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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **2357**

03/22/2021 Authored by Youakim
The bill was read for the first time and referred to the Committee on Education Finance

1.1 A bill for an act
1.2 relating to education finance; modifying special education formulas; authorizing
1.3 a levy for certain special access costs at cooperative units; authorizing a levy for
1.4 special education facility costs; limiting special education tuition billing;
1.5 appropriating money; amending Minnesota Statutes 2020, sections 124E.21,
1.6 subdivision 1; 125A.21, subdivisions 1, 2; 125A.76, subdivision 2e; 125A.79, by
1.7 adding a subdivision; 126C.40, by adding a subdivision; 127A.47, subdivision 7.

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

1.9 Section 1. Minnesota Statutes 2020, section 124E.21, subdivision 1, is amended to read:

1.10 Subdivision 1. **Special education aid.** (a) A charter school is eligible for special education
1.11 aid if the charter school files an annual plan with its authorizer describing the charter school's
1.12 procedure for implementing third party billing under section 125A.21. Except as provided
1.13 in section 124E.23, special education aid, excluding cross subsidy reduction aid under
1.14 section 125A.76, subdivision 2e, must be paid to a charter school according to section
1.15 125A.76, as though it were a school district.

1.16 (b) ~~For fiscal year 2020 and later,~~ The special education aid paid to the charter school
1.17 shall be adjusted as follows:

1.18 (1) if the charter school does not receive general education revenue on behalf of the
1.19 student according to section 124E.20, the aid shall be adjusted as provided in section
1.20 125A.11; or

1.21 (2) if the charter school receives general education revenue on behalf of the student
1.22 according to section 124E.20, the aid shall be adjusted as provided in section 127A.47,
1.23 subdivision 7, paragraphs (b) to (e), and if the tuition adjustment is computed under section
1.24 127A.47, subdivision 7, paragraph (c), it shall also receive an adjustment equal to ~~five~~

2.1 ~~percent for fiscal year 2020 or~~ ten percent for fiscal year 2021 and later of the unreimbursed
 2.2 cost of providing special education and services for the student and the amount in paragraph
 2.3 (c).

2.4 (c) A charter school must receive special education tuition adjustment aid equal to the
 2.5 difference between the charter school's unreimbursed costs without a rate cap and the
 2.6 district's unreimbursed costs with the rate cap, times the adjustment factor for that year. For
 2.7 fiscal years 2021 and 2022, the adjustment factor equals 100 percent. For fiscal year 2023,
 2.8 the adjustment factor equals 75 percent. For fiscal year 2024, the adjustment factor equals
 2.9 50 percent. For fiscal year 2025 and later, the adjustment factor equals 25 percent.

2.10 **EFFECTIVE DATE.** This section is effective July 1, 2021.

2.11 Sec. 2. Minnesota Statutes 2020, section 125A.21, subdivision 1, is amended to read:

2.12 Subdivision 1. **Obligation to pay.** (a) Nothing in sections 125A.03 to 125A.24 and
 2.13 125A.65 relieves an insurer or similar third party from an otherwise valid obligation to pay,
 2.14 or changes the validity of an obligation to pay, for services rendered to a child with a
 2.15 disability, and the child's family.

2.16 (b) For purposes of this section, "school district" and "district" mean a school district,
 2.17 charter school, or cooperative unit defined under section 123A.24, subdivision 2, providing
 2.18 direct special education services to students.

2.19 (c) A school district shall pay the nonfederal share of medical assistance services provided
 2.20 according to section 256B.0625, subdivision 26. Eligible expenditures must not be made
 2.21 from federal funds or funds used to match other federal funds. Any federal disallowances
 2.22 are the responsibility of the school district. A school district may pay or reimburse
 2.23 co-payments, coinsurance, deductibles, and other enrollee cost-sharing amounts, on behalf
 2.24 of the student or family, in connection with health and related services provided under an
 2.25 individual educational plan or individualized family service plan.

2.26 Sec. 3. Minnesota Statutes 2020, section 125A.21, subdivision 2, is amended to read:

2.27 Subd. 2. **Third-party reimbursement.** (a) ~~Beginning July 1, 2000,~~ Districts shall seek
 2.28 reimbursement from insurers and similar third parties for the cost of services provided by
 2.29 the district whenever the services provided by the district are otherwise covered by the
 2.30 child's health coverage. Districts shall request, but may not require, the child's family to
 2.31 provide information about the child's health coverage when a child with a disability begins

3.1 to receive services from the district of a type that may be reimbursable, and shall request,
3.2 but may not require, updated information after that as needed.

3.3 (b) For children enrolled in medical assistance under chapter 256B or MinnesotaCare
3.4 under chapter 256L who have no other health coverage, a district shall provide an initial
3.5 and annual written notice to the enrolled child's parent or legal representative of its intent
3.6 to seek reimbursement from medical assistance or MinnesotaCare for:

3.7 (1) the evaluations required as part of the individualized education program process or
3.8 individualized family service plan process; and

3.9 (2) health-related services provided by the district according to the individualized
3.10 education program or individualized family service plan.

3.11 The initial notice must give the child's parent or legal representative the right to request a
3.12 copy of the child's education records on the health-related services that the district provided
3.13 to the child and disclosed to a third-party payer.

3.14 (c) The district shall give the parent or legal representative annual written notice of:

3.15 (1) the district's intent to seek reimbursement from medical assistance or MinnesotaCare
3.16 for evaluations required as part of the individualized education program process or
3.17 individualized family service plan process, and for health-related services provided by the
3.18 district according to the individualized education program or individualized family service
3.19 plan;

3.20 (2) the right of the parent or legal representative to request a copy of all records
3.21 concerning individualized education program or individualized family service plan
3.22 health-related services disclosed by the district to any third party; and

3.23 (3) the right of the parent or legal representative to withdraw consent for disclosure of
3.24 a child's records at any time without consequence.

3.25 The written notice shall be provided as part of the written notice required by Code of Federal
3.26 Regulations, title 34, section 300.504 or 303.520. The district must ensure that the parent
3.27 of a child with a disability is given notice, in understandable language, of federal and state
3.28 procedural safeguards available to the parent under this paragraph and paragraph (b).

3.29 (d) In order to access the private health care coverage of a child who is covered by private
3.30 health care coverage in whole or in part, a district must:

3.31 (1) obtain annual written informed consent from the parent or legal representative, in
3.32 compliance with subdivision 5; and

4.1 (2) inform the parent or legal representative that a refusal to permit the district or state
 4.2 Medicaid agency to access their private health care coverage does not relieve the district of
 4.3 its responsibility to provide all services necessary to provide free and appropriate public
 4.4 education at no cost to the parent or legal representative.

4.5 (e) If the commissioner of human services obtains federal approval to exempt covered
 4.6 individualized education program or individualized family service plan health-related
 4.7 services from the requirement that private health care coverage refuse payment before
 4.8 medical assistance may be billed, paragraphs (b), (c), and (d) shall also apply to students
 4.9 with a combination of private health care coverage and health care coverage through medical
 4.10 assistance or MinnesotaCare.

4.11 (f) In the event that Congress or any federal agency or the Minnesota legislature or any
 4.12 state agency establishes lifetime limits, limits for any health care services, cost-sharing
 4.13 provisions, or otherwise provides that individualized education program or individualized
 4.14 family service plan health-related services impact benefits for persons enrolled in medical
 4.15 assistance or MinnesotaCare, the amendments to this subdivision adopted in 2002 are
 4.16 repealed on the effective date of any federal or state law or regulation that imposes the
 4.17 limits. In that event, districts must obtain informed consent consistent with this subdivision
 4.18 as it existed prior to the 2002 amendments and subdivision 5, before seeking reimbursement
 4.19 for children enrolled in medical assistance under chapter 256B or MinnesotaCare under
 4.20 chapter 256L who have no other health care coverage.

4.21 Sec. 4. Minnesota Statutes 2020, section 125A.76, subdivision 2e, is amended to read:

4.22 Subd. 2e. **Cross subsidy reduction aid.** (a) A school district's annual cross subsidy
 4.23 reduction aid equals the school district's initial special education cross subsidy for the
 4.24 previous fiscal year times the cross subsidy aid factor for that fiscal year.

4.25 (b) The cross subsidy aid factor equals 2.6 percent for fiscal year 2020 ~~and~~, 6.43 percent
 4.26 for fiscal year 2021 ~~and~~, 9.33 percent for fiscal year 2022, 12.11 percent for fiscal year
 4.27 2023, and increases by three percentage points per year for fiscal year 2024 and later. The
 4.28 cross subsidy aid factor must not exceed 30 percent.

4.29 Sec. 5. Minnesota Statutes 2020, section 125A.79, is amended by adding a subdivision to
 4.30 read:

4.31 Subd. 9. Access fee levy. A school district may annually levy for the cost of any access
 4.32 fees charged by an intermediate school district or other school cooperative unit under section
 4.33 123A.24, subdivision 2, providing direct special education services to students.

5.1 **EFFECTIVE DATE.** This section is effective for taxes payable in 2022 and later.

5.2 Sec. 6. Minnesota Statutes 2020, section 126C.40, is amended by adding a subdivision to
5.3 read:

5.4 Subd. 3a. **Lease and other facility costs for cooperative units serving special education**
5.5 **pupils.** (a) For purposes of this subdivision, "cooperative unit" means a cooperative under
5.6 section 123A.24, subdivision 2, and "facility costs" means the annual costs of a lease or
5.7 bond payments for a facility used primarily for special education students.

5.8 (b) The board of a cooperative unit may adopt a resolution authorizing the cooperative
5.9 to assess facilities costs to its member districts.

5.10 (c) A district that is a member of a cooperative unit providing special education services
5.11 may levy for its proportional share of facility costs assessed by the cooperative unit of which
5.12 it is a member.

5.13 **EFFECTIVE DATE.** This section is effective for taxes payable in 2022 and later.

5.14 Sec. 7. Minnesota Statutes 2020, section 127A.47, subdivision 7, is amended to read:

5.15 Subd. 7. **Alternative attendance programs.** (a) The general education aid and special
5.16 education aid for districts must be adjusted for each pupil attending a nonresident district
5.17 under sections 123A.05 to 123A.08, 124D.03, 124D.08, and 124D.68. The adjustments
5.18 must be made according to this subdivision.

5.19 (b) For purposes of this subdivision, ~~the~~ "unreimbursed cost of providing special
5.20 education and services" means the difference between: (1) the actual cost of providing
5.21 special instruction and services, ~~including special transportation and unreimbursed building~~
5.22 ~~lease and debt service costs for facilities used primarily for special education,~~ for a pupil
5.23 with a disability, as defined in section 125A.02, or a pupil, as defined in section 125A.51,
5.24 who is enrolled in a program listed in this subdivision, including special transportation and
5.25 unreimbursed building lease and debt service costs for facilities used primarily for special
5.26 education, minus (2) ~~if the pupil receives special instruction and services outside the regular~~
5.27 ~~classroom for more than 60 percent of the school day,~~ the amount of general education
5.28 revenue, if the pupil receives special instruction and services outside the regular classroom
5.29 for more than 60 percent of the school day, excluding local optional revenue, plus local
5.30 optional aid and referendum equalization aid as defined in section 125A.11, subdivision 1,
5.31 paragraph (d), attributable to that pupil for the portion of time the pupil receives special
5.32 instruction and services outside of the regular classroom, excluding portions attributable to

6.1 district and school administration, district support services, operations and maintenance,
6.2 capital expenditures, and pupil transportation, minus (3) special education aid under section
6.3 125A.76, excluding cross subsidy reduction aid under section 125A.76, subdivision 2e,
6.4 attributable to that pupil, that is received by the district providing special instruction and
6.5 services. For purposes of this paragraph, general education revenue and referendum
6.6 equalization aid attributable to a pupil must be calculated using the serving district's average
6.7 general education revenue and referendum equalization aid per adjusted pupil unit.

6.8 (c) ~~For fiscal year 2020, special education aid paid to a resident district must be reduced~~
6.9 ~~by an amount equal to 85 percent of the unreimbursed cost of providing special education~~
6.10 ~~and services. For fiscal year 2021 and later, Special education aid paid to a resident district~~
6.11 must be reduced by an amount equal to 80 percent of the unreimbursed cost of providing
6.12 special education and services.

6.13 (d) Notwithstanding paragraph (c), special education aid paid to a resident district must
6.14 be reduced by an amount equal to 100 percent of the unreimbursed cost of providing special
6.15 education and services ~~provided~~ to students at an intermediate district, cooperative, or charter
6.16 school where the percent of students eligible for special education services is at least 70
6.17 percent of the charter school's total enrollment.

6.18 (e) Notwithstanding paragraph (c), special education aid paid to a resident district must
6.19 be reduced under paragraph (d) for students at a charter school receiving special education
6.20 aid under section 124E.21, subdivision 3, calculated as if the charter school received special
6.21 education aid under section 124E.21, subdivision 1.

6.22 (f) Special education aid paid to the district or cooperative providing special instruction
6.23 and services for the pupil, or to the fiscal agent district for a cooperative, must be increased
6.24 by the amount of the reduction in the aid paid to the resident district under paragraphs (c)
6.25 and (d). If the resident district's special education aid is insufficient to make the full
6.26 adjustment under paragraphs (c), (d), and (e), the remaining adjustment shall be made to
6.27 other state aids due to the district.

6.28 (g) Notwithstanding paragraph (a), general education aid paid to the resident district of
6.29 a nonspecial education student for whom an eligible special education charter school receives
6.30 general education aid under section 124E.20, subdivision 1, paragraph (c), must be reduced
6.31 by an amount equal to the difference between the general education aid attributable to the
6.32 student under section 124E.20, subdivision 1, paragraph (c), and the general education aid
6.33 that the student would have generated for the charter school under section 124E.20,
6.34 subdivision 1, paragraph (a). For purposes of this paragraph, "nonspecial education student"

7.1 means a student who does not meet the definition of pupil with a disability as defined in
7.2 section 125A.02 or the definition of a pupil in section 125A.51.

7.3 (h) An area learning center operated by a service cooperative, intermediate district,
7.4 education district, or a joint powers cooperative may elect through the action of the
7.5 constituent boards to charge the resident district tuition for pupils rather than to have the
7.6 general education revenue paid to a fiscal agent school district. Except as provided in
7.7 paragraph (f), the district of residence must pay tuition equal to at least 90 and no more than
7.8 100 percent of the district average general education revenue per pupil unit minus an amount
7.9 equal to the product of the formula allowance according to section 126C.10, subdivision 2,
7.10 times .0466, calculated without compensatory revenue, local optional revenue, and
7.11 transportation sparsity revenue, times the number of pupil units for pupils attending the area
7.12 learning center.

7.13 (i) Notwithstanding paragraph (b), unreimbursed tuition reimbursement amounts for a
7.14 charter school, not including a charter school for which the tuition adjustment is calculated
7.15 under paragraph (d) or (e), must be computed according to this paragraph. For purposes of
7.16 this paragraph:

7.17 (1) "regular school year statewide district cap rate" means the unreimbursed regular
7.18 school year cost per service hour, calculated statewide for all districts and averaged across
7.19 the current year;

7.20 (2) "extended school year statewide district cap rate" means the unreimbursed extended
7.21 school year cost per service hour, calculated statewide for all districts and averaged across
7.22 the current year;

7.23 (3) "special education transportation statewide district cap rate" means the unreimbursed
7.24 special education transportation cost per membership hour, calculated statewide for all
7.25 districts and averaged across the current year;

7.26 (4) "special education one-to-one paraprofessional statewide district cap rate" means
7.27 the unreimbursed special education one-to-one paraprofessional cost per hour, calculated
7.28 statewide for all districts and averaged across the current year; and

7.29 (5) "unreimbursed cost of providing special education and services" means the lesser of
7.30 (i) the amount calculated under paragraph (b), or (ii) the "regular school year statewide
7.31 district cap rate" multiplied by the regular school year service hours, plus the "extended
7.32 school year statewide district cap rate" multiplied by the extended school year service hours,
7.33 plus the "special education transportation statewide district cap rate" multiplied by the

8.1 membership hours, plus the "special education one-to-one paraprofessional statewide district
8.2 cap rate" times instructional hours.

8.3 (j) For purposes of paragraph (i), for each capped rate, the unreimbursed cap rate must
8.4 not exceed 200 percent of the capped rate for fiscal year 2023, 175 percent of the capped
8.5 rate for fiscal year 2024, 150 percent of the capped rate for fiscal year 2025, and 125 percent
8.6 of the capped rate for fiscal year 2026 and later.

8.7 (k) Notwithstanding paragraph (b), the department may disallow tuition expenses for a
8.8 charter school if the department determines that the charter school failed to pursue third-party
8.9 billing for qualifying special education services.

8.10 **EFFECTIVE DATE.** This section is effective for fiscal year 2023 and later.

8.11 Sec. 8. **APPROPRIATION; SPECIAL EDUCATION AID.**

8.12 Subdivision 1. **Department of Education.** The sums indicated in this section are
8.13 appropriated from the general fund to the Department of Education in the fiscal years
8.14 designated.

8.15 Subd. 2. **Special education aid.** For special education aid under Minnesota Statutes,
8.16 section 125A.76:

8.17 \$ 2022

8.18 \$ 2023