

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2615**

As Recommended by House Committee on K-12 Education Budget

Brief*

Sub. for HB 2615 would authorize boards of education of school districts to allow students enrolled in grades 6 through 12 to earn course credits through alternative educational opportunities.

The bill would also require school districts to allow nonresident students to enroll in and attend school in any school district. Finally, the bill would create the Student Empowerment Program and would authorize parents and guardians of eligible students to establish student savings accounts in the state treasury and use such accounts for certain education expenses.

Alternative Educational Opportunities

The bill would authorize boards of education of school districts to adopt policies to allow students enrolled in grades 6 through 12 to earn course credits through alternative educational opportunities with sponsoring entities. The bill would define the following terms:

- “Alternative educational opportunity” would mean the instruction that primarily occurs outside the classroom with a sponsoring entity; and

*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>

- “Sponsoring entity” would mean a business, not-for-profit organization, nonprofit organization, trade association, parent of a student, teacher, or administrator that partners with a school district to provide an alternative educational opportunity to students.

Alternative Education Policy

The bill would require a school district's policy to establish the following:

- Eligibility requirements for sponsoring entities;
- Requirements for the provision of alternative educational opportunities by sponsoring entities;
- Procedures for a sponsoring entity to submit a proposal to the school district to provide an additional educational opportunity to students;
- Criteria the school district will use to evaluate proposals; and
- Course credit that may be earned through the alternative educational opportunity.

Alternative Education Proposals

The bill would authorize a school district to accept a proposal from a sponsoring entity if the alternative education opportunity:

- Provides an additional learning opportunity through a work-based, pre-apprenticeship, apprenticeship, internship, industry certification, or community program; and

- Is approved by the State Board of Education (State Board) as an alternative educational opportunity; or
 - Complies with the school district policies adopted pursuant to the program; and
- Is managed and directed by a licensed teacher employed by the school district.

State Board of Education

The bill would allow a sponsoring entity to petition the State Board to approve an alternative education opportunity that is provided through such sponsoring entity if such alternative education opportunity provided through such sponsoring entity is generally applicable on a statewide or regional basis across multiple school districts. The State Board would be required to approve or deny each petition proposing an alternative educational opportunity within 90 days of receipt of such proposal.

If the State Board denies the proposal, it would be required to provide the sponsoring entity with the reasons for such denial. If the State Board approved such proposal, any school district would be permitted to implement the alternative education opportunity. The State Board would be permitted to revoke any such approved proposal if it determines that the sponsoring entity fails to comply with the requirements of the program.

Reporting Requirement

The bill would also require school districts to report information to the Kansas State Department of Education (KSDE) on the alternative educational opportunities that are authorized in the school district, the names of the sponsoring entities, the number of students participating, and the number of credits earned.

Non-resident District Enrollment

The bill would amend current law to require school districts to allow nonresident students to enroll in and attend school in the school district.

[*Note:* Students can currently only attend school outside of their resident district if the district has an agreement with the student's resident school district.]

Determination of Capacity

The bill would require the board of education of school districts (board) to adopt policies on or before January 1, 2023, to determine the capacity limits for nonresident students of each grade in each school of the district. The adopted policies must specify the reasons that may be used by the board to deny:

- An application of a nonresident student seeking to transfer to such district. Such reasons for denial may include, but not be limited to, a nonresident student's record of school absenteeism, suspensions, or expulsions from school; and
- The continued enrollment of a nonresident student who previously transferred to such school district to a transfer request.

Prior to adopting such policy, the board would be required to hold a hearing. The board would be required to provide notice of the hearing, which would include the time, date, and place of the public hearing to be held on the proposed policy and would be required to be published at least once each week for two consecutive weeks in a newspaper of general circulation in the school district and posted on the school district's website. A representative of the board would be required to present the board's proposal for the policy at the hearing and the board would be required to hear testimony regarding the proposed policy. The bill would

require any parent, or person acting as parent, present to be allowed to speak at the public hearing. After consideration of the testimony and evidence presented or submitted at such public hearing, the board would determine whether to adopt the policy or revise the proposed policy at a subsequent public meeting of the board.

The bill would require each such policy and the number of available openings to be posted on the school district's website.

Transfer Student Enrollment

On or before July 1, 2023, subject to the school district's capacity limits, the school district would be required to enroll transfer students at any time during the school year unless doing so would exceed the district's capacity of a grade level. The district would be required to accept transfers in the order in which the school district received applications to transfer. A school district may deny a transfer request based upon the school district's adopted policy, but would be prohibited from denying a transfer request based upon a student's:

- Ethnicity;
- National origin;
- Gender;
- Income level;
- Disabling condition;
- Proficiency in the English language;
- Measure of achievement;
- Aptitude; or
- Athletic ability.

A transfer student would be granted a one-year transfer but could continue to attend the school district in the following year subject to the board's approval. At the end of each school year, a school district would be authorized to deny continued enrollment of any nonresident student based on the district's capacity and other exclusion policies.

The bill would prohibit school districts from charging tuition or fees to any nonresident student except fees otherwise charged to every student enrolled and attending in the school district.

Any student who is a dependent child of a current member of the U.S. armed forces would be eligible for admission regardless of the school's capacity. Likewise, any foster child who is living in the home of a nonresident student who transfers may attend school in the receiving school district.

Appeals Process

A parent of a student seeking a transfer would be required to apply to the school district. The bill would allow the parent to appeal the denial to the board of such school district if a transfer request is denied by the school district. Such board would be required to consider the matter at the next meeting. If the board denies the appeal, the parent could appeal to the State Board, which must consider such appeal at the next regularly scheduled meeting.

Reporting Requirements

School districts would be required to submit information on the program to the KSDE, which will collect and report such data. KSDE would be required to randomly select one school district each year and audit such school district to evaluate the district's approved and denied nonresident student transfers and the district's capacity level to determine if the school district complies with nonresident student

transfer laws and policies. KSDE would also be required to annually report the results of such audit to the legislature.

Funding

The bill would require nonresident students to be counted as regularly enrolled in the school district they are attending for purposes of school funding under the Kansas School Equity and Enhancement Act.

School districts entering into agreements related to resident students attending a nonresident school district would still count said students for purposes of school funding. However, the school district would be responsible to pay the receiving school district for said student.

Student Savings Accounts

The bill would create the Student Empowerment Program (Program). The Program would authorize parents and guardians of eligible students to establish student savings accounts in the state treasury and use such accounts for certain education expenses. The Program would be administered by the State Treasurer and would begin operation in the 2023-2024 school year.

Student Eligibility Requirements

Under the bill, a student would be eligible for a student empowerment account if such student:

- Is enrolled in any school of a school district and qualifies for free and reduced-price meals;
- Is enrolled in any school of school district and has been identified as eligible to receive at-risk services pursuant to KSA 72-5153a; or

- Has already established a student empowerment account.

School districts would be required to notify the parent of a student when such student becomes eligible for a student empowerment account. The notice must include a description of the Program, the reason why the student became eligible for the Program, a copy of the student's most recent ELA and math assessment results and contact information of the persons who may be contacted regarding the Program at the school district, KSDE, and the State Treasurer's office.

Program Participation

To establish a student empowerment account, the parent or legal guardian of the student would be required to enter into an agreement with the State Treasurer. This agreement would provide terms and conditions of participation in the Program and account usage. As part of this agreement, a student would be required to either enroll in a qualified private school or continue part-time enrollment in such student's resident school district while receiving additional educational services using the student's empowerment account moneys.

Qualified School

A qualified private school could be any private school accredited by the State Board or by any other national or regional accrediting organization that provides instruction in the subjects required under certain statutes, including reading, writing, math, geography, U.S. history, civics, health, and Kansas history and government. Enrollment in a qualified private school would be deemed a parental placement under the IDEA. The treasurer would be required to approve the qualified private schools in which an eligible student may enroll under the Program and to conduct a random annual audit of a qualified private school to ensure compliance. If a qualified private school does not comply with Program

requirements, the treasurer may revoke the qualified school's approval.

Student Empowerment Accounts

Moneys in student empowerment accounts could only be expended on eligible education expenses which include:

- Tuition and fees charged by a qualified private school;
- Textbooks and supplies required by a qualified private school;
- Transportation fees provided by a qualified private school;
- Educational therapies or services provided by a licensed or accredited educational provider;
- Tutoring services provided by a certified tutor;
- Curriculum materials;
- Tuition and fees charged by an accredited private online learning program;
- Fees for nationally recognized norm-referenced achievement tests, advanced placement examinations or other examinations related to postsecondary admissions;
- 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 educational expenses approved by the State Treasurer.

The amount of moneys deposited into a student's empowerment account would be based on whether the student enrolls in a qualified private school or enrolls part-time in a school district. A student who enrolls in a qualified private school would receive an amount equal to the amount of BASE aid for the immediately preceding school year. A student who enrolls part-time in a school district would receive the BASE aid amount multiplied by the ratio of time such student is not counted in the enrollment of such school district.

Duties of the State Treasurer

The State Treasurer (Treasurer) would be required to annually certify the amount of moneys necessary to fund the Program accounts. Upon certification, a demand transfer from the State General Fund to the Student Empowerment Fund would be made each year. The Treasurer would be authorized to keep a certain amount for administrative costs. For newly established accounts, the Treasurer would be authorized to deduct up to 5.0 percent from each such transfer to an account and 2.5 percent for accounts that have been established for three years or more.

The Treasurer would be required to audit the Program on an annual basis to ensure compliance with requirements of the program. If the Treasurer determines that moneys in an account were not expended on eligible education expenses, the Treasurer could make the parent repay such ineligible expenses, lock the account, or prorate future deposits to make up for the ineligible expenses.

The bill would require the Treasurer to provide an annual report on the Program to the Governor and the Legislature. This report would include, but not be limited to, the number of participating students, where such students are enrolled, the

number of qualified private schools, audit results, and the total cost to administer the Program. The Treasurer would also be required to adopt rules and regulations prior to January 1, 2023, to administer the Program.

Resident School District Funding

For each eligible student who has participated in the Program for less than three years, such student's resident school district would maintain funding in an amount equal to such student's weightings under the school finance formula, including the low enrollment weighting, high enrollment weighting, bilingual weighting, at-risk student weighting, and career and technical education weighting. Such weighted amounts would be certified by the State Board, and upon appropriation of such moneys, the weighted amount for each student would be transferred from the State General Fund to the State Foundation Aid Account of the KSDE and would be distributed through the school finance formula back to the school districts.

Tax Exemption

The bill would provide that amounts deposited in a student empowerment account would not be counted as earned income for Kansas income tax purposes.

Student Empowerment Fund

The bill would establish the Student Empowerment Fund within the State Treasury.

Background

Sub. for HB 2615, as recommended by the House Committee on K-12 Education Budget, incorporates the contents of HB 2553, as amended, and HB 2550, as

amended. The background information for those referenced bills follows.

HB 2615 (Alternative Educational Opportunities)

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 the bill, as introduced, **proponent** testimony was provided by Representative Thomas and representatives of Americans for Prosperity and yes.every.kid. Proponents generally stated the bill would give students the opportunity to learn outside of the classroom and prepare them for the workforce.

Neutral testimony was provided by a representative from the Kansas Association of School Boards. Neutral written-only testimony was provided by a representative from the State Board. Neutral testimony generally stated that while the education opportunities may be beneficial for students, the requirement to submit plans to the State Board would put an undue burden on the State Board and stated it would be impractical for the State Board and the KSDE to provide effective evaluation of such programs.

No other testimony was provided.

The House Committee amended the bill to:

- Allow a sponsoring entity of an educational opportunity to petition the State Board to approve an alternative educational opportunity that is provided through such sponsoring entity if the educational opportunity is generally applicable on a statewide or regional basis. The State Board would be required to review such proposal within 90 days and if approved, any school district would be

permitted to implement such alternative education opportunity. If denied, the State Board would be required to provide cause of the denial;

- Remove language requiring accountability measures for alternative education opportunities and sponsoring entities;
- Remove language requiring alternative educational opportunities to improve the academic success of students; and
- Include the contents of HB 2553, as amended, and HB 2550, as amended.

The House Committee recommended a substitute bill be passed.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget, HB 2615, as introduced, would have no fiscal effect on state aid to school districts or any administrative cost to the agency. Any fiscal effect on school districts that would choose to provide alternative educational opportunities for course credit would be borne by the school district.

HB 2553 (Non-resident District Enrollment)

The bill was introduced by the House Committee on K-12 Education Budget at the request of Representative Johnson.

House Committee on K-12 Education Budget

In the House Committee hearing on the bill, **proponent** testimony was provided by representatives of Americans for Prosperity, ExcelinEd in Action, Kansas Policy Institute, and Oklahoma State Senator. Proponent written-only

testimony was provided by a representative of Kansas Family Voice. Proponents of the bill generally stated the bill would provide more choice to parents and students regarding where students attend school and that the bill would strengthen and expand public school open enrollment policies.

Opponent testimony was provided by a representative of the Kansas Association of School Boards. Opponent written-only testimony was provided by representatives of the Kansas National Education Association, Shawnee Mission School District PTA, State Board, USD 207 (Fort Leavenworth), and three private citizens. Opponents of the bill generally stated concerns that the decision to enroll students who are not residents of a school district should be made by the State Board, would encroach on local control, and students attending their resident school district have a sense of community.

The House Committee amended the bill to:

- Remove language requiring the legislative division of post audit to randomly select 10.0 percent of the school districts in the state and conduct an audit of each of the school district's approved and denied nonresident student transfers;
- Add language requiring the KSDE, each year, to randomly select one school district and audit such school district to evaluate the school district's approved and denied nonresident student transfers and the district's capacity level to determine if the school district complies with nonresident student transfer laws and policies. The KSDE would be required to annually report the results of such audit to the Legislature;
- Add language to require, on or before January 1, 2023, each board of education of a school district to adopt a policy to determine the number of nonresident students that the school district has

the capacity to accept in each grade level for each school of the school district. The policy would be required to specify the reasons that may be used that may be used by such board to deny nonresident transfer requests;

- Add language that any parent, or person acting as parent, present or attending the presentation of a school board's proposed policy must be allowed to speak at the public hearing; and
- Add language to have requirements of the bill fulfilled on or before July 1, 2023.

Fiscal Information

An updated fiscal note was not immediately available at the time the Committee took action on HB 2553.

HB 2550 (Student Savings Accounts)

The bill was introduced by the House Committee on K-12 Education Budget at the request of Representative Penn.

House K-12 Education Committee

In the House Committee hearing on the bill, as introduced, **proponent** testimony was provided by representatives of EdChoice and the Kansas Policy Institute. Proponent written-only testimony was provided by a representative of Americans for Prosperity. Proponents generally stated that educational choice creates better opportunities for students and the bill would empower families.

Opponent testimony was provided by representatives of Game On for Kansas Schools, the Kansas Association of School Boards, the Kansas PTA, the Kansas State Treasurer, the Mainstream Coalition, and two private citizens. Opponent

written-only testimony was provided by representatives of the Kansas Association of Special Education Administrators, Kansas National Education Association, Olathe Public Education Network, Shawnee Mission School District PTA, State Board, USD 299 (Blue Valley), USD 512 (Shawnee Mission), USD 500 (Kansas City), and 22 private citizens. Opponents of the bill generally expressed concern that public school funding would be diverted to private schools, private schools do not have the same accountability measures as public schools, and certain students may not have access to specialized services in private schools.

Neutral written-only testimony was provided by representatives of the Department of Administration and Equality Kansas. Neutral testimony generally expressed concerns on the administrative burden the bill could result in and the bill would divert tax-payer money to private organizations.

The House Committee amended the bill to require each qualified private school to be accredited by the State Board or by any national or regional accrediting organization and remove home schools and non-accredited private schools from the definition of "qualified private schools."

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2550, as introduced, the State Treasurer indicates that a new division would need to be established under the State Treasurer with up to six months of start up costs for FY 2023 totaling \$521,060, including 5.0 FTE positions. This estimate includes six months of salaries totaling \$194,500, including 1.0 FTE Program Director ($\$93,000/2=\$46,500$), 1.0 FTE General Counsel ($\$112,000/2 = \$56,000$), 1.00 FTE Auditor ($\$78,000/2=\$39,000$), and 2.0 FTE Administrative Support Staff ($\$106,000/2=\$53,000$). The cost of the positions includes base salary and fringe benefits for six months. Other operating expenses included in the

start-up costs would include computer equipment and software licensing expenses totaling \$17,560, postage and printing totaling \$7,500 for six months, and a new printer lease totaling \$1,500 for six months. Included in the start-up cost estimate is a cost of \$300,000 for the purchase and development of banking software for account management and a system of electronic funds transfer payments. The scope of the program would make it unfeasible to rely on in-house programming resources. The estimate for this software is based upon pricing for corporate trust software similar to that used by the Unclaimed Property Division of the State Treasurer.

The Division of the Budget notes that of the above costs, expenditures for the 5.0 FTE positions would be ongoing operating costs, as well as postage and printing, as well as the printer lease. The State Treasurer notes that depending on the number of accounts established, the agency likely would need to add additional staff to process invoices. The State of Arizona Treasurer's Office added approximately 20.0 FTE staff positions to process approximately between 300 to 1,000 invoices per day for approximately 10,000 accounts. If the State of Kansas program would need this number of staff, additional expenditures of approximately \$1.1 million would be needed ([20.0 FTE Clerks X \$53,000 salary and fringe benefits] + [20.0 FTE X \$3,000 office and hardware costs] = \$1,120,000). Also, an additional printer lease would be needed for this level of staff, costing an additional \$3,000 per year. If additional staffing with this scenario is needed, additional office space would also be required. The State Treasurer estimates that if an additional 5,500 square feet of additional office space in the Landon Building would be required, total costs would increase by \$105,325 per year (\$19.15 per square foot X 5,500 square feet = \$105,325). If additional space would not be available in the Landon Building, the cost would vary, depending on available options. The Division of the Budget notes that these costs likely would not be required until FY 2024

In addition, the State Treasurer estimates that each student account would have a monthly maintenance fee of approximately \$10 per account per year, plus 2.5 percent of all transactions. As an example, the State Treasurer states that if 10,000 accounts would be established, an estimated yearly cost of \$1,311,500 would be incurred ($[\$10 + (\$4,846 \text{ (BASE)} \times .025)] \times 10,000 \text{ accounts} = \$1,311,500$). 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. The Division of the Budget notes that the State Treasurer would need an appropriation from the State General Fund or another funding source for the Program's administrative expenditures until the reimbursement mechanism from account transfers can generate sufficient ongoing revenues for the Program.

Instead of the agency purchasing banking software, the Division of the Budget notes the management of the accounts could potentially be outsourced with the state's contract bidding process to a financial institution. However, the total cost for this option would fluctuate depending on the number of transactions per account per month. With this option, the State Treasurer would still need to employ 1.0 FTE Program Director, 1.0 FTE Administrative Support Staff, 1.0 FTE General Counsel, and 1.0 FTE Auditor at the costs listed previously, plus the associated operating expenses. The KSDE 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.

KSDE has identified three cost centers in the bill that would affect the agency: 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. The following describe these potential additional costs.

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 to the original public school, as well as the student's account. For every 1.0 percent of the state's 464,000 public school students that would participate in the Program, a total of \$22,485,440 (4,640 students X \$4,846 BASE = \$22,485,440) would be transferred from the State General Fund to the students' accounts under this scenario in FY 2022. This amount assumes these students would transfer full-time to private schools. The bill would allow for students to attend part-time at private schools and would allow for an amount to be transferred to the student's account in an amount inversely proportional to the time an eligible student is enrolled in the student's resident school district, which would reduce these estimated amounts. If the number of students utilizing this Program is greater than or less than 1.0 percent as indicated above, the estimated cost would increase or decrease proportionally.

For the adjusted weightings provision, the amount that would be transferred to the public schools would also depend on the number of students that would participate in the Program. KSDE reports that in FY 2022, the total eligible weightings that would be calculated in the bill for the adjusted weighting provision totaled 151,452 FTE students, which is an average of 0.327 FTE per student. Using these formula weightings and for each 1.0 percent of the 464,000 total public school students that would participate in the Program, the total amount that would be transferred from the State General Fund to the State Foundation Aid account in the KSDE for additional state aid to school districts for FY 2024 is \$7,352,739 (4,640 students X 0.327 weightings X \$4,846 = \$7,352,739.) If the number of students utilizing this Program is greater than or less than 1.0 percent as indicated above, the estimated cost would increase or decrease proportionally.

In addition, KSDE would require \$60,000 from the State General Fund for FY 2024 for 1.0 FTE Accountant 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.

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. 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. Also, the bill would make a technical change to the tax statutes regarding the homebuyer's tax credit that would make an incidental conflict resolution in the statutes from a tax change that was made into law during the 2021 Legislative Session. The Division of the Budget notes that although the bill would create additional federally reported income for parents of Program participants, the bill would create 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 2023 Governor's Budget Report*.

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. It is likely that additional staff and expenditures would be required to implement the Program; however, an estimate of additional expenditures for the agency cannot be made. If the State Treasurer would track the individual student accounts externally with a vendor, there would be no additional costs for the Department of Administration for implementation.

Any fiscal effect associated with HB 2550 is not reflected in *The FY 2023 Governor's Budget Report*.

Education; Student Empowerment Program; enrollment; non-resident districts; education savings account; alternative educational opportunities; course credits