

SECOND CONFERENCE COMMITTEE REPORT BRIEF HOUSE BILL NO. 2089

As Agreed to April 26, 2023

Brief*

HB 2089 would create the Kansas Education Enrichment Program, which would provide for awards or grants for qualified students and establish the Kansas Education Enrichment Program Fund, and provide for Special Education State Aid funding totaling \$72.4 million from federal American Rescue Plan Act (ARPA) funds for FY 2024.

Transfers and New Funds (New Sections 1 - 4)

The bill would specifically authorize the transfer of \$25.4 million from the Legislative Employment Security Fund of the Legislative Coordinating Council to the Special Education and Related Services Aid ARPA Fund in the Kansas State Department of Education (KSDE). The bill would also provide for the transfer of \$47.0 million from the American Rescue Plan – State Fiscal Relief Federal Fund (Governor’s Office, expenditures and obligations for learning loss programming) to the ARPA agency state fiscal recovery fund of the KSDE. [Note: Additional SGF transfer provisions are included in section 8 of the bill.]

The bill would also establish various special revenue funds in the Kansas State Department of Education and the Office of the State Treasurer for purposes established in the bill.

Kansas Education Enrichment Program; Awards and Grants for Qualified Students (New Sections 5-11; Section 12)

Program Definitions (New Section 5)

The bill would create the Kansas Education and Enrichment Program Act, establish the Kansas Education Enrichment Program (KEEP or program), and provide definitions for terms including, but not limited to, the following:

- “Award” would mean a KEEP award provided to a qualified student who attends a public school;

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- “Grant” would mean a KEEP grant established in an account on behalf of a qualified student who attends a non-public school;
- “Parent” would mean a Kansas resident who is the parent, stepparent, legal guardian, custodian, or other person with authority to act on behalf of a qualified student;
- “Qualified education service provider” would mean any business, organization, or individual that provides educational goods or services that are authorized for purchase or reimbursement under the program and includes any school located in Kansas that is either a non-public preschool, elementary, or secondary school that has been approved to participate; and
- “Qualified student” would be defined differently based upon whether the student was seeking an award for the student to attend a public or nonpublic school.

For a student attending a public school, “qualified student” would mean a Kansas resident who is enrolled and attending kindergarten or grades 1 through 12 in a public or nonpublic elementary or secondary school in the state, and

- Has a household family income of 250 percent or less of the Federal Poverty Level; or
- Attended, in the previous year, a school building in a school district that has since been closed by the district and must travel 15 miles or more from the student’s residence to attend the new assigned school; or

For those seeking awards to attend a nonpublic school, “qualified student” would mean a Kansas resident who is enrolled and attending kindergarten or grades 1 through 12 in a public or nonpublic elementary or secondary school in the state, and

- Has a household family income of 250 percent or less of the Federal Poverty Level and resides in a school district participating in the KEEP program;
- Attended, in the previous year, a school building in a school district that has since been closed by the district and must travel 15 miles or more from the student’s residence to attend the new assigned school; or
- Previously received a grant pursuant to the program and enters into a written agreement with the Treasurer to receive subsequent grants.

The bill would also establish definitions for the terms “BASE Aid,” “immediate family member,” “program,” “school district,” and “treasurer.”

KEEP Administration; Transfer (New Section 6)

The bill would provide the program to be a continuation and supplement to the existing KEEP and require the Treasurer (defined as the State Treasurer in the KEEP Act) to administer the program. On July 1, 2023, all aspects of the Kansas Education Enrichment Program approved by the State Finance Council resolution 22-741 would transfer to the Office of the State Treasurer. This would include maintaining all the terms and conditions of any existing contracts that were executed prior to the transfer.

[*Note:* Resolution 22-741 authorizes the approval of the request of the Strengthening People and Revitalizing Kansas (SPARK) Executive Committee to approve the allocation of State Fiscal Recovery Fund (SFRF) moneys for economic revitalization, health and education, and connectivity, and the Kansas Board of Regents expenditures from the Governor's Emergency Education Relief II funds. Among the authorized funding is \$50.0 million in health and education to assist students with learning and recovery, designed to provide a menu of options for the highest need students to support their educational success.]

The KEEP would provide for two options for qualified students:

- \$1,000 for those who would enroll in a public elementary or secondary school to be used for purchases from a qualified education service provider; and
- 95 percent of Base Aid for Student Excellence (BASE) for those who will enroll in a nonpublic elementary or secondary school to be used for purchases from a qualified education service provider.

The bill would also make four findings regarding the purpose of the KEEP Act.

Powers and Duties of the Treasurer (New Section 7)

The bill would detail additional oversight and administrative duties of the Treasurer, including accepting applications throughout the year, enrolling qualified students, and notifying parents of completed forms. The bill would require the Treasurer to maintain on the Treasurer's website, and provide an electronic or hard copy to the parent of a qualifying student prior to any expenditures from the account established for the qualified student, a list of the following:

- Allowable expenditures;
- Responsibilities for the qualifying student's parents; and
- Impact of a qualifying student participating with an individualized education program (IEP) or a plan under section 504 of the federal Rehabilitation Act of 1973.

The bill would prohibit the Treasurer from disclosing any qualified student's personal information without the written permission of the student's parent for each disclosure. The Treasurer would be required to conduct or contract to conduct financial audits of the use of account moneys and would be authorized to adopt rules and regulations for the administration and implementation of KEEP.

\$1,000 Award Enrollment; Qualified Students and Awards Criteria (New Section 8)

To receive a \$1,000 award, the bill would require the parent of the qualifying student who will enroll in a public elementary or secondary school to apply on a form and in the manner prescribed by the Treasurer. The written agreement would state that the one-time award would be used to pay for goods and services from a qualified education service provider. A qualified student may not receive a grant in the same year that an award was received.

Allowable expenses for award funding. The bill would require a parent to only expend a qualified student's award for the following:

- Day or overnight in-person camps that are primarily academic in nature related to the student's academic curriculum;
- Online or in-person language classes offered by a licensed organization;
- Purchase or rental of instruments, purchases of sheet music, music books and music materials, and music lessons;
- Tutoring services provided by a tutor who is not an immediate family member of the qualified student;
- Curriculum materials, school supplies, and authorized educational technology devices; and
- Any other education expenses approved by the Treasurer.

Prohibited uses of award funding. The bill would further specify that no award funding could be used for:

- Sporting goods or services, including sports camps;
- Driver's education-related fees or services;
- Non-academic lessons or courses including personal hygiene, self-care, self-esteem, or other non-academic lessons or courses;
- Tuition or school registration fees;
- Goods or services provided by immediate family members;
- Field trips or admission tickets to museums, zoos, theaters, historical landmarks, or other locations;
- Fees associated with transportation services, including parking fees;
- Clothing or uniforms;
- Food or meals; or
- Daycare services.

Online education marketplace. The bill would authorize any award to be used in the online education marketplace for goods and services from a qualified education service provider. A parent would be required to submit a request prior to any expenditures for any goods or services not pre-approved by the Treasurer.

Written agreement. The bill would require the parent of a qualified student to enter into a written agreement with the Treasurer to receive an award. The bill directs, once the agreement is approved, the Treasurer to authorize a \$1,000 award for each qualified student. The bill would

further specify that each written agreement would be for one year, but it could be suspended or terminated if the money in the account has been used improperly or the qualified student is no longer a Kansas resident.

The bill would also permit the parent to terminate the agreement with written notification. Once an agreement has been terminated, the bill would require the Treasurer to close the account and transfer any remaining balance to the State General Fund (SGF).

BASE Aid Grant Enrollment; Qualified Students and Grants Criteria (New Section 9)

To receive the \$5,000 grant, the bill would require the parent of the qualifying student who would enroll in a nonpublic elementary or secondary school to apply on a form and in the manner prescribed by the Treasurer. The bill would require the parent of a qualified student to enter into a written agreement with the Treasurer to establish the grant.

Provisions of written agreements for qualified students. The bill would require all written agreements to contain the following provisions:

- Money in the grant would be required to be used to educate the qualifying student, at a minimum, in reading, grammar, mathematics, social studies, and science;
- Upon receipt of the grant, the qualifying student could not enroll full-time in any school district;
- No immediate family member of a qualified student could collect payment, tuition, or fees for educational therapies or services or tutoring;
- Money in a qualified student's grant could only be expended on goods and services from a qualified education service provider;
- Payments from a grant for a student's enrollment at a nonpublic school would only be made to a qualified education service provider;
- The qualifying student could accept a scholarship pursuant to the Tax Credit for Low-income Students Scholarship Program Act, if eligible; and
- The parent of a qualified student would be required to comply with rules and regulations and all other requirements of this act.

The bill would require a parent to only expend a qualified student's grant for the following:

- Enrollment costs charged by a qualified education service provider;
- Textbooks and other supplies required by a qualified education service provider;
- Educational therapies or services provided by a licensed provider;
- Tutoring services provided by a tutor who is not an immediate family member of the qualified student;
- Curriculum materials;

- Uniforms purchased, if required for attendance;
- Enrollment costs charged by an online learning program;
- Contracted services from a public school district offered outside of the traditional school year and hours for students;
- Fees for any nationally standardized norm-referenced achievement test, advanced placement examination, or examination related to admission to a postsecondary institution;
- Fees or costs required to apply for or acquire occupational licenses, certificates, apprenticeships, or other professional qualifications;
- Fees for transportation services approved by the Treasurer that are used for transportation to and from a qualified school;
- Computer hardware and technological devices primarily used for educational purposes, including personal computers, laptops, tablet devices, microscopes, telescopes, and printers; and
- Any other education expenses approved by the Treasurer.

Prohibited uses of grant funding. The bill would prohibit the use of expenditures for sporting goods or services, including sports caps, or instruction, or tutoring provided by an immediate family member for qualifying students who are schooled at home.

Written agreement. The bill would require the parent of a qualified student to enter into a written agreement with the Treasurer to receive a grant. Once the agreement is approved, a grant would be authorized for each qualified student. The bill would further specify that only one grant could be provided to each qualified student per school year, and a parent acting on behalf of a student would be required to have a separate written agreement for each qualified student.

The bill would permit the parent to terminate the agreement with written notification. Once an agreement has been terminated, the bill would require the Treasurer to close the account and transfer any remaining balance to the SGF.

Agreement terms. The bill would provide that, once the agreement is approved, one account would be authorized for each qualified student. The bill would further specify that each written agreement would be for one year and remain active until:

- A written agreement is terminated;
- A parent does not renew the qualified student's written agreement;
- The student enrolls in a school district on a full-time basis;
- The student is no longer a qualified student under the program; or
- Moneys have been used for purposes other than those allowed under the program.

The bill would also provide that, unless an account has been closed pursuant to the KEEP Act, any amount remaining in the account would be rolled over into the account for the succeeding year if the student and parent renew a written agreement to continue. The bill would prohibit any personal deposits into the account.

Misuse of funds. The bill would authorize the Treasurer to refer cases to the Attorney General for collection or criminal investigation if the Treasurer finds evidence of substantial misuse of funds.

School District Participation. For purposes of determining eligibility of the nonpublic school grant awards, the bill would automatically opt in all school districts whose primary administrative offices are located in one of the following counties:

- Butler;
- Douglas;
- Johnson;
- Leavenworth;
- Reno;
- Riley;
- Saline;
- Sedgwick;
- Shawnee; and
- Wyandotte.

The bill would allow school districts automatically included in the program to opt out, on an annual basis, if more than 50 percent of that district's students eligible for free and reduced-price meals achieve proficiency for grade level academic expectations by scoring performance level 3 or level 4 on the statewide math and English language arts assessments the preceding school year.

Any school district not automatically included in the program pursuant to the bill's provisions may be included in the program after the local school board adopts a resolution to join the KEEP. Such resolution would be considered valid for one year. The bill would permit the board to adopt subsequent resolutions if the district meets the specified requirements.

KEEP Fund; Certification (New Section 10)

The bill would establish the KEEP Fund (Fund), which would be administered by the Treasurer. Money from the Fund could be used only for purposes authorized by the KEEP Act.

Certification of federal funds; demand transfer. The Treasurer would determine the amount of federal funds available in the Fund. If the Treasurer determines the available funds would be insufficient to provide awards and grants, the Treasurer would certify such information to the Director of the Budget. The bill would require the Treasurer to annually determine the amount to be transferred to the Fund by multiplying the amount equal to the BASE by the number of qualified students eligible for grants and by multiplying \$1,000 by the number of qualified students eligible for an award. The Treasurer would certify that amount to the Director of Accounts and Reports, who would then transfer that amount from the SGF to the Fund and record the transaction as a demand transfer.

Transfer, reporting. The bill would also require the Treasurer to transfer annually an amount equal to 95 percent of the BASE amount to all full-time qualified student accounts or a proportional amount to part-time qualified student accounts. The bill would specify that payments must be made in two installments, one in August and one in January. The Treasurer would be required, during each legislative session, to provide an estimate of the amount to fund the awards and grants for the next succeeding year.

The bill would allow the Treasurer to retain up to 5 percent of the BASE aid per participating student for purposes of administering the program.

Governmental Control (New Section 11)

The bill would state that nothing in the KEEP Act would be construed to permit any governmental agency to exercise control or supervision over any nonpublic school or home school. Any qualified school or tutor that accepts a payment from a parent of a qualified student participating in the program would not be an agent of the State.

Compulsory School Attendance (Section 12)

The bill would amend school attendance law to state that a qualified student participating in a KEEP grant would be deemed to meet the requirements of compulsory school attendance.

Conference Committee Action

The second Conference Committee agreed to remove the contents of HB 2089, as passed by the Senate, and insert provisions pertaining to transfers for Special Education State Aid and creation of KEEP. The Conference Committee inserted the following provisions of the second Conference Committee Report (CCR) on House Sub. for SB 83 into the bill:

- Add \$72.4 million ARPA funds for Special Education State Aid; and
- Add language creating the KEEP Act, with modifications to eligibility provisions for KEEP grants. [*Note.* The changes made to the eligibility criteria for grants would automatically include school districts located within the ten most populous counties while allowing all other school districts to opt into the program.]

[*Note:* HB 2089, as introduced and passed the Senate, pertained to registration and reporting requirements on prepaid service plans in the Insurance Code. These contents were included in the Conference Committee Report for HB 200, which was approved by the Governor on April 19.]

Background

HB 2089, as agreed to by the Conference Committee, includes some of the provisions, with modifications previously noted above, from the second Conference Committee Report for House Sub. for SB 83. [*Note:* The second Conference Committee Report was adopted by the House on April 6. The Senate did not adopt the CCR in its consideration on April 6.]

Fiscal Information

A fiscal note was not immediately available for the action taken by the second Conference Committee.

Education; Kansas Education Enrichment Program; special education; funding; American Rescue Plan Act; State Treasurer; nonpublic schools; public schools; students

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