pursuant to Section 69995.12 of the Education Code.

SEC. 11. (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 another act or acts relating to the same subject 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) Sections 9 and 10 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, all of 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 or proponents 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 proponent or proponents of the act are also authorized to take action on the state's behalf in asserting the state's interest in the validity of the act in any action and to appeal from any judgment invalidating the act.

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

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