

### Fiscal Estimate - 2011 Session

- Original
  Updated
  Corrected
  Supplemental

<b>LRB Number</b> 11-1907/2	<b>Introduction Number</b> SB-486
-----------------------------	-----------------------------------

**Description**  
 Creating the 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	<b>5.Types of Local Government Units Affected</b> <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input checked="" type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory	<input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

<b>Fund Sources Affected</b>	<b>Affected Ch. 20 Appropriations</b>
<input checked="" type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	20.255 (1) (a), 20.255 (2)(ac), 20.255 (2) (az), 20.255 (2)(cy)

<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DPI/ Kimberly Chase (608) 266-1344	Michael Bormett (608) 266-2804	3/5/2012

## Fiscal Estimate Narratives

DPI 3/5/2012

LRB Number	11-1907/2	Introduction Number	SB-486	Estimate Type	Original
<b>Description</b> Creating the Special Needs Scholarship Program for disabled pupils, granting rule-making authority, and making an appropriation					

### Assumptions Used in Arriving at Fiscal Estimate

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

1. 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.
2. If the school is a private school, it is approved as a private school by DPI or is accredited.
3. An individualized education program (IEP) has been completed for the child.
4. In the previous school year, the child attended a public school, attended a private school under a parental choice program (PCP), or did not attend school in this state.

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, 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, a pupil attending a private school, or a public school outside the pupil's school district of residence, under the program is counted for state aid purposes by the pupil's school district of residence. However, the state aid paid to that school district is reduced by the total amount of scholarships paid by DPI for pupils who reside in that school district.

Each private school participating in the program must comply with applicable health and safety laws; hold a valid certificate of occupancy; 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; and implement the child's most recent IEP.

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 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, 2015.

#### State Fiscal Effect:

The bill requires DPI to determine the amount of a pupil's scholarship as the lesser of two figures. The first figure will be calculated on an annual basis using school finance data. The second figure is the cost of the eligible school to provide education and services to the child. DPI would need to review the IEPs of all scholarship applicants to determine the level of scholarship each should receive which will be very labor intensive. It is unclear how DPI would determine how much it would cost a resident district, non-resident district or private school to implement a student's IEP. Each district and school has different programs and services already in place that they could potentially provide for a student; while some districts and schools would need to add programs, services and staff to serve the new student(s). It is expected the IEP review process and attaching a cost to each one would be very labor intensive with many outside contacts being necessary for each. Tracking would also be necessary as districts' general aid would need to be reduced accordingly. This additional workload could not be absorbed by the department.

Florida has implemented a similar special education scholarship program, the McKay Scholarship Program. The Florida Department of Education currently has a total of 13 FTE working solely on the McKay Scholarship Program. In 2008-09, Florida awarded 20,500 scholarships, or approximately 5 percent of its K-12 special education population. Thus, Florida has approximately 1 FTE to process every 1,577 scholarships. Assuming that 5 percent of Wisconsin's 119,402 students with disabilities would receive a scholarship under the bill, this would result in 5,970 recipients and DPI would require 4 additional FTE to calculate and process scholarship applications. DPI estimates needing 2 education consultants and 2 education specialists at a cost of \$346,900 GPR for salaries, fringe benefits, fixed costs, and supplies and services.

The bill requires DPI to adjust each resident school district's general school aid payment to reflect the cost of the scholarship(s) for their resident pupils, and to audit both participating private schools and public school districts for proper use of scholarship funds, appropriate financial reporting and refunds of overpayments. DPI may also be required to calculate and adjust those nonresident district revenue limits to reflect scholarship funds. The department estimates it will require an additional 2 FTE for these financial and audit responsibilities, an education consultant and an auditor at a cost of \$196,200 GPR. The department does not currently have vacant GPR positions that could be used for this purpose. (Current special education staff could not be used as they are 100% federally funded.)

It can be presumed that many appeals regarding the per student voucher amount that DPI determines would occur in each private school or nonresident district, when and for how long a school district or private school could be barred from the program, etc. Since the bill does not address how these appeals would be handled, the department would likely have to follow Chap. 227, Wis. 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 bill creates a new GPR sum sufficient appropriation from which to pay each scholarship. DPI then reduces the resident school district's general school aids by the equivalent amount of each scholarship and lapses it to the general fund. While the bill is unclear, it is assumed that the general fund, via the new sum sufficient GPR scholarship appropriation, will be liable to pay for any special needs scholarships that are unable to be funded through general school aid deductions due to insufficient general school aids in resident districts.

With respect to federal Individuals with Disabilities Education Act (IDEA) funds, the bill may not affect the amount of total IDEA revenue received by the state. However, the use and distribution of that aid among districts could be impacted by the bill.

The bill may also impact the state's claiming of federal Medicaid 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 their 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.

Finally, the state currently has an appropriation [s. 20.255(2)(cy), Wis. Stats.] for the reimbursement of transportation costs for parents of low-income pupils participating in the open enrollment program. Claims for this program are estimated to be prorated at 25% due to having more claims than money available. It is indeterminate how many additional claims would be realized by adding 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.

The overall cost of this bill for the state is indeterminate.

#### Local Fiscal Effect:

Under current law, each district receives general state school aid, local property taxes, IDEA, state special education categorical aid, and Medicaid school-based services (SBS) funds, to serve special needs students.

#### Property Taxes

SB 486 could result in significant increases in school district property taxes, beginning in 2012-13, assuming students accepting special education vouchers enroll in another school district, charter school, or private school prior to the third Friday in September count. Property taxes could increase (using such assumptions) since: (1) the bill provides that public school districts can count students receiving special education vouchers in their revenue limit membership, which would increase their revenue limit authority immediately (assuming they were not already enrolled in the district); and (2) the bill requires DPI to reduce each district's October general aid entitlement by the total amount of each district's known special education vouchers for that year.

A school district's revenue limit would thus be increased beyond what it would be under current law and its general state aid decreased in the same year. Under the bill, districts are allowed, but not required, to increase their property tax levy to replace state general school aids lost to other districts or private schools as a result of paying for students' special needs vouchers. The bill also provides that school districts would count students receiving special education vouchers in their general aid membership; however, any marginal state general aid received due to adding additional students to their membership would not be paid until the succeeding school year under current law (assuming these students were not enrolled in the district in the prior year) and would almost certainly be less than the amount of the special education voucher.

On the other hand, eligible students can apply and enroll in another district or private school after the general aid certification. If this happens, for example, on January 15th, the department would be required to reduce the resident district's state general aid by roughly half (for one-half of a school year) of the voucher amount in that same year and the resident district would not be able to make up these lost state general aids because its property tax levy would already be set. Thus, school districts would be required to address such a loss of state aid within their current budget.

#### General School Aids

Some school districts receive very little general school aid from the state. In 2010-11, 19 districts received less than \$100,000 while 10 received less than \$50,000. If a district does not have sufficient general school aid to cover the total cost of scholarships, DPI assumes the state general fund would be liable to pay the difference via the sum sufficient GPR appropriation created under this bill.

SB 486 would not limit the number of special needs vouchers, so the total amount of scholarships could be of any magnitude. Based on the Florida program's experience, one might project 5% of the total number of students with disabilities residing in the state in the previous school year will be awarded a voucher. In the 2010-11 school year there were 119,402 children with disabilities in public schools across the state. Therefore, one might expect approximately 5,970 of those children (or 5%) to be awarded a special needs scholarship.

Using the formula described in the bill (s. 115.7915 (2) (b) 2), DPI has figured a rough estimate of the amount of each scholarship to be \$13,593 (this figure will change annually) or the cost to the district or school to provide the education and services; whichever is less. (This is a rough estimate because it is not absolutely clear what all the specific figures are that go into this calculation and DPI does not have the

number of FTE students with special needs. DPI has head count only.)

So, in total, if every special needs student receives the maximum scholarship, it will cost approximately \$80,595,000 GPR. Funding is reduced from the amount of general equalization aid for which each school district is eligible. Again, if a district does not have sufficient general school aid to cover the total cost of scholarship(s) for its resident students, DPI assumes the state general fund would be liable to pay the difference via the sum sufficient GPR appropriation created under this bill. The amount that will not be able to be funded by school district general aid reductions is indeterminate because it will vary based on how many students in each district receive scholarships as well as the district's amount of general aid.

As noted above, because the scholarships are paid on a current year basis and not based on prior year data, the impact of general aid transfers would vary dependent on whether the transfer was part of the district's October 15th aid certification. For aid reductions occurring after the aid certification date, districts would not be able to levy for the revenue decrease they will experience from paying the special needs scholarships.

In addition, for private school enrollment, the general school aid transfer of \$13,500 (or a lesser amount if the private school has said they could provide the education and services) could exceed the tuition that would have to have been paid by the parent to enroll their child in the private school.

As drafted, the bill would also impact the state's general equalization aid formula in future years as it would likely increase the membership of some school districts without affecting shared costs or equalized property valuations. Under the bill, membership would be increased in those school districts where students receiving special education vouchers were not enrolled in the public school district or were enrolled in private schools participating in the Milwaukee Parental Choice Program (MPCP) or the Private Parental School Choice Program (PPSCP) in the preceding school year. An increase in membership in the state's general equalization aid formula would affect the state's secondary and tertiary guarantees and the secondary cost ceiling, resulting in a redistribution of general state aid entitlements in nearly all school districts in future years. These changes in the formula's "factors" would have differing impacts on the vast majority of school districts currently eligible for state general equalization aid, impacting the amount of state general equalization aid they receive. Since neither the current residency, enrollment status, nor number of students electing to receive special education vouchers is known, the impact on state general equalization aid for nearly any school district in future years is indeterminate; however, it could be significant in some cases.

#### State Categorical Special Education Aid

Under the bill, if a student leaves a resident district with a scholarship, the resident district may no longer be claiming state special education categorical aid costs for that student. In 2010-11, it is expected that special education categorical aid will be pro-rated at 26.7%. The bill does not affect the total amount of state special education categorical aid allocated to school districts, CESA's, or County Children with Disabilities Education Boards. If partial costs for 5,970 students are removed from the total claims for state special education categorical aid due to the scholarship, the reimbursement percentage for all districts' remaining special education categorical aid will increase. Depending on the amount of claims that remain after the students with their partial costs paid with the special needs scholarships are removed, and the final distribution of the aid, districts could gain or lose special education categorical aid.

#### Federal IDEA Funds

IDEA flow-through funds are allocated to public school districts based on a census count of where the child is being served, a poverty count, and a special education count from 1998. The resident school district counts the child for IDEA flow-through funding. If a different district is serving the student, the resident district is billed for the excess cost of providing the special education and the resident district can use IDEA funds to pay the bill.

While working on this legislation, it has also come to the department's attention that local school districts' IDEA maintenance of effort (MOE) would remain unchanged when special needs students leave their resident district (therefore, this item has not been mentioned in prior fiscal notes prepared for the similar legislation-2011 AB 110). Thus, in addition to the general equalization aid transfer, districts will need to also transfer an equivalent amount of general education dollars into their special education budget to backfill the transfer as a means to meet MOE. Please see example on the attachment.

#### Medicaid SBS Funds

Nonresident public and private schools will not be able to bill as much as they do currently for Medicaid SBS reimbursement because some of the costs for serving the student will already be covered by the scholarship. The resident district, if it was claiming SBS, will lose that revenue since they are no longer serving the pupil.

The bill appears to have no requirements that the amount of the student's scholarship ever be refigured. There is no requirement to revisit whether special education services are still needed, as required in public schools through reevaluation, or if associated costs are still relevant, until the student graduates.

Paying a pro-rated amount for students that transfer to a different district or private school does not necessarily reduce the cost for the resident district – this will be an individual student impact. Staff are under contract, and services are already in place and may need to be continued for the other students with disabilities in the resident district. Therefore, costs are not necessarily saved when one special needs student transfers out of the resident district. However, under this bill, the resident district will lose state general school aids regardless of the impact on its costs.

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

If a special needs child obtains a scholarship to attend a private school where the parents later determine he/she is not getting an appropriate education or when the private school dismisses a child, the child will be re-enrolled in the public school system. The responsibility for legal compliance, determining eligibility, determining educational deficits, etc. starts over again for the public school. Not only would this lost time be detrimental to the child, the burden and costs then fall on that resident district to appropriately assess and provide for that child in the best way possible. It is possible more intensive services would be necessary due to the year(s) of inadequate services received while out of the public school system that ensures a free and appropriate public education (FAPE).

The bill requires the nonresident school district to provide transportation if it is in a student's IEP. Because it is not stated otherwise, this provision could result in nonresident districts needing to travel a large number of miles to pick up special needs children that have received a scholarship. Costs to provide such transportation would vary by student and district and are indeterminate. On the other hand, it is assumed the nonresident district would not accept the scholarship student if such costs were excessive.

If a student attends a private school, the resident district is required to provide transportation 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. These students are more likely to need specialized transportation to be safely transported, but again, costs will vary widely but could be substantial.

The overall cost of this bill for local school districts is indeterminate.

### **Long-Range Fiscal Implications**

## Resident District

Districts with outgoing Special Needs Scholarship students will need to fund the required scholarship payments and continue meeting their IDEA maintenance of effort.

The district will pay the cost of the voucher to the non-resident school. In addition, due to IDEA maintenance of effort, the resident district will have to continue to spend on special education whatever they were spending on special education in prior years. This will likely result in general education funds being moved to special education instead. Once these costs are identified as local special education costs, the district is required to maintain this expenditure effort in order to meet IDEA's maintenance of effort requirement. In the event that the scholarship student would return to the resident district, and the scholarship payment is no longer required, the district's decrease in special education expenditures will result in failed maintenance of effort by the scholarship amount. For example, see the table below.

<b>Fiscal Year</b>	<b>Outgoing Student Scholarship Count</b>	<b>Fund 27 Special Education Expenditures</b>	<b>Fund 10 General Education Available Funds</b>	
2011-12	0	\$100,000	\$200,000	
2012-13	2	\$126,000	\$174,000	General Education Loss: \$26,000
2013-14	4	\$152,000	\$148,000	General Education Loss: \$52,000
2014-15	5	\$165,000	\$135,000	General Education Loss: \$65,000
2015-16	3	\$139,000	\$161,000	Failed MOE – Payback of \$26,000

A couple of other separate examples:

District A was spending \$20,000 to provide education and services to a student, but the student now chooses to go to a non-resident school that can provide services for \$13,000. The resident district will need to pay the \$13,000 scholarship which will result in a savings of special education costs for District A. However, because District A was previously paying \$20,000 for this student, they will need to continue using those dollars for special education as a means to meet maintenance of effort.

At the same time, District B was spending \$10,000 to provide education and services to a student, but the student now chooses to go to a non-resident school that will cost \$15,000 to provide services. District B would pay a \$13,000 voucher which will increase District B's costs by \$3,000. Then the district must continue spending another \$10,000 to meet maintenance of effort (for the first year). Every year after that, District B would have to spend \$23,000 in order to pay the voucher and meet maintenance of effort.