

Fiscal Estimate - 2013 Session

Original
 Updated
 Corrected
 Supplemental

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| LRB Number 13-3959/1 | Introduction Number AB-0682 | |
| Description Creating a Special Needs Scholarship Program for disabled pupils, granting rule-making authority, and making an appropriation | | |
| Fiscal Effect | | |
| State: <input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs | | |
| Local: <input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate 1. <input checked="" type="checkbox"/> Increase Costs 3. <input checked="" type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory <input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input checked="" type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory <input checked="" type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts | | |
| Fund Sources Affected Affected Ch. 20 Appropriations <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.255 (2)(ac), 2(az) [New], 2(cy) | | |
| Agency/Prepared By DPI/ Sheryl Cordell (608) 266-1344 | Authorized Signature Michael Bormett (608) 266-2804 | Date 2/27/2014 |

Fiscal Estimate Narratives

DPI 2/27/2014

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Assumptions Used in Arriving at Fiscal Estimate

BACKGROUND

This bill establishes a Special Needs Scholarship Program. Under the program, beginning in the 2014–15 school year, a child with a disability may receive a scholarship to attend a public school located outside the pupil's school district of residence, a charter school, or a private school, if all of the following conditions are met:

1. The child has applied to attend a public school outside of his or her school district of residence under the Open Enrollment Program and was rejected by the school board of the nonresident school district or was prohibited from attending school in a nonresident school district by the school board of the child's resident school district.
2. The school has notified the Department of Public Instruction (DPI) of its intent to participate in the program and the child has been accepted by the school.
3. If the school is a private school, it is approved as a private school by DPI or is accredited.
4. An individualized education program (IEP) has been completed for the child.
5. With certain exceptions, the child attended a public school in this state in the previous school year.

The bill directs DPI to develop a document, for inclusion with an application, comparing the rights of a child with a disability and his or her parent under state and federal handicapped education law with the rights of a child with a disability under the program created by this bill and federal handicapped education law.

A school that accepts a child under the program must notify DPI. Upon receipt of the notice, DPI must notify the school board of the pupil's school district of residence and determine the amount of the child's scholarship. The amount is the lesser of the cost to the school the child is attending under the scholarship of providing regular instruction, instructional and pupil support services, special education and related services, and supplementary aids and services to the child, plus the per pupil operating and debt service costs, or an amount equal to the statewide cost per public school pupil plus the state aid per child with a disability. If the child is attending for less than a full school term, DPI must prorate the amount of the scholarship.

DPI pays the scholarship directly to the school or school district that the child will attend. The scholarship continues while the child attends a school eligible to participate in the program until he or she graduates from high school or until the end of the school term in which he or she turns 21, whichever comes first.

Under the bill, the total amount appropriated as state school equalization aid is reduced by the total amount of scholarships paid by DPI to schools and school districts under the program, as described above. A pupil attending a private school, a public school outside the pupil's school district of residence, or an independent charter school under the program is not counted for state aid or revenue limit purposes by the pupil's school district of residence.

Each private school participating in the program must comply with applicable health and safety laws; hold a valid certificate of occupancy if the municipality in which the school is located issues such certificates; comply with federal law that prohibits discrimination against any person on the basis of race, color, or national origin; conduct criminal background investigations of its employees and exclude from employment any person not permitted to hold a teaching license as the result of an offense and any person who might reasonably be believed to pose a threat to the safety of others; provide to each applicant a profile of the school's special education program; implement the child's most recent IEP; and comply with the restrictions on the use of seclusion and physical restraint that currently apply to public and charter schools.

The private school must also annually submit to DPI a school financial report prepared by a certified public accountant. If the private school expects to receive at least \$50,000 in scholarships during a school year, it must either file a surety bond with DPI or provide DPI with information demonstrating that it has the ability to pay an amount equal to 25 percent of the total amount of scholarships that it expects to receive.

The bill provides that if a child attends a private school under the program, his or her school district of residence must provide transportation to and from the school if the school is located at least two miles from the child's residence, the child resides in the private school's attendance area, and the private school is situated within the school district of residence or not more than five miles beyond the boundaries of the school district.

If the child attends a public school under the program, the child's parent is responsible for transporting the child to and from school unless transportation is required in the child's IEP. If the latter applies, the school district that the child attends is responsible for transporting the child. The bill allows a low-income pupil to apply to DPI for reimbursement of transportation costs.

The bill authorizes DPI to bar a school from participating in the program if the school intentionally and substantially misrepresents information required under the bill, routinely fails to comply with financial standards, uses a pupil's scholarship for any purpose other than educational purposes, or fails to refund any scholarship overpayments to the state.

Finally, the bill directs the Legislative Audit Bureau to contract for a study of the program. The results of the study must be reported to the legislature by January 9, 2017.

STATE FISCAL EFFECT: The overall cost of this bill for the state is indeterminate.

State General Equalization Aid:

The bill does not change the amount appropriated for general school aids, but under this bill, Section 1 specifically reduces the amount of general school aids that would be made available to school districts beginning in the 2014-15 fiscal year to pay for special needs scholarships. Since the bill does not make any changes to school district revenue limits or the calculation of general school aids, this provision would result in a commensurate increase in school district property taxes on a statewide basis.

State Categorical Special Education Aid:

The scholarship program will not reduce most school districts' current special education costs and will not reduce the amount of state special education categorical aids necessary to support children with disabilities in public schools going forward.

Private schools under this proposal have no obligation to accept all students with disabilities. It is likely that few students with significant disabilities (physical and/or cognitive) will be accepted into private schools. Most special needs scholarship students will have minimal needs. The result is school districts will have a higher percentage of students with significant disabilities compared to their current population and will not have a reduction in costs.

Special Education and school-age parents categorical aid and additional special education aid (i.e. high cost) are sum-certain appropriations which have not been increased in the past six years. Aid payments are prorated as total eligible costs exceed the appropriation. In recent years the proration rate has been in the range of 26-28% for special education categorical aid and 50-55% for special education high cost categorical aid.

State aid for transportation; open enrollment and, course options, and special needs scholarships:

The state currently has an appropriation, s. 20.255(2)(cy), Stats., for the reimbursement of transportation costs for parents of low-income pupils participating in the open enrollment program. Claims for the open enrollment program are prorated due to having more claims than money available. The proration factor for the 2012-13 school year was 30.9%. It is indeterminate how many additional claims would be realized by the Special Needs Scholarship program low-income parents as eligible for transportation reimbursement. However, for every additional claim by a scholarship parent, the aid proration percentage will decrease.

Federal Individuals with Disabilities Education Act (IDEA) funds:

The bill will not affect the IDEA grant amount awarded to the state as long as the special needs scholarship is a sum sufficient appropriation. In the future, if the Wisconsin legislature changed the program to be sum certain versus sum sufficient, State Maintenance of Effort (MOE) could be impacted which could result in Wisconsin receiving reduced IDEA grant monies.

The special needs scholarship program is paid from appropriation s. 20.255(2)(az), Stats., which is a sum sufficient appropriation. Because the scholarship program appropriation is sum sufficient, DPI may expend any amount of monies necessary for the program that is allowable under the scholarship program requirements per s. 115.7915, Stats. As a result, state level MOE will not be impacted because the state is "making available" all needed funds to support the scholarship program.

MOE is the requirement placed upon many federally funded grant programs that the State Education Agency (SEA) and Local Education Agencies (LEAs) demonstrate that the level of state and local funding remains relatively constant from year to year. Part B of the IDEA, which addresses IDEA funding allocations to the SEA and LEAs, includes MOE provisions applicable separately at both the state and local levels.

At the state level, IDEA Part B prohibits a state from reducing state financial support for special education below the amount of that support for the preceding fiscal year (34 CFR s. 300.163). In Wisconsin, this state support includes "special education categorical aids" (including supplemental and high cost aid) as well as special education support provided by the Wisconsin School for the Deaf, Wisconsin Center for the Blind and Visually Impaired, and the Department of Corrections. Approximately \$375 million is paid out to LEAs each year through Wisconsin's special education categorical aid program to help cover the local costs of providing special education and related services for children with disabilities. This state support is not federal funding, but rather an appropriation made in Wisconsin's state budget. To meet the IDEA MOE state-level expectation, Wisconsin must continue to fund special education (i.e. make funds available) at least at the same level every year. If the state fails to meet MOE requirements, the IDEA Part B grant funding is reduced by the same amount as the amount the state fell short of its MOE requirement.

Federal Medicaid School Based Services Funds:

The bill may impact the state's claiming of federal Medicaid School Based Services (SBS) funds. Only Medicaid-certified providers may provide SBS services; the state Department of Health Services is responsible for the certification process. While all school districts in the state are Medicaid-certified providers, not all private schools are certified. Thus, if a parent takes a scholarship under this bill to transfer his or her student from a resident public school to a private school, there may be a loss of federal SBS funds to the state unless the private school is a Medicaid-certified provider. Under current law, 60 percent of all federal SBS claims are deposited in the state's general fund; thus there could be a loss of GPR earned. This amount is indeterminate.

Department of Public Instruction:

This bill will increase costs for DPI. The amount of the increase is indeterminate and cannot be absorbed by the department.

This bill requires DPI to implement and administer a new scholarship program; however no additional staff or funding is provided. Current DPI special education staff is 100 percent federally funded by IDEA funds which cannot be used to implement and/or administer this state program. The additional workload cannot be absorbed by the department.

Based on experience administering other choice programs, DPI estimates needing 4 new FTE to administer the special needs scholarship program at a cost of \$340,015 GPR annually for salaries, fringe benefits, fixed costs, and supplies and services. The 4 FTE are as follows: 1 school administration consultant, 1 information systems development services specialist, 1 school finance auditor, and 1 financial specialist-5. DPI estimates needing 2 contract programmers at a cost of \$30,000 GPR for the initial design, programming and implementation of a special needs scholarship program (databases, applications, forms, interfaces, etc).

The following are DPI requirements in the bill:

- o Confirm child has been denied open enrollment and attended a Wisconsin public school for the entire school year immediately preceding the school year the child receives first special needs scholarship.
- o Notify the resident school district a child has been awarded a scholarship.
- o Determine both the cost of a student's education at the eligible school and the standard scholarship amount. Scholarship amount is the lesser of the eligible school cost or the standard amount.
- o Notify parent of the scholarship amount with an explanation of how the amount was determined.

- o Track acknowledgement of document (rights of child with a disability and of her or her parent) by the parent. This constitutes notice that the applicant has been informed of his or her rights under state law and under IDEA.
- o Track acknowledgement of private school profiles by parents. DPI will not make a scholarship payment to a private school unless acknowledgement is confirmed.
- o Pay special needs scholarships to school district, charter school or private school from s.20.255 (2) (az), Stats..
- o For children who previously qualified for a special needs scholarship that are no longer eligible who continue to attend the private school, DPI will pay the private school an amount equal to a Wisconsin parental school choice program amount.
- o Deduct scholarship amount from state general equalization aid.
- o Pay scholarships to eligible school per payment schedule in s. 119.23(4)(c), Stats., : 25% in September, November, February, and May.
- o Bar school from participating in the program if the school intentionally and substantially misrepresents required information, routinely fails to comply with financial standards, uses a pupil's scholarship for any purpose other than educational purposes, or fails to refund any scholarship overpayments to the state within 60 days.
- o Notify all children eligible to participate in the program and their parents of barred schools. These children can attend another eligible school under the scholarship program.
- o Administer an appeal process for barred schools.
- o Promulgate rules to implement and administer the program.
- o Ensure all calculations to the \$4.3 billion general school aid formula are conducted accurately and in a timely manner.
- o Implement the program (IT applications, forms, school and DPI staff training, etc.)
- o Develop application form parents use to apply to an eligible school.
- o Develop rights comparison document and revise as necessary. This document compares the rights of a child with a disability and of his or her parent under state law and IDEA (federal special education law) to rights under the scholarship program and IDEA.
- o Maintain database of eligible schools that have notified DPI of their intent to participate.
- o Review private schools annual financial reports.
- o Track private schools surety bond procurement or filing of financial reports to DPI demonstrating ability to pay total scholarship amount.
- o Monitor private schools for the following:
 - * Comply with all health and safety laws or codes that apply to private schools.
 - * Hold a valid certificate of occupancy, if required by the municipality in which the school is located. If the municipality in which the school is located does not issue certificates of occupancy, the private school shall obtain a certificate of occupancy issued by the local or regional governmental unit with authority to issue certificates of occupancy or submit to DPI a letter or form from the municipality in which the private school is located that explains that the municipality does not issue certificates of occupancy.
 - * Comply with 42 USC 2000d federal law that prohibits discrimination on the basis of race, color, or national origin by any program or activity that receives federal financial assistance
 - * Conduct criminal background investigations of its employees and exclude from employment any person not permitted to hold a teaching license as the result of an offense and any person who might reasonably be believed to pose a threat to the safety of others.

It can be presumed that there will be appeals regarding when and for how long a school district or private school could be barred from the program. Since the bill does not address how these appeals would be handled, the department would likely have to follow Chapter 227, Stats., in regard to due process. The related costs and staff time in doing so could be substantial and will need to be covered by the 4 FTE listed above. The department also estimates that for each contested case hearing, it will cost \$2,000 GPR for the hearing officer and approximately 40 hours of DPI staff attorney time. These costs are indeterminate.

The wording included in s. 115.7915 (6), Stats., of "Intentionally and substantially misrepresented" and "Routinely failed to comply" significantly negates the requirements listed under the Private School Duties s. 115.7915 (4) in this bill. This wording will increase DPI legal costs for program compliance because DPI will need to engage in significant amounts of litigation to determine precisely how the wording applies in many different fact situations. The amount of the increase is indeterminate.

LOCAL FISCAL EFFECT: The overall cost of this bill for local school districts is indeterminate.

General School Aids and Property Taxes:

Under current law, the total amount of state funding available for distribution under general school aids (the

"school aid" formula) is established by a single general fund appropriation. Assuming revenue limits are unchanged and that school districts use all of their available revenue limit authority, if more state funding is made available through general school aids, school district property taxes will decrease. Conversely, if less state funding is provided, property taxes will increase.

Under this bill, Section 1 specifically reduces the amount of general school aids that would be made available to school districts beginning in the 2014-15 fiscal year to pay for special needs scholarships. Since the bill does not make any changes to school district revenue limits or the calculation of general school aids, this provision would result in a commensurate increase in school district property taxes on a statewide basis. However, since the bill is drafted in a manner that reduces general school aids before the department would "run" the school aid formula, the impact of this overall reduction in general school aids would affect school districts differently. Had this legislation been in place in 2013-14, 61 school districts would have realized no reduction in their general school aids from the state as they are either no longer eligible for state equalization aids or are "primary aid only" districts that receive state aid only at the first tier of the formula. Thus, the impact of a reduction in general school aids, and resulting increase in property taxes, would have been concentrated on the remaining 363 school districts in the state.

In addition, since the bill would reduce the overall amount of general school aids available it would also increase the uniform general aid reduction for all school districts under current law to pay for the state's independent charter schools program. Since all but two school districts (that no longer receive any general school aid whatsoever) have their state general aids reduced for this program, the bill would also reduce state general aid for 422 school districts and increase their property taxes by an identical amount.

Since the number of students that would receive special education scholarships under this bill and the amount of each individual scholarship is unknown, the exact fiscal impact of this bill upon state general school aids and resulting increase in property taxes is indeterminate. The department estimates approximately 3,900 children with disabilities would be eligible for the scholarship in the 2014-15 school year based on prior year open enrollment denials from the 2012-13 and 2013-14 school year and projected denials for 2014-15 school year. This is equal to approximately 3.2 % of the children with disabilities enrolled in public school in Wisconsin. If these 3,900 eligible children received the standard scholarship amount of \$13,660, the 2014-15 cost of the special needs scholarship program would be \$53,274,000. Therefore, the resulting statewide property tax increase would be \$53,274,000. If 5% of the children with disabilities in Wisconsin receive a scholarship, the property tax increase would be \$82,438,100 (10% would be \$164,876,200).

Federal Individuals with Disabilities Education Act (IDEA) Funds and Equitable Services
Resident school districts may have an increase in Equitable Services resulting in decreased IDEA funds available for the public school students at the district.

IDEA requires school districts to set aside funds to pay for special education services for private school students with disabilities. Equitable Services are IDEA entitlement funds a school district is required by federal law to set aside to pay for special education services for children with disabilities who were parentally placed in private schools located within their school district boundaries. These children may or may not live within the school district boundaries in which the private school is located. Under IDEA, the public school district in which the private school is located must set aside the federal funds and provide the special education services.

If the availability of scholarships results in an increase in the number of students with disabilities attending private schools, the amount of federal IDEA grant funds a district has to set aside will also increase and must be spent on private school students rather than public school students. In addition, the districts that may see their IDEA funds diverted to private schools may not be the districts with the outgoing scholarship students. As an example, if five students from the ABC School District take scholarships to attend a private school located within the XYZ School District, the XYZ School District will see the amount of IDEA grant monies available for their own special education costs decrease as it will need to be spent on the private school students.

Federal Individuals with Disabilities Education Act (IDEA) Funds and Maintenance of Effort (MOE):
The special needs scholarship program will not impact MOE for local school districts.

The funds for the scholarship are paid from appropriation s. 20.255(2)(az), Stats., and not tied to a district's ledger. The district will never account for the cost of the scholarship and therefore it will not be an expenditure included in the MOE calculation. MOE is also examined at a per student with disability capita amount. The special needs scholarship students are not counted in the school membership of the resident

school district. As a result, districts will see a decrease in their students with disabilities which is an allowed exception to MOE under IDEA.

Legal Costs:

School districts may incur increased legal costs due to disputes over IEP eligibility.

Standardized Testing Costs:

School districts may have increased testing costs. These testing costs for the special needs scholarship student are additional costs to school districts for which they are not receiving state or local aid.

If a scholarship student chooses to attend a private school and the private school does not administer the state standardized tests, the resident school district must administer the tests at the request of the parent. Administering the test to children with disabilities could require various accommodations and costs to the resident district. Furthermore, the district may not be able to properly administer the test because the resident district would not be aware of required accommodations, thus exposing the district to litigation that could be costly.

Cost of servicing special needs students who return to the public school

School districts may have increased costs as a result of providing more intensive services to children returning from private schools. If children return to public school due to their needs not being met at the private school or being dismissed by the private school, the public school may be providing more or more intensive services to restore the children to prior functioning levels than they would have provided had the children not attended the private school. The responsibility for legal compliance, determining eligibility, determining educational deficits, etc., starts over when the children return to the public school. Not only would this lost time be detrimental to the children, the burden and costs fall on the resident district to appropriately assess and provide for the children.

Long-Range Fiscal Implications

To the extent this bill permanently reduces pupil membership in public school districts, spending authority under revenue limits in affected districts will be reduced.