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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 768

01/25/2023 Authored by Davis
The bill was read for the first time and referred to the Committee on Education Policy

1.1 A bill for an act
1.2 relating to education; creating education savings accounts as a learning option for
1.3 students; appropriating money; amending Laws 2021, First Special Session chapter
1.4 13, article 1, section 10, subdivision 2; article 2, section 4, subdivisions 2, 3, 4,
1.5 12, 13; article 3, section 7, subdivision 7; article 7, section 2, subdivision 3; article
1.6 8, section 3, subdivisions 2, 3, 4; article 11, section 4, subdivision 2; proposing
1.7 coding for new law in Minnesota Statutes, chapter 124D.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. [124D.035] EDUCATION SAVINGS ACCOUNTS FOR STUDENTS ACT.

1.10 Subdivision 1. Title. This act will be known as the "Education Savings Accounts for
1.11 Students Act."

1.12 Subd. 2. Definitions. (a) For the purposes of this section, the following terms have the
1.13 meanings given them.

1.14 (b) "Commissioner" means the commissioner of education.

1.15 (c) "Department" means the Department of Education.

1.16 (d) "Educational service provider" means an eligible school, tutor, or other person or
1.17 organization that provides education-related services and products to participating students.

1.18 The eligible student's parent shall not be an educational service provider for that student.

1.19 (e) "Eligible school" means a nonpublic school where a student can fulfill compulsory
1.20 education requirements and that is recognized by the commissioner or accredited by an

1.21 accrediting agency recognized by the Minnesota Nonpublic Education Council under

1.22 Minnesota Statutes, section 123B.445, paragraph (a). An eligible school does not include

1.23 a home school under Minnesota Statutes, sections 120A.22, subdivision 4, and 120A.24.

2.1 (f) "Eligible student" means any student who (1) resides in Minnesota, (2) attended a
 2.2 public school or a public charter school during the semester preceding participation in the
 2.3 program, and (3) is a member of a household that has a total annual income during the year
 2.4 prior to initial participation in the program, without consideration of the benefits under this
 2.5 program, that does not exceed an amount equal to three times the income standard used to
 2.6 qualify for a reduced-price meal under the National School Lunch Program.

2.7 (g) "Parent" means a resident of this state who is a parent, legal guardian, custodian, or
 2.8 other person with the authority to act on behalf of the eligible student.

2.9 (h) "Postsecondary institution" means a college or university accredited by a state,
 2.10 regional, or national accrediting organization.

2.11 (i) "Program" means a program to implement education savings accounts (ESAs).

2.12 (j) "Tutor" means a person who (1) is certified or licensed by a state, regional, or national
 2.13 certification or licensing organization to teach, (2) has earned a valid teacher's license, or
 2.14 (3) has experience teaching at a postsecondary institution.

2.15 **Subd. 3. Education savings account (ESA) program.** (a) An eligible student qualifies
 2.16 to participate in the program if the student's parent signs an agreement:

2.17 (1) to arrange for the provision of organized, appropriate educational services with
 2.18 measurable goals to the participating student in at least the subjects of reading, writing,
 2.19 mathematics, social studies, and science; and

2.20 (2) to not enroll the participating student in a public school or a public charter school
 2.21 for as long as the student is participating in the program.

2.22 (b) A parent shall use the funds deposited in a participating student's ESA for any of the
 2.23 following qualifying expenses to educate the student using any of the methods or combination
 2.24 of methods in this paragraph that meet the requirement in paragraph (a), clause (1):

2.25 (1) tuition and fees at an eligible school;

2.26 (2) payment to a tutor;

2.27 (3) payment for purchase of curriculum, including any textbooks and supplemental
 2.28 materials required by the curriculum;

2.29 (4) fees for transportation to and from an educational service provider paid to a
 2.30 fee-for-service transportation provider;

2.31 (5) tuition and fees for online learning programs or courses;

3.1 (6) fees for nationally standardized norm-referenced achievement tests, including alternate
3.2 assessments, and fees for advanced placement examinations or similar courses and any
3.3 examinations related to college or university admission;

3.4 (7) educational services or therapies from a licensed or certified practitioner or provider,
3.5 including licensed or certified paraprofessionals or educational aides;

3.6 (8) services provided by a public school, including individual classes and extracurricular
3.7 programs;

3.8 (9) tuition, fees, and textbooks at a postsecondary institution;

3.9 (10) no more than \$300 in annual consumable school supplies necessary for the student's
3.10 education; or

3.11 (11) computer hardware and software and other technological devices if an eligible
3.12 school, tutor, educational service provider, or licensed medical professional verifies in
3.13 writing that these items are necessary for the student to meet annual, measurable goals.

3.14 (c) Neither a participating student nor anyone on the student's behalf may receive cash
3.15 or cash-equivalent items, such as gift cards or store credit, from refunds or rebates from a
3.16 provider of services or products in this program. Refunds or rebates shall be credited directly
3.17 to the participating student's ESA. The funds in an ESA may only be used for
3.18 education-related purposes. Eligible schools, postsecondary institutions, and educational
3.19 service providers that serve participating students shall provide parents with a receipt for
3.20 all qualifying expenses.

3.21 (d) Payment for educational services through an ESA shall not preclude parents from
3.22 paying for educational services using non-ESA funds.

3.23 (e) For purposes of continuity of educational attainment, students who enroll in the
3.24 program shall remain eligible to receive monthly ESA payments until the participating
3.25 student returns to a public school, graduates from high school, or completes the school year
3.26 in which the student reaches the age of 21, whichever occurs first.

3.27 (f) Any funds remaining in a student's ESA upon graduation from high school may be
3.28 used to attend or take courses from a postsecondary institution, with qualifying expenses
3.29 subject to the applicable conditions in paragraph (b).

3.30 (g) Upon the participating student's graduation from a postsecondary institution or after
3.31 any period of four consecutive years after graduation from high school that the student is
3.32 not enrolled in a postsecondary institution, the participating student's ESA shall be closed
3.33 and any remaining funds shall be returned to the state general fund.

4.1 (h) A participating student shall be allowed to return to the resident school district at
4.2 any time after enrolling in the program, according to rules adopted by the commissioner
4.3 providing for the least disruptive process for doing so. Upon a participating student's return
4.4 to the resident school district, the student's ESA shall be closed and any remaining funds
4.5 shall be returned to the state general fund.

4.6 (i) The commissioner shall begin accepting applications for the program on July 1, 2024.

4.7 Subd. 4. **Funding.** (a) The commissioner shall determine the amount to be deposited in
4.8 each student's ESA on a first-come, first-served basis. The ESA amount shall be the statewide
4.9 average general education aid per adjusted pupil unit.

4.10 (b) The commissioner shall allow program participation of up to one percent of public
4.11 school average daily membership in fiscal year 2025, 1-1/2 percent of public school average
4.12 daily membership in fiscal year 2026, and two percent of public school average daily
4.13 membership in fiscal year 2027 and later.

4.14 Subd. 5. **District aid adjustment.** The commissioner shall make a onetime adjustment
4.15 to a serving school district's general education aid in the fiscal year following a participating
4.16 student's withdrawal from the district. The commissioner shall increase the district's general
4.17 education aid for each participating student who withdrew from the district by an amount
4.18 equal to ten percent of the statewide average general education revenue per adjusted pupil
4.19 unit for the previous fiscal year.

4.20 Subd. 6. **Administration.** (a) The commissioner shall create a standard form that parents
4.21 of students may submit to establish the student's eligibility for an ESA. The commissioner
4.22 shall ensure that the application is readily available to interested families through various
4.23 sources, including the department's website, and a copy of procedural safeguards annually
4.24 given to parents.

4.25 (b) The commissioner shall provide parents of participating students with a written
4.26 explanation of the allowable uses of ESAs, the responsibilities of parents, and the duties of
4.27 the commissioner. The information shall also be made available on the department's website.

4.28 (c) The commissioner shall annually notify all students who are eligible to participate
4.29 of the existence of the program and shall ensure that low-income families are made aware
4.30 of their potential eligibility.

4.31 (d) The commissioner may deduct up to three percent from appropriations made to fund
4.32 ESAs to cover the costs of overseeing and administering the program.

5.1 (e) The commissioner shall make payments to the ESAs of participating students on a
5.2 monthly basis unless there is evidence of misuse of the ESA pursuant to this subdivision.

5.3 (f) The commissioner shall make a determination of eligibility and shall approve the
5.4 application within 45 business days of receiving an application for participation in the
5.5 program.

5.6 Subd. 7. **ESA establishment.** (a) To ensure that funds are spent appropriately, the
5.7 commissioner shall adopt rules and policies necessary for the administration of the program,
5.8 including the auditing of ESAs, and shall conduct or contract for random audits throughout
5.9 the year.

5.10 (b) Beginning with the 2024-2025 school year, the commissioner shall issue ESA cards
5.11 to parents making expenditures under this section on behalf of a participating student. ESA
5.12 cards shall be issued to parents upon enrollment in the program and shall expire when the
5.13 participating student's ESA is closed, except for the periodic expiration and replacement of
5.14 cards in the normal course of business. All unexpended amounts shall remain in the student's
5.15 ESA and be combined with the following year's allocation of ESA funds, subject to
5.16 subdivision 3, paragraphs (f) and (g).

5.17 (c) The commissioner, taking into consideration requests from the parents of participating
5.18 students, shall use merchant category classification (MCC) codes, or a similar system as
5.19 practicable and consistent with current technology, to identify categories of providers that
5.20 provide services and products consistent with subdivision 3, paragraph (b). The commissioner
5.21 shall make a list of blocked and unblocked MCC codes publicly available for purposes of
5.22 the program.

5.23 (d) The commissioner shall adopt a process for removing educational service providers
5.24 that defraud parents and for referring cases of fraud to law enforcement.

5.25 (e) The commissioner shall establish or contract for the establishment of an online,
5.26 anonymous fraud-reporting service and an anonymous telephone hotline for fraud reporting.

5.27 (f) The commissioner shall adopt rules implementing policies on misspending of ESA
5.28 funds.

5.29 (g) Any amount not spent in the allowable categories pursuant to the agreement will
5.30 cause the ESA card to be temporarily suspended and the parent contacted within five business
5.31 days by United States mail at the parent's home address explaining the suspension, detailing
5.32 the violation, and requesting the parent to:

6.1 (1) provide additional documentation within 15 business days justifying the expenditure;
6.2 or

6.3 (2) repay the misspent amount within 15 business days.

6.4 (h) If the parent does not provide sufficient documentation and refuses to repay the
6.5 amount, the commissioner shall begin the removal process and shall seek to recover the
6.6 misspent funds using administrative measures or other appropriate measures, including
6.7 referral to collections, seeking a civil judgment, or referral to law enforcement.

6.8 (i) If the parent repays the amount within the requested time frame, then the offense will
6.9 be recorded and held in the parent's file.

6.10 (j) Three offenses within a consecutive three-year period shall disqualify the student
6.11 from participating in the program.

6.12 (k) If the commissioner determines that a parent has failed to comply with the terms of
6.13 the agreement as specified in subdivision 3, the commissioner shall suspend the participating
6.14 student's ESA. The commissioner shall notify the parent in writing within five business
6.15 days that the ESA has been suspended and that no further transactions will be allowed or
6.16 disbursements made. The notification shall specify the reason for the suspension and state
6.17 that the parent has 21 business days to respond and take corrective action.

6.18 (l) If the parent fails to respond to the commissioner, furnish reasonable and necessary
6.19 information, or make a report that may be required for reinstatement within the 21-day
6.20 period, the commissioner may remove the participating student from the program.

6.21 (m) The decision of the commissioner under this section is subject to judicial review
6.22 under Minnesota Statutes, sections 14.63 to 14.69. The decision of the commissioner is
6.23 stayed pending an appeal.

6.24 (n) The commissioner shall refer cases of substantial misuse of funds to law enforcement
6.25 agencies for investigation if evidence of fraudulent intent and use of an ESA is obtained.

6.26 Subd. 8. **Scope.** An eligible nonpublic school is autonomous and not an agent of the
6.27 state or federal government, and therefore:

6.28 (1) the commissioner, department, or any other government agency shall not in any way
6.29 regulate the educational program of a nonpublic school or educational service provider that
6.30 accepts funds from the parent of a participating student;

6.31 (2) the creation of the program does not expand the regulatory authority of the state, its
6.32 officers, or any school district to impose any additional regulation of nonpublic schools or

7.1 educational service providers beyond those necessary to enforce the requirements of the
7.2 program; and

7.3 (3) eligible schools and educational service providers shall be given the maximum
7.4 freedom to provide for the educational needs of their students without governmental control.
7.5 No eligible school or educational service provider shall be required to alter its creed,
7.6 practices, admission policies, or curriculum in order to accept participating students.

7.7 Subd. 9. **Severability.** If any provision of this law or its application is found to be
7.8 unconstitutional and void, the remaining provisions or applications of this law that can be
7.9 given effect without the invalid provision or application are valid.

7.10 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.11 Sec. 2. Laws 2021, First Special Session chapter 13, article 1, section 10, subdivision 2,
7.12 is amended to read:

7.13 Subd. 2. **General education aid.** For general education aid under Minnesota Statutes,
7.14 section 126C.13, subdivision 4:

7.15		7,569,266,000		
7.16	\$	<u>7,487,945,000</u>	.....	2022
7.17		7,804,527,000		
7.18	\$	<u>7,683,951,000</u>	.....	2023

7.19 The 2022 appropriation includes \$717,326,000 for 2021 and ~~\$6,851,940,000~~
7.20 \$6,770,619,000 for 2022.

7.21 The 2023 appropriation includes ~~\$734,520,000~~ \$725,349,000 for 2022 and
7.22 ~~\$7,070,007,000~~ \$6,958,602,000 for 2023.

7.23 Sec. 3. Laws 2021, First Special Session chapter 13, article 2, section 4, subdivision 2, is
7.24 amended to read:

7.25 Subd. 2. **Achievement and integration aid.** For achievement and integration aid under
7.26 Minnesota Statutes, section 124D.862:

7.27		84,057,000		
7.28	\$	<u>82,369,000</u>	.....	2022
7.29		83,431,000		
7.30	\$	<u>81,144,000</u>	.....	2023

7.31 The 2022 appropriation includes \$8,868,000 for 2021 and ~~\$75,189,000~~ \$73,501,000 for
7.32 2022.

8.1 The 2023 appropriation includes ~~\$8,353,000~~ \$8,167,000 for 2022 and ~~\$75,078,000~~
8.2 \$72,977,000 for 2023.

8.3 Sec. 4. Laws 2021, First Special Session chapter 13, article 2, section 4, subdivision 3, is
8.4 amended to read:

8.5 Subd. 3. **American Indian education aid.** For American Indian education aid under
8.6 Minnesota Statutes, section 124D.81, subdivision 2a:

8.7		11,351,000		
8.8	\$	<u>11,426,000</u>	.....	2022
8.9		11,775,000		
8.10	\$	<u>11,885,000</u>	.....	2023

8.11 The 2022 appropriation includes \$1,102,000 for 2021 and ~~\$10,249,000~~ \$10,324,000 for
8.12 2022.

8.13 The 2023 appropriation includes ~~\$1,138,000~~ \$1,147,000 for 2022 and ~~\$10,637,000~~
8.14 \$10,738,000 for 2023.

8.15 Sec. 5. Laws 2021, First Special Session chapter 13, article 2, section 4, subdivision 4, is
8.16 amended to read:

8.17 Subd. 4. **Charter school building lease aid.** For building lease aid under Minnesota
8.18 Statutes, section 124E.22:

8.19		93,547,000		
8.20	\$	<u>90,717,000</u>	.....	2022
8.21		99,819,000		
8.22	\$	<u>96,202,000</u>	.....	2023

8.23 The 2022 appropriation includes \$8,617,000 for 2021 and ~~\$84,930,000~~ \$82,100,000 for
8.24 2022.

8.25 The 2023 appropriation includes ~~\$9,436,000~~ \$9,122,000 for 2022 and ~~\$90,383,000~~
8.26 \$87,080,000 for 2023.

8.27 Sec. 6. Laws 2021, First Special Session chapter 13, article 2, section 4, subdivision 12,
8.28 is amended to read:

8.29 Subd. 12. **Interdistrict desegregation or integration transportation grants.** For
8.30 interdistrict desegregation or integration transportation grants under Minnesota Statutes,
8.31 section 124D.87:

9.1 \$ 12,310,000 2022
 9.2 ~~14,823,000~~
 9.3 \$ 14,833,000 2023

9.4 Sec. 7. Laws 2021, First Special Session chapter 13, article 2, section 4, subdivision 13,
 9.5 is amended to read:

9.6 Subd. 13. **Literacy incentive aid.** For literacy incentive aid under Minnesota Statutes,
 9.7 section 124D.98:

9.8 \$ 45,075,000 2022
 9.9 ~~45,968,000~~
 9.10 \$ 45,999,000 2023

9.11 The 2022 appropriation includes \$4,463,000 for 2021 and \$40,612,000 for 2022.

9.12 The 2023 appropriation includes \$4,512,000 for 2022 and ~~\$41,456,000~~ \$41,487,000 for
 9.13 2023.

9.14 Sec. 8. Laws 2021, First Special Session chapter 13, article 3, section 7, subdivision 7, is
 9.15 amended to read:

9.16 Subd. 7. **Alternative teacher compensation aid.** (a) For alternative teacher compensation
 9.17 aid under Minnesota Statutes, section 122A.415, subdivision 4:

9.18 ~~88,896,000~~
 9.19 \$ 88,600,000 2022
 9.20 ~~88,898,000~~
 9.21 \$ 88,447,000 2023

9.22 (b) The 2022 appropriation includes \$8,877,000 for 2021 and ~~\$80,019,000~~ \$79,723,000
 9.23 for 2022.

9.24 (c) The 2023 appropriation includes ~~\$8,891,000~~ \$8,858,000 for 2022 and ~~\$80,007,000~~
 9.25 \$79,589,000 for 2023.

9.26 Sec. 9. Laws 2021, First Special Session chapter 13, article 7, section 2, subdivision 3, is
 9.27 amended to read:

9.28 Subd. 3. **Long-term facilities maintenance equalized aid.** For long-term facilities
 9.29 maintenance equalized aid under Minnesota Statutes, section 123B.595, subdivision 9:

9.30 ~~108,582,000~~
 9.31 \$ 107,790,000 2022
 9.32 ~~111,077,000~~
 9.33 \$ 108,965,000 2023

10.1 The 2022 appropriation includes \$10,660,000 for 2021 and ~~\$97,922,000~~ \$97,130,000
10.2 for 2022.

10.3 The 2023 appropriation includes ~~\$10,880,000~~ \$10,792,000 for 2022 and ~~\$100,197,000~~
10.4 \$98,173,000 for 2023.

10.5 Sec. 10. Laws 2021, First Special Session chapter 13, article 8, section 3, subdivision 2,
10.6 is amended to read:

10.7 Subd. 2. **School lunch.** For school lunch aid under Minnesota Statutes, section 124D.111,
10.8 and Code of Federal Regulations, title 7, section 210.17:

10.9		16,661,000		
10.10	\$	<u>14,828,000</u>	.....	2022
10.11		16,954,000		
10.12	\$	<u>15,995,000</u>	.....	2023

10.13 Sec. 11. Laws 2021, First Special Session chapter 13, article 8, section 3, subdivision 3,
10.14 is amended to read:

10.15 Subd. 3. **School breakfast.** For traditional school breakfast aid under Minnesota Statutes,
10.16 section 124D.1158:

10.17		11,848,000		
10.18	\$	<u>101,000</u>	.....	2022
10.19		12,200,000		
10.20	\$	<u>10,527,000</u>	.....	2023

10.21 Sec. 12. Laws 2021, First Special Session chapter 13, article 8, section 3, subdivision 4,
10.22 is amended to read:

10.23 Subd. 4. **Kindergarten milk.** For kindergarten milk aid under Minnesota Statutes,
10.24 section 124D.118:

10.25		656,000		
10.26	\$	<u>309,000</u>	.....	2022
10.27		658,000		
10.28	\$	<u>660,000</u>	.....	2023

10.29 Sec. 13. Laws 2021, First Special Session chapter 13, article 11, section 4, subdivision 2,
10.30 is amended to read:

10.31 Subd. 2. **Department.** (a) For the Department of Education:

11.1 \$ 30,837,000 2022
 11.2 ~~26,287,000~~
 11.3 \$ 28,203,000 2023

11.4 Of these amounts:

11.5 (1) \$319,000 each year is for the Board of School Administrators;

11.6 (2) \$1,000,000 each year is for regional centers of excellence under Minnesota Statutes,
 11.7 section 120B.115;

11.8 (3) \$250,000 each year is for the School Finance Division to enhance financial data
 11.9 analysis;

11.10 (4) \$720,000 each year is for implementing Minnesota's Learning for English Academic
 11.11 Proficiency and Success Act under Laws 2014, chapter 272, article 1, as amended;

11.12 (5) \$123,000 each year is for a dyslexia specialist;

11.13 (6) \$480,000 each year is for the Department of Education's mainframe update;

11.14 (7) \$4,500,000 in fiscal year 2022 only is for legal fees and costs associated with
 11.15 litigation; and

11.16 (8) \$340,000 in fiscal years 2022 and 2023 only are for voluntary prekindergarten
 11.17 programs.

11.18 (b) None of the amounts appropriated under this subdivision may be used for Minnesota's
 11.19 Washington, D.C., office.

11.20 (c) The expenditures of federal grants and aids as shown in the biennial budget document
 11.21 and its supplements are approved and appropriated and must be spent as indicated.

11.22 (d) This appropriation includes funds for information technology project services and
 11.23 support subject to the provisions of Minnesota Statutes, section 16E.21. Any ongoing
 11.24 information technology costs will be incorporated into the service level agreement and will
 11.25 be paid to the Office of MN.IT Services by the Department of Education under the rates
 11.26 and mechanisms specified in that agreement.

11.27 (e) To account for the base adjustments provided in Laws 2018, chapter 211, article 21,
 11.28 section 1, paragraph (a), and section 3, paragraph (a), the base for fiscal year 2024 ~~and later~~
 11.29 is \$26,238,000 and the base for fiscal year 2025 and later is \$25,965,000.