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**TESTIMONY OF KANSAS STATE TREASURER LYNN ROGERS
IN OPPOSITION OF HB 2550**

February 1, 2022

Chairwoman Williams and Members of the Committee on K-12 Education Budget,

I am opposed to this legislation as written for six main reasons. Additionally, I am submitting questions that have been raised by our staff as we consider implementation of a program like this one.

First, it will be very difficult to establish this program by the bill's projected implementation date. Implementing the program would require hiring a program director, as well as additional staff for the day-to-day maintenance of the program. These hires would need to take place while the program and system are being developed. An RFP process would also need to be completed. For reference, our office's UP4 program to update our unclaimed property database is currently at the 10-month mark for implementation, and the project is still in the procurement stage. Additionally, rules and regulations would have to be developed for the program and then these would need approved by the Legislature. For reference, the Kansas ABLE Act was originally passed in 2015, but the first accounts were not opened under it until January of 2017. That program is substantially smaller than the one proposed here in terms of the number of potential accounts and the amount of rulemaking necessary for the program. This reflects the amount of up-front work needed to bring a savings program like this online.

Second, administrative costs for a program like this are high. A figure of \$10 per account is often referenced, but this would only be the tip of the iceberg. "Wallet" type accounts charge \$10 per year per account. This does not include, however, a charge of 2.5% per transaction per account. With the current level of Base State Aid amount, that would be an additional \$121.15 per account per year. A \$10 per account estimate also fails to consider the cost of the establishment and administration of accounts, including substantial increases in staffing. At a minimum, establishing the program would require adding a new division including a director, support staff, general counsel and an auditor position. Realistically, the staffing needs will be greater. For example, Arizona, a state with an established program, has 10,000 accounts administered by a staff of more than 20 with costs running \$1.2 million per year. They process 300 to 1,000 invoices per day, in addition to managing school and student applications and approvals, review of vendors, monthly statements, annual audits, interfacing with vendors, annual renewal of accounts, closing of accounts and coordination of funds between state agencies. This bill as written could create an equal or greater administrative need for our office. This bill would allow our office to use up to 5% of accounts initially, but only

2.5% in years three and beyond. Wallet expenses alone would use that, so additional funds would need to be appropriated from the State General Fund.

Third, auditing concerns exist given the limited scope of the bill. The bill allows only one audit, selected randomly, each year. This would likely not be a sufficient deterrent to potentially fraudulent activity. Public schools, by contrast, are audited annually for their unified budget, as well as special education, transportation and other areas of concern. Public money carries with it a responsibility to the public, and it is important that we hold institutions receiving public funds to the same high standards.

Fourth, there are significant concerns related to fraud due to significantly lower regulations placed on private schools and randomized auditing not being a strong enough net to catch inappropriate activity with ESA funds. Other states have had substantial issues with improper use of funds. In Arizona, audits have found that funds were spent on food, clothes, entertainment products, gift cards, a haunted house, and at a family planning clinic. Arizona has recovered less than 10% of misused funds under their program. Even when funds are spent on education-related expenses, there have been cases where parents have returned initial education-related purchases for store cards or cash that can then be spent on anything. Accounts have also been established by parents who do not actually transfer their student to a “qualifying” school.

Fifth, as the bill stands, we’re not sure we could use ‘Wallet’ type accounts, or if we did, they may have to be used differently. Since this bill requires interest payment on average daily balances, funds would need to remain in the state’s control until expended. The current SMART account system could not handle the large increase of accounts this program could envision so alternatives would need to be considered. No interest costs have been built into the bill’s fiscal note.

Sixth, the bill indicates that the State Treasurer’s Office would be responsible for approving or disapproving private “qualifying schools” for eligibility in the program. The Department of Education would need to be included on the drafting of rules and regulations surrounding these approvals. Notification of a closed or disapproved school would need to be sent to every parent or guardian requiring the private schools to supply contact information to the State Treasurer’s Office for this notification. Thus, structures must be put into place to ensure the safe and secure handling of said private information. We expect this would create an additional administrative need for our office’s IT staff.

Finally, if this bill passes, we will do everything in our power to implement it safely, efficiently and fairly. However, we do have a number of questions this legislation does not address:

Treasurer Lynn Rogers Testimony Addendum
Questions Regarding HB 2550
Febr. 1, 2022

Is HB 2550 constitutional in light of the Kansas Constitutional prohibition that “no religious sect or sects shall control any part of public educational funds?” What about school financing requirements under Kansas Supreme Court decisions?

How does the state intend to make up for the shortfall of funding for public schools if they experience a loss in students? Are resident school districts which might provide part-time or ancillary services to students going to be adequately funded for those activities (especially given the Kansas Constitutional prohibition that “no tuition shall be charged for attendance at any public school to pupils required by law to attend such schools)?

Aside from legal issues, what will happen to schools in smaller communities that suddenly lose funding to metro-area or online private schools? How will that impact rural communities across the state?

What are the implications of this program given the Individuals with Disabilities Education Act Americans with Disabilities Act? What effect does participation in this program have by virtue of being deemed a “parental placement of such student under the individuals with disabilities education act, 20 U.S.C. § 1400 et seq.?” Could identifying and removing financially-challenged individuals and their families, or individuals with other specialized needs, from the regular public classroom violate these laws or otherwise be considered discriminatory?

HB 2550 states that one of the responsibilities of the Treasurer will be "the effect of participation in the program by eligible students with an individualized education program (IEP) or an education plan under section 504 of the rehabilitation act of 1973, 29 U.S.C. § 794 (section 504 plan)." Does this mean the STO is responsible for determining whether an IEP or 504 plan will be able to be legally implemented if a specific student opens an account? The STO does not currently have the appropriate expertise to make these determinations, so this would require additional staff and/or coordination with SBOE or other agencies.

As currently structured, resident school districts notify parents of a student’s eligibility, but are not required to notify the State Treasurer’s Office (STO). How will the STO be notified of eligibility, as well as of each student’s loss of eligibility, any transfer to a new resident school district, or each students’ enrollment in and actual attendance at one or more private schools?

Parents are responsible for providing some of the required information (e.g., the number of hours the student is attending a private school), but only once per year. What if this changes during the year? Why is the parent responsible for reporting this and not school where the student is enrolled? This seems to be one of the windows of opportunity for fraud to occur.

Who provides all of the other required information? Who is in charge of making all of these ongoing eligibility, residence, and attendance determinations? How is all of this this private data going to be safely and securely stored, and shared among the many parties involved? Who will be responsible for 1099 reporting associated with HB 2550?

How are mid-year changes to a student's or private school's status handled? For example, a student becoming eligible during the school year, must they wait until the following school year to participate? If a student's participation is terminated, would resident school district be required to admit a student whose funds were spent elsewhere during the same school year? Would they be permitted to charge for partial or prorated tuition? If changes are allowed during a school year, more complicated funding, tracking and reporting requirements need to be addressed.

What are the definitions for "nonaccredited private home school or home school organization, community, consortium or group" which are excluded from participation? How is the STO to evaluate a school's provision of educational services? The STO is not the appropriate agency to make these determinations. May the STO contract with the State Board of Education for technical assistance in this area? If so, this would need appropriately funded.

The Treasurer may revoke a qualified private school's approval if the school "has failed to provide any educational services required by law to an eligible student." The scope of this language is unclear; is this limited to failure to provide "instructions in those subjects required by K.S.A. 72-3214, 72-3217 and 72-3235" or is something else intended?

The bill states that "Nothing in this act shall be deemed to limit the independence or autonomy of a qualified private school or to make the actions of a qualified private school." The Treasurer has the power to approve significant amounts of the school's funding and auditing the private school's program. At what point does this public oversight become a burden on the autonomy of a private school?

The definitions of allowable expenses and other definitions will need to be significantly built out. For example: Would any school fee be an acceptable use of funds? For example, fees for birthday parties? With respect to transportation "provided by" a private school, could a private school pay parents mileage for transporting their own students, or a carpool of students? What is a Certified Tutor? What is a licensed or accredited education provider? What standards apply to the STO's determination of "any other education expenses approved by the treasurer"?

Does Accounts and Reports have the capability to handle the applicable interest calculations? How are the STO, Accounts and Reports, and outside vendors all going to coordinate with respect to interest calculations and other account management functions? How is this being funded?

Can parents withdraw funds without being required to provide invoices? Is the STO required to approve payments before the disbursement is made? This would be required in connection with electronic funds transfer payments, but would significantly slow down the payment process and would be administratively burdensome.

Can the STO revoke the approval vendors, as well as private schools that do not provide proper educational services?

If the STO determines more than one school should be audited (because of questionable transactions), how will that be allowed?

We believe it is important that the Legislature consider and address these questions, as well as other concerns outlined above, before adopting this legislation. Failure to consider these may create significant logistical or legal challenges down the road for our office, as well as the State.