

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2119**

As Amended by House Committee on K-12  
Education Budget

**Brief\***

HB 2119, as amended, would create the Student Empowerment Act (Act). The Act would provide education savings accounts for students academically at-risk. The bill would amend the Kansas School Equity and Enhancement Act and the Kansas Income Tax Act.

***Purpose (New Section 2)***

The bill would designate the purpose of the bill to acknowledge that each student has unique educational, social, emotional, and environmental needs and that for each student to become a productive member of society that diversity must be supported through different educational approaches. The bill would further invite parents to act on behalf of their child when determining the best educational approach.

***Definitions (New Section 3)***

The bill would define terms, including the following:

- “BASE aid” would mean the base aid for student excellence defined in the Kansas School Equity and Enhancement Act, and amendments, for the immediately preceding school year;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Eligible student” would mean a Kansas resident who has not graduated from high school or obtained a general educational development credential and who:
  - Is enrolled in any school of a school district and qualifies for free or reduced-priced meals under the National School Lunch Act;
  - Has been identified by the resident school district as eligible to receive at-risk educational services because of below grade level performance in English language arts or mathematics, high rate of absenteeism, or for any other reason specified by the school district;
  - Was required, after January 1, 2021, by the resident’s school district to attend school through either remote learning for 120 consecutive school term hours within the current school year or 240 school term hours within the current calendar year, whichever occurs first; or hybrid model of instruction for a period of 240 school term hours within the current school year or one calendar year, whichever occurs first; or
  - Has an account established pursuant to the bill;
- “Hybrid model of instruction” would mean a method of providing education in which the student, enrolled in the resident school district, does not physically attend the school the student would otherwise attend on a full-time basis but participated in remote learning for at least one day each week. To calculate the school term hours for hybrid instruction, the hours would be counted for each day instruction is provided through remote learning;

- “Parent” would mean a parent, legal guardian, custodian or other person with authority to act on behalf of an eligible student;
- “Qualified private school” would mean any accredited private school or nonaccredited private school that provides specified instruction required in current law and is approved by the State Treasurer (Treasurer) according to provisions in the bill. A qualified private school would not mean any nonaccredited private home school or home school organization, community, consortium, or group;
- “Remote learning” would mean a method of providing education in which the student is regularly enrolled in the resident school district, does not physically attend the school the student would otherwise attend in-person, and the instruction is prepared for and provided by the school district’s teachers and staff to replace the instruction that would have been provided in person. It would not include virtual school as defined in the Virtual School Act; and
- “Resident school district” would mean the school district in which the student is currently or would be enrolled based on the student’s residence.

***Establishment (New Section 4)***

The bill would establish the Treasurer as the administrator of the Student Empowerment Program (Program). The bill would require the Treasurer to maintain a description of the Program on the State Treasurer website and provide, upon request, a hard copy of;

- Options for participation in the Program;
- Allowable uses of the funds;

- Responsibilities of students and parents;
- The effects of an Individualized Education Program (IEP) on eligible students in the Program;
- Duties of the Treasurer;
- The appeals process;
- The contact information for the Treasurer's employee who can answer questions about the Program; and
- A list of qualified schools.

***Notification of Eligibility (New Section 5)***

The bill would establish that, when a student in a resident school district becomes eligible, the school district must notify the parent of the student. That notification must include:

- The basis of the student's eligibility;
- A copy of the student's results from the most recently administered state assessment for English language arts and state assessment for mathematics; and
- The name and telephone number for the school district employee, Department of Education employee, and the Treasurer's office employee who can be contacted regarding the Program.

The bill would require notification to also include either a written description of the Program, including the information that must be published on the Treasurer's website or the website address for the Treasurer's website where such information can be found. Notice must be provided annually

so long as the student remains enrolled in the school districts and remains eligible for the Program.

***Written Agreement (New Section 6)***

The bill would require a written agreement between the parent of an eligible student and the Treasurer for the student to participate in the Program. If a parent has more than one eligible student, there would be separate written agreements for each student.

The written agreement would be terminated on July 31 immediately after the agreement is effective if the parent fails to consent to renewal, or if the Treasurer determines the money was not used for an allowable purpose, the student is no longer eligible, or the student no longer participates in the Program. The parent may end the agreement at any time.

When a written agreement is terminated, the account would become inactive.

***Student Empowerment Fund (New Section 7)***

The bill would create the Student Empowerment Fund (Fund). The bill would require the Director of Accounts and Reports to establish a process for eligible students to have individual accounts within the Fund that will earn interest based on the average daily balance and the net earnings rate of the pooled money investment portfolio for the preceding month. The bill would require the amount of interest to be added monthly to each student's account.

When an account is created within the Fund, the Treasurer would be required to notify the student's resident school district of its creation.

If an eligible student is enrolled in a qualified private school, the Treasurer would be required to transfer the

aggregate annual amount equal to the BASE aid into the student's account; or, if the student is still enrolled part-time in the resident school district, the amount of BASE aid inversely proportional to the amount of time the student is enrolled in the resident school district.

The Treasurer would be allowed to deduct a percentage of the transfer for administrative costs. The bill would authorize up to five percent each year for the first two years and two and a half percent each year thereafter.

The bill would also state that accounts are to be considered active unless:

- A written agreement is terminated;
- The date is July 31 following the graduation of the student from high school; or
- There have been two consecutive years of nonrenewal of agreement.

The Treasurer would be authorized to close any accounts determined to be inactive and the money remaining in the accounts would remain in the Fund. The Treasurer would be required to contract out the system by which the funds will be distributed to parents.

***Student Participation (New Section 8)***

The bill would state that eligible students would participate in the Program by receiving additional services under the Program while still enrolled in their resident school district or enrolling in a qualified private school. The parent of the eligible student would report to the Treasurer if the student is still enrolled in the resident school district, and, if so, the number of hours the student attended.

### ***Amount Transferred (New Section 9)***

The bill would require the Treasurer to determine the amount to be transferred to the Fund on or before August 1 of each year. The amount transferred would be the BASE aid multiplied by the number of eligible students enrolled in qualified schools and the total amount of the inverse proportion of the BASE aid for those students enrolled part-time in the resident school district. The bill would require the Treasurer to certify that amount and the Director of Accounts and Reports would transfer that certified amount from the state general fund to the Fund.

### ***Allowable Uses of Money (New Section 10)***

The bill would allow moneys in each student's account of the Fund to be expended only for:

- Tuition and fees charged by qualified schools;
- Textbooks and supplies required by qualified schools;
- Costs for transporting students to qualified schools, if the qualified school provides transportation;
- Educational therapies or services provided by a licensed or accredited education provider;
- Tutoring provided by a certified tutor;
- Curriculum materials;
- Tuition or fees charged by an accredited private online learning program;
- Fees for any nationally standardized norm-referenced achievement test, advanced placement examination or other examination related to

admission to a postsecondary educational institution;

- Classes, services, programs, activities, classes or any other resources or programs provided or contracted by a school district;
- Tuition and fees charged by a postsecondary educational institution; and
- Any other education expenses approved by the Treasurer.

The bill would require the Treasurer to notify the parent if non-allowable expenditures are made and the parent would have 30 days from that notification to repay the cost. The money remaining in the account at the end of the school year would shift into the next year.

If a qualified private school provides educational services, the funds would be reimbursed directly into the student's account. No personal deposits would be allowed to be made into an account.

The bill would require the Treasurer to conduct, or contract for, an annual audit of the accounts to ensure compliance with this act. If the Treasurer determines money in an account has been used for non-allowable purposes, the Treasurer would be authorized to prohibit expenditures from the account, prorate the deposit into that account by the amount used for non-allowable purposes, or terminate the account.

***State Board of Education (New Section 11)***

The bill would require the Treasurer to provide to the Kansas State Board of Education (State Board), on or before August 1, 2022 and every year thereafter:



- The names of students participating in the Program;
- The resident school districts with participating students; and
- The qualified private schools where each participating student is enrolled in the current school year.

On or before September 1, 2021, and each year thereafter, the State Board would determine the adjusted weightings funding amount for the Director of Accounts and Reports to transfer to the Fund. This amount would be determined for any participating student who has participated for less than three years and is the amount of the state foundation aid for the student's last year enrolled in the resident school district attributable to the low enrollment weighting, high enrollment weighting, bilingual weighting, at-risk student weighting, and career technical education weighting. The aggregate of those amounts for each resident school district totaled would be the adjusted weightings funding amount.

### ***School Approval and Revocation (New Section 12)***

The bill would require that, to become a qualified private school under the Program, a school must submit to the Treasurer an application of the Treasurer's making. The application must include proof that the applicant is an accredited or nonaccredited private school. The Treasurer must then accept, ask for additional information, or deny the application within 45 days of the application's receipt.

The bill would require the Treasurer to audit a qualified private school, randomly selected, each year to ensure compliance. If the Treasurer determines a qualified private school has routinely failed to comply with the provisions of the Act or applicable rules and regulations or failed to provide

educational services to an eligible student receiving instruction from the school if the school is accepting payments from the student's account, the Treasurer may revoke approval.

Prior to revocation, the Treasurer would be required to notify the school and allow 30 days for the school to cure the defect. If a school's approval has been revoked, the school may not participate in the Program until the Treasurer determines the school is in compliance with the act. Upon revocation of a school's approval, the Treasurer must notify the parent of a participating student receiving instruction from the school. If a school's approval was revoked due to misuse of moneys from the account, the treasurer may notify the Attorney General or the county or district attorney of the county where the school is located.

***Parental Placement (New Section 13)***

The bill would consider enrollment in a qualified private school as parental placement under the federal Individuals with Disabilities Education Act.

***Report to the State Board (New Section 14)***

The bill would require the Treasurer to report to the State Board on the Program on or before December 31, 2021, and each December 31 thereafter, including the:

- Number of students participating in the Program;
- Number of participating students enrolled on a part-time basis in a school district and the average number of hours such students attended public school;
- Number of participating students enrolled in a qualified private school;

- Number of qualified private schools;
- Results of any audits the Treasurer conducted or contracted for; and
- Total cost to administer the Program.

The State Board would present the information included in that report, along with the state foundation aid adjustments, in a report to the Governor and Legislature on or before January 15, 2022, and every January 15 thereafter.

***Rules and Regulations (New Sections 15-17)***

The bill would subject the Treasurer's actions for the Program to the Kansas Administrative Procedure Act and be reviewable under the Kansas Judicial Review Act.

The bill would require the Treasurer to adopt rules and regulation to carry out the Act on or before January 1, 2022.

The bill would state it should not be deemed to limit the autonomy of the qualified private school or deem the actions of a qualified private school those of state government.

***State Foundation Aid (New Sections 18-20)***

The bill would amend statute to reflect the State Board's determination of state foundation aid to include subtracting the adjusted weightings amount from the state foundation aid amount each school district shall receive in the year.

The bill would also amend statute to extend the high-density at-risk weighting through FY 2022.

Finally, the bill would amend statute to allow for the amounts deposited in a student empowerment account by a

taxpayer to be subtracted from the federal adjusted gross income for taxable years beginning after December 31, 2020.

## **Background**

The bill was introduced by the House Committee on K-12 Education Budget.

### ***House Committee on K-12 Education Budget***

In the House Committee hearing on February 8, 2021, **proponent** testimony was provided by representatives of Americans for Prosperity, EdChoice, Frontier Peace Advisors, Kansas Policy Institute, Urban Preparatory Academy in Wichita, and two private citizens. Written-only **proponent** testimony was provided by representatives of the Berean Academy and ExcelinEd. The proponent testimony generally stated that the bill allows for greater choice, which leads to better outcomes for students and accountability in the education system. Further, proponent testimony noted that the COVID-19 pandemic has widened the gap between low-income students and high-income students, in part because high-income students could take advantage of school choice or educational services that low-income students could not afford.

**Opponent** testimony was provided by representatives of GameOn for Kansas Schools, Kansas Association of School Boards, Kansas PTA, Piper School District (USD 203) and three private citizens. Written-only **opponent** testimony was provided by representatives of Americans United for Separation of Church and State, Blue Valley Schools (USD 229), Dighton School Board (USD 482), Education First Shawnee Mission, Garden City High School (USD 457), Geary County Schools Board of Education (USD 475), Goddard Public Schools (USD 265), Kansas Association of Retired School Personnel, Kansas National Education Association, Kansas State Board of Education, Mainstream

Coalition, Maize Board of Education (USD 266), Olathe Public Education Network, Olathe Schools (USD 233), Renwick Board of Education (USD 267), Seaman School District (USD 345), Shawnee Mission School District, Spring Hill School District (USD 230), Topeka Public Schools (USD 501), and four private citizens. The opponent testimony generally stated that the bill failed to focus on the students most in need of educational services and would instead give the choice to private schools to seek out high-performing students both academically and athletically. Further, opponent testimony noted that private schools need not serve all students or meet the special needs of students.

Written-only neutral testimony was provided by the Kansas Department of Administration. The Department of Administration noted concern with some language in the bill that appears contradictory in regards to the account and fund creation. The Department of Administration also noted a presumption that the Student Empowerment Fund would be created within SMART using existing Department of Administration resources.

The House Committee amended the bill to:

- Modify the definition of “eligible student” to include students who qualify for free and reduced lunch only if the student is enrolled in any school in a school district;
- Modify the definition of “eligible student” to include students who have attended school through a remote learning or hybrid model learning for set hours in the current school year or current calendar year after January 1, 2021;
- Specify that “qualified private school” does not mean any nonaccredited private home school or home school organization, community, consortium, or group;

- Provide that the Treasurer must contract with a third party *via* competitive bids for the system that would provide the electronic funds transfers for participating parents;
- Modify one of the allowable uses of the funds to reflect both services provided by and contracted by a school district, not just services contracted by the school district; and
- Amend the Kansas School Equity and Enhancement Act to require the State Board to calculate the high-density at-risk weighting for each school district on or before July 1, 2021, and extend the weighting through July 1, 2022.

### **Fiscal Information**

The fiscal note prepared by the Division of the Budget on the bill, as introduced provides estimates for provisions of the bill as follows.

#### ***State Treasurer***

##### *New Division*

According to the State Treasurer, the agency would need to establish a new division within the agency with start-up costs in FY 2022 totaling \$596,155, including 5.00 FTE positions. These costs include salaries and wages (\$187,375) and fringe benefits for six months, computer equipment and software licensing expenses (\$17,560), postage and printing (\$15,000) and the purchase and development of banking software for account management and a system of electronic funds transfer payments (\$400,000). The State Treasurer indicates that the scope of the Program would make it unfeasible to rely on in-house programming resources. The

estimate for this pricing is based on similar software used by the Unclaimed Property Division of the State Treasurer.

In addition, the State Treasurer estimates that each student account would have a monthly maintenance fee of approximately \$4 per account per month, with the cost possibly increasing or decreasing depending on the total number of transactions that would occur each month. As an example, the State Treasurer states that if 200,000 accounts would be established, an estimated monthly cost of \$800,000 would be required, or \$9.6 million annually.

The Division of the Budget notes that the monthly account costs and all other administrative costs for the State Treasurer would eventually be funded from the allowable administrative reimbursement mechanism of account transfers. Until the reimbursement mechanism can generate sufficient revenues, the State Treasurer would need an appropriation from the State General Fund or another funding source for the Program's administrative expenditures.

### *Contracts*

According to the State Treasurer, if the management of the accounts was outsourced with the State's contract bidding process, the management of these accounts would cost an estimated \$5 per account per month per year. The State Treasurer indicates this estimate is based on information from financial institutions for the average fees for managing similar transactional records and could fluctuate depending on the total transactions per account per month. The agency assumed annual cost \$12.0 million for 200,000 accounts. However, with this option, the State Treasurer would still need to employ 4.0 FTE positions at the costs indicated above and would estimate similar operating expenses.

## ***Kansas State Department of Education***

The Department of Education indicates the number of students that would participate in the Program cannot be estimated. However, the agency made certain assumptions to describe a potential fiscal effect with the enactment of the bill.

The Department of Education has identified four main costs in the bill that would affect the agency: participating current private school students; participating current public school students who would transfer to private schools (or who partially transfer to private schools); adjusted weightings for school districts; and additional administrative costs.

### ***Current Private School Students***

For current private school students, there would be an additional cost to the State if these students participate in the Program. Assuming only those students who qualify for free or reduced-price meals are eligible, the Department of Education estimates that approximately 20.0 percent of the 26,000 students in accredited private schools currently would qualify, or 5,200 students. The Department of Education does not have data for the number of students who would qualify in nonaccredited private schools. However, if the Department of Education would assume half of the number that would qualify in these schools relative to those in accredited private schools, a total of 2,600 students would qualify from nonaccredited private schools. This would mean a total of 7,800 eligible students from private schools. Using the BASE aid in the prior school year of \$4,569, a total of \$35,638,200 would be transferred from the State General Fund in FY 2022 to the accounts of current eligible private school students under this scenario.

### ***Current Public School Students***

For current public school students who would transfer to private schools, the current school finance formula provides



that school district funding is based on the higher FTE student count from the prior year or second preceding year, whichever is greater. In the first year that an eligible student would choose to move into a private school with the Program, the state would pay the BASE aid to the original public school, as well as the student's account.

If the Department of Education assumes that 10.0 percent of the state's 476,000 public school students would participate in the Program, a total of \$217,474,400 would be transferred from the State General Fund to the students' accounts under this scenario in FY 2022. If 5.0 percent of the state's public school students would participate, a total of \$108,742,200 would be transferred to students' accounts in FY 2022.

These amounts assume these students would transfer full-time to private schools. If the students attend only part-time as allowed by the bill, it would reduce these estimated amounts.

#### *Adjusted Weighting Provision*

For the adjusted weightings provision, the Department of Education notes the amount that would be transferred to the public schools would also depend on the number of students that would participate in the Program. The Department of Education reports that for FY 2020, the total eligible weightings that would be calculated in the bill for the adjusted weighting provision totaled 156,876 FTE students, which is an average of 0.318 FTE per student.

Using these formula weightings and assuming 10.0 percent of the 476,000 total public school students would participate in the Program, the total amount that would be transferred from the State General Fund to the State Foundation Aid account for additional state aid to school districts in FY 2022 is \$69,160,039. If the participation rate would be 5.0 percent, a total of \$34,580,020 would be

transferred from the State General Fund to the State Foundation Aid account for additional state aid to school districts in FY 2022.

The Division of the Budget notes that additional students would qualify for the Program in addition to these scenarios presented by the Department of Education.

*Administrative*

In addition, the Department of Education would require \$60,000 from the State General Fund for 1.0 FTE accountant position to complete the required calculations, to coordinate with the State Treasurer, to provide technical assistance to school districts and private schools, and to complete the required reports.

***Kansas Department of Revenue***

The Department of Revenue states that the implementation of the Program would affect State General Fund income tax collections, as the contributions to the student accounts would be considered income and the bill would allow the parent of the eligible student to deduct the amounts credited from their federal adjusted gross income. The Department of Revenue notes that because the number of students that would participate in the Program cannot be determined, the fiscal effect of the bill on tax collections cannot be estimated.

The Division of the Budget notes that although the bill creates additional federally reported income for parents of Program participants, the bill creates a corresponding reduction of the income tax liability for state tax purposes.

The enactment of the bill would not reduce State General Fund receipts as included in *The FY 2022 Governor's Budget Report*.

### ***Kansas Department of Administration***

The Department of Administration states that the State's accounting system and related procedures are not currently designed to implement the Program with individual student accounts within the State Treasury. The Department of Administration indicates that it is likely that additional staff and expenditures would be required to implement the Program; however, an estimate cannot be made. The Department of Administration notes that if the State Treasurer would track the individual student accounts with a vendor, there would be no additional costs for implementation.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Education; BASE aid; school choice; school finance; Student Empowerment Act