

Fiscal Estimate - 2011 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 11-1976/1	Introduction Number AB-0110	
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 checked="" 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 type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input checked="" type="checkbox"/> Decrease Costs 4. <input checked="" type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input checked="" 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(1)(a), (2)(ac), (2)(az) [new], (2)(cy)		
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Fiscal Estimate Narratives

DPI 5/11/2011

LRB Number	11-1976/1	Introduction Number	AB-0110	Estimate Type	Original
Description 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 shall 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. The child attended a public school, or did not attend school in this state, in the previous school year.
5. The child, or the child's parent on behalf of the child, has submitted an application to the department, on a form prepared by the department, for a scholarship.
6. The child has been accepted by the school district in which the eligible public school is located or the eligible private school.

Upon receipt of an application for a scholarship, DPI must review the child's IEP and determine the amount of the child's scholarship. The amount is the lesser of the cost to the child's school district of residence, or the cost to the school district or private school that the child wishes to attend, of providing regular instruction, instructional and pupil support services, special education and related services, and supplementary aids and services to the child. 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, 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 occupancy permit, if required by the municipality; comply with federal law that prohibits discrimination against any person on the basis of race, color, or national origin; and 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 any person who might reasonably be believed to pose a threat to the safety of others.

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 review the IEPs of all scholarship students to determine the level of scholarship each should receive, however no additional staff or funding to do so is provided. 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 125,300 students with disabilities would apply for a scholarship under the bill, this would result in 6,265 applicants 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.

In addition, the bill requires DPI to adjust each resident school district's general school aid payment to reflect the cost of the scholarship, and to audit both participating private schools and public school districts for proper use of scholarship funds, appropriate financial reporting and refunds of overpayments. Also, it is not clear whether these scholarship payments to nonresident public school districts will be received inside or outside the revenue limit. Thus 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.

It can be presumed that many appeals regarding the per student service costs that DPI estimates to serve the special needs student 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 6 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 number of scholarships that would actually be given as a result of this bill is indeterminate (although 5 percent of special education students, or 6,265, is a reasonable assumption given Florida's experience). 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 (see discussion below).

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 bill may also 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 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. In addition, since the Scholarship is to reflect the full cost of serving the child at the private school, there may not be any eligible costs for which to claim SBS reimbursement even if the private school was a Medicaid-certified provider; this would also be a possible issue for a nonresident public school. 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, 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 (see below).

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 SBS funds, to serve special needs students.

Property Taxes

AB 110 could result in school property tax levy increases in districts. However, it is unclear under the bill when scholarships are to be paid. If the amount of funding to be transferred from a resident school district on behalf of an eligible student(s) is known prior to October 1st, the department would presumably reduce the amount of state general aid the district would be entitled to receive in its October 15th general aid certification. Under this scenario, it is possible that resident school districts could choose to increase their property taxes under their revenue limit to replace state general school aids lost to other districts or private schools as a result of paying for students' special needs scholarships. For example, a resident district may have four students each costing \$20,000 who apply to other schools or districts. The resident district would receive \$80,000 less in general school aid from the state and would be allowed to increase its property taxes by \$80,000 prior to setting its property tax levy in November.

On the other hand, as the bill is drafted, if four eligible students applied to enroll in another district or private school on January 15th, the department would be required to reduce the resident district's state general aid by roughly \$40,000 (for one-half of a school year) 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.

As drafted, DPI would likely make general state aid reduction(s) for the scholarships from affected districts' June school aid payment (as it does for open enrollment payments) after determining the number of days a student was in one school versus another to determine if any pro-ration was needed to the scholarship amount.

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.

In addition, for private school enrollment, depending on the value of a given scholarship, the general school aid transfer could exceed the tuition that would have to have been paid by the parent to enroll their student in the private school.

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 6,265 students' costs are removed from the total claims for state special education categorical aid because there are no unreimbursed costs in nonresident districts or private schools due to the scholarship, the reimbursement percentage for all districts' remaining special education categorical aid will increase. Resident districts will not be serving the child. Resident districts could end up receiving the same or nearly the same amount of overall special education categorical aid, depending on the amount of claims that remain after the students with their full costs paid with the special needs scholarships are removed which will determine the final distribution of the aid. Examples follow:

Current Law – Open enrollment

District A – Resident - Provides no special education services to open enrolled students and, in most cases, incurs no special education costs for open enrolled students. If the nonresident district charges for excess costs, the resident district is reimbursed by the nonresident district for the categorical aid received for that cost.

District B – Nonresident - Provides special education services and counts the student for state categorical aid. May charge resident District A only for certain excess costs (such as individual aides and special transportation). If any part of the excess cost is eligible for categorical aid, the nonresident district will rebate that portion to District A upon receipt of the categorical aid.

AB 110 Public-to-Public with Scholarship

District A – Resident - Counts special needs student for categorical aid.

District B – Nonresident - Serves special needs student with scholarship.

A student with a disability transfers from District A, the resident district, to a nonresident district, District B. District A has had their general school aid reduced by the cost of the special needs student's IEP and paid to District B in the form of a scholarship. Because District B has obtained the full cost of serving that special needs student through the scholarship, District B should have no excess special education costs for which to bill back District A (so District A would not have special education categorical aid to claim).

AB 110 Public-to-Private with Scholarship

District A – Resident - Counts special needs student for categorical aid.

Private School - Serves special needs student with scholarship.

A student with a disability transfers from District A, the resident district, to a private school. District A has had their general school aid reduced by the cost of the special needs student's IEP and paid to the private school in the form of a scholarship. Because the private school has obtained the full cost of serving that special needs student through the scholarship, the resident school district can claim no special education categorical aid for the services being provided by the private school.

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. Examples follow:

Current Law – Open Enrollment

District A – Resident - IDEA funds for poverty count and for 1998 # of students with disabilities.

District B – Nonresident - IDEA for total student enrollment.

A student with a disability transfers from District A, the resident district, to a nonresident district, District B. District B receives some IDEA flow-through funds for serving the student while remaining IDEA funds stay with the resident district. District B may then bill District A for any actual, additional, special education costs to educate the student. District A may use IDEA funds to pay for these costs.

AB 110 Public to Public with Scholarship

District A – Resident - IDEA funds for poverty count and for 1998 # of students with disabilities.

District B – Nonresident - IDEA for total student enrollment.

A student with a disability transfers from District A, the resident district, to a nonresident district, District B.

District B receives some IDEA flow-through funds for serving the student while remaining IDEA money stays with the resident district. District B could not bill back District A for any additional costs because the special needs scholarship, in theory, already paid the costs for that student. The resident and nonresident districts would both be using their IDEA funds to pay costs for other students that are in their districts.

AB 110 Public to Private with Scholarship

District A – Resident, if private school is located within District A's jurisdiction - IDEA funds for poverty count, total student enrollment and for 1998 # of students with disabilities.

District A – Resident, if private school is located outside District A's jurisdiction - IDEA funds for poverty count and for 1998 # of students with disabilities.

District B, if private school is located within District B's jurisdiction – IDEA for total student enrollment.

Private School - No IDEA funds.

A student with a disability transfers from District A, the resident district, to a private school in the district. The private school gets the special needs scholarship from the resident district AND the resident district must set aside some of its IDEA funds to provide for equitable services for students in the private school. There is, therefore, the potential that resident taxpayers would be double-paying for this student (District A has already had their aid reduced for the student to go to the private school, and also has to set aside some of its IDEA funding to provide equitable services for this same student). If the student attends a nonresident private school, the nonresident district would then need to provide equitable services to the special needs student in the private school from its IDEA flow-through allocation).

Nonresident public and private schools may not be able to bill for Medicaid SBS reimbursement since all costs for serving the student are 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 cost of the student's scholarship ever be refigured. There is not a 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. Further, if a student moves out of their resident district, that district is still the one paying.

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.

Excess costs to educate students with disabilities vary widely; hence, the cost of special needs scholarships would likely vary significantly as well. In 2009-10, the statewide average special education costs in Fund 27 for a student with a disability was \$13,219 and ranged as high as \$117,100.

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

Long-Range Fiscal Implications