



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4910/1
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2017 SENATE BILL 725

January 19, 2018 - Introduced by Senators DARLING, VUKMIR and WANGGAARD, cosponsored by Representatives FELZKOWSKI, FIELDS, JAGLER, KNODL, KRUG, MURSAU, OTT, SANFELIPPO, SPIROS, THIESFELDT, PETRYK and CROWLEY. Referred to Committee on Education.

1 **AN ACT to create** 20.255 (3) (fs), 20.255 (3) (ft) and 115.49 of the statutes;
2 **relating to:** an education savings account program for gifted and talented
3 pupils, providing an exemption from emergency rule procedures, granting
4 rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill creates an educational savings account program for gifted and talented pupils. Beginning in the 2018-19 school year, the bill requires the Department of Public Instruction to award \$1,000 scholarships to certain gifted and talented pupils and to credit the scholarships to individual accounts established and maintained by DPI. Under the bill, DPI may award no more than 2,000 scholarships in any school year.

Under the bill, a pupil is eligible for a gifted and talented scholarship if the pupil satisfies the following criteria:

1. The pupil is enrolled in a public school, including an independent charter school, or a private school participating in a parental choice program or the Special Needs Scholarship Program.

2. The pupil is identified as a gifted and talented pupil because the pupil demonstrates evidence of high performance capability in an intellectual, creative, artistic, leadership, or other specific academic area or because the pupil scored in the top 5 percent on a pupil assessment required to be administered under state law.

3. The pupil satisfies the income eligibility criteria under federal law for a free or reduced-price lunch.

SENATE BILL 725

In order to receive a scholarship under the program, an eligible pupil must apply to DPI and the pupil's parent or guardian must agree 1) to comply with compulsory attendance requirements, 2) not to accept a payment, refund, or rebate from a person who provides a service or product that is purchased with a scholarship, and 3) to use the scholarship only for eligible expenses. The bill provides that an eligible expense is any of the following incurred to educate the gifted and talented pupil at an eligible educational provider: tuition and fees, textbooks, payments to a licensed or accredited tutor, payments to purchase a curriculum, tuition and fees for a private online learning program, fees for Advanced Placement exams, private music or art lessons, and any other expenses approved by DPI. The bill defines an eligible educational provider as a public school, including an independent charter school, a private school participating in a parental choice program or the SNSP, any nonprofit organization approved by DPI, a licensed or accredited tutor, and any other provider approved by DPI.

The bill directs DPI to establish and maintain an individual account for each pupil awarded a scholarship under the program. The bill specifies that an account is a record of the scholarships awarded to and disbursements made on behalf of a pupil. The bill directs DPI to develop, by rule, a system to promptly disburse money from a pupil's account for eligible expenses. The system developed by DPI may include direct payments to providers and reimbursements to parents and guardians for eligible expenses.

Under the bill, any scholarship credited to a pupil's account remains in his or her account until it is disbursed for an eligible expense or until the account is closed. A pupil's account is closed when the pupil graduates high school, reaches age 21, is no longer eligible to participate in the program, or is suspended or barred from the program. DPI deposits any amount remaining in a pupil's account when the account is closed in the state's general fund.

This bill allows DPI to contract with a private, nonprofit entity to administer the education savings account program for gifted and talented pupils. However, DPI may not execute a contract for the administration of the program unless the contract is approved by the Joint Committee on Finance through a 14-day passive review process.

Finally, the bill requires the Legislative Audit Bureau to conduct a performance audit of the first year of the educational savings account program and file its report with the legislature by January 31, 2020.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

SENATE BILL 725

2017-18

2018-19

1 **20.255 Public instruction, department of**

2 (3) AIDS TO LIBRARIES, INDIVIDUALS AND
3 ORGANIZATIONS

4 (ft) Education savings accounts for
5 gifted and talented pupils; schol-
6 arships

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7 **SECTION 2.** 20.255 (3) (fs) of the statutes is created to read:

8 20.255 (3) (fs) *Education savings account for gifted and talented pupils;*
9 *contract.* A sum sufficient to pay the costs of a contract to administer the education
10 savings account program under s. 115.49 (9).

11 **SECTION 3.** 20.255 (3) (ft) of the statutes is created to read:

12 20.255 (3) (ft) *Education savings accounts for gifted and talented pupils;*
13 *scholarships.* The amounts in the schedule for scholarships under s. 115.49.

14 **SECTION 4.** 115.49 of the statutes is created to read:

15 **115.49 Education savings account; gifted and talented pupils. (1)**

16 DEFINITIONS. In this section:

17 (a) "Account" means a record of scholarships awarded to a pupil under this
18 section and disbursements made on behalf of the pupil under this section.

19 (b) "Education savings account" is an account established for a pupil under sub.
20 (6) (a).

21 (c) "Eligible educational provider" means any of the following:

- 22 1. A participating school.
- 23 2. A licensed or accredited tutor.

SENATE BILL 725

1 3. Any other provider approved by the department.

2 (d) “Eligible expense” means an expense for which a parent or guardian may
3 use a scholarship under sub. (5) (b).

4 (e) “Eligible pupil” means a pupil who satisfies the requirements under sub. (2).

5 (f) “Gifted and talented pupil” means a pupil who satisfies any of the following:

6 1. The pupil demonstrates evidence of high performance capability in
7 intellectual, creative, artistic, leadership, or specific academic areas and needs
8 services or activities not ordinarily provided in a regular school program in order to
9 fully develop such capabilities.

10 2. On a subject area assessment that is required to be administered under s.
11 118.30, the pupil scores in the top 5 percent of all pupils who took the assessment in
12 that grade in that school year.

13 (g) “Institution of higher education” means an institution within the University
14 of Wisconsin System, a technical college, a tribally controlled college, or a private,
15 nonprofit institution of higher education located in this state.

16 (h) “Participating school” means a public school, including a charter school
17 authorized under s. 118.40 (2r) or (2x), a private school participating in a program
18 under s. 115.7915, 118.60, or 119.23, an institution of higher education, and any
19 nonprofit organization that has been approved by the department.

20 **(2) ELIGIBILITY REQUIREMENTS.** A pupil is eligible for a scholarship under this
21 section if all of the following apply:

22 (a) The pupil is enrolled in a public school, including a charter school
23 authorized under s. 118.40 (2r) or (2x), or is attending a private school under s.
24 115.7915, 118.60, or 119.23.

SENATE BILL 725

1 (b) A school board, operator of a charter school authorized under s. 118.40 (2r)
2 or (2x), or governing body of a private school participating in a program under s.
3 115.7915, 118.60, or 119.23 identifies the pupil as a gifted and talented pupil.

4 (c) The pupil satisfies the income eligibility criteria for a free or reduced-price
5 lunch under 42 USC 1758 (b) (1).

6 **(3) SCHOLARSHIP.** (a) Subject to par. (b) and sub. (4), beginning in the 2018-19
7 school year and in each school year thereafter, the department shall award a \$1,000
8 scholarship to an eligible pupil who applies for a scholarship under this section if the
9 pupil's parent or guardian enters into an agreement with the department under sub.
10 (5). The department shall credit the scholarship to the pupil's education savings
11 account no later than the first day of the school term.

12 (b) The department may not award more than 2,000 scholarships under this
13 section in any school year.

14 **(4) APPLICATION PROCESS.** (a) To apply for a scholarship under this section, the
15 parent or guardian of an eligible pupil shall submit an application, on a form
16 provided by the department, to the department between the first Monday in
17 February and the last weekday in April of the school year immediately preceding the
18 school year for which the eligible pupil wishes to receive a scholarship.

19 (b) If the department receives applications from more than 2,000 eligible pupils
20 in any school year, the department shall, by June 1, determine which applications
21 to accept on a random basis, except that the department shall give preference to the
22 following in accepting applications, in the order of preference listed:

- 23 1. Pupils who received a scholarship in the previous school year.
- 24 2. Pupils who were on the waiting list in the previous school year.

SENATE BILL 725

1 (c) The department shall establish a waiting list of eligible pupils whose
2 applications are not accepted under par. (b).

3 **(5) AGREEMENT.** Before the department may award a scholarship to an eligible
4 pupil whose application is accepted under sub. (4), the pupil's parent or guardian
5 shall enter into an agreement with the department that includes all of the following:

6 (a) The parent or guardian agrees to comply with the compulsory attendance
7 requirements under s. 118.15.

8 (b) The parent or guardian agrees to use the scholarship for only the following
9 expenses incurred to educate the eligible pupil at an eligible educational provider:

- 10 1. Tuition and fees.
- 11 2. Textbooks required by an eligible educational provider.
- 12 3. Payment to a licensed or accredited tutor.
- 13 4. Payment to purchase a curriculum.
- 14 5. Tuition or fees for a private online learning program.
- 15 6. Fees for Advanced Placement examinations or similar courses.
- 16 7. Private music or art lessons.
- 17 8. Any other expenses approved by the department.

18 (c) The parent or guardian agrees not to accept a payment, refund, or rebate
19 from a person who provides a service or product that the parent or guardian pays for,
20 in full or in part, with the scholarship.

21 **(6) EDUCATION SAVINGS ACCOUNTS.** (a) For each pupil awarded a scholarship
22 under sub. (3), the department shall establish and maintain an individual account.
23 Scholarship funds credited to a pupil's account remain in the account until disbursed
24 for an eligible expense or until the pupil's account is closed under par. (c). A

SENATE BILL 725

1 scholarship credited to an account under this section is not taxable income to the
2 pupil or the pupil's parent or guardian.

3 (b) The department shall develop by rule a system to promptly disburse money
4 from a pupil's account to pay for eligible expenses. The payment system may include
5 direct payments to eligible educational providers and reimbursements to a pupil's
6 parent or guardian for eligible expenses.

7 (c) The department shall close a pupil's account if any of the following occurs:

- 8 1. The pupil graduates high school.
- 9 2. The pupil reaches age 21.
- 10 3. The pupil no longer meets the eligibility requirements under sub. (2).
- 11 4. The pupil is suspended or barred from participating in the program under
12 sub. (7).

13 (d) The department shall deposit in the general fund any money remaining in
14 a pupil's account when the account is closed.

15 **(7) DISQUALIFICATION.** The department may suspend or bar a pupil, a pupil's
16 parent or guardian, or an eligible educational provider from the program under this
17 section based on fraud, misrepresentation, or failure to comply with the
18 requirements under this section.

19 **(8) RULES.** The department shall promulgate rules to implement this section,
20 including rules related to all of the following:

21 (a) An approval process for eligible educational providers that includes an
22 appeals process for a provider that is not approved by the department.

23 (b) An appeals process for a pupil's parent or guardian if a school board,
24 operator of a charter school authorized under s. 118.40 (2r) or (2x), or a governing

SENATE BILL 725

1 body of a private school participating in a program under s. 118.60 or 119.23 does not
2 identify the pupil as a gifted and talented pupil.

3 (c) A process to appeal a determination by the department under sub. (7) to
4 suspend or bar a pupil, a pupil's parent or guardian, or an eligible educational
5 provider from the program.

6 (d) Prompt payments to eligible educational providers and prompt
7 reimbursements to parents or guardians for eligible expenses.

8 **(9)** (a) Subject to par. (b), the department may contract with a private, nonprofit
9 entity to administer the education savings account program under this section,
10 including making payments to eligible educational providers and reimbursements
11 to parents or guardians for eligible expenses.

12 (b) If the department intends to execute a contract under par. (a), the
13 department shall notify the joint committee on finance. If the cochairpersons of the
14 joint committee on finance do not notify the department that the committee has
15 scheduled a meeting for the purpose of approving the execution of the contract within
16 14 working days after the date of the department's notification, the department may
17 execute the contract. If, within 14 working days after the date of the department's
18 notification, the cochairpersons of the committee notify the department that the
19 committee has scheduled a meeting for the purpose of approving the execution of the
20 contract, the department may not execute the contract without the approval of the
21 committee.

SECTION 5. Nonstatutory provisions.

22
23 (1) CONTRACT FOR 2018-19 SCHOOL YEAR; DEADLINE. If the department of public
24 instruction intends to execute a contract under section 115.49 (9) of the statutes for

SENATE BILL 725

1 the 2018-19 school year, the department shall notify the joint committee on finance
2 under section 115.49 (9) (b) of the statutes by April 16, 2018.

3 (2) APPLICATIONS FOR 2018-19 SCHOOL YEAR. Notwithstanding section 115.49 (4)
4 of the statutes, to apply for a scholarship for the 2018-19 school year under section
5 115.49 of the statutes, a parent or guardian of an eligible pupil shall submit an
6 application, on a form provided by the department of public instruction or an entity
7 administering the program under section 115.49 (9) of the statutes, to the
8 department of public instruction or administering entity between May 14, 2018, and
9 June 28, 2018. If the department of public instruction or administering entity
10 receives applications from more than 2,000 eligible pupils, the department or
11 administering entity shall, by August 1, 2018, determine which applications to
12 accept in accordance with section 115.49 (4) (b) of the statutes and create a waiting
13 list of eligible pupils whose applications are not accepted under this subsection.

14 (3) EDUCATION SAVINGS ACCOUNT FOR GIFTED AND TALENTED PUPILS; AUDIT.

15 (a) In this subsection:

- 16 1. "Program" means the program under section 115.49 of the statutes.
17 2. "Scholarship" means a scholarship under the program.

18 (b) Upon the completion of the 2018-19 school year, the legislative audit bureau
19 shall conduct a performance evaluation audit of the program that includes all of the
20 following:

21 1. The number of pupils who qualified as a gifted and talented pupil under
22 section 115.49 (1) (e) 1. of the statutes and the number of pupils who qualified as a
23 gifted and talented pupil under section 115.49 (1) (e) 2. of the statutes.

24 2. The subject area in which each pupil who received a scholarship was
25 identified as gifted and talented.

SENATE BILL 725

1 3. The number of pupils who received a scholarship who were enrolled in a
2 public school and the number of pupils who received a scholarship who were enrolled
3 in a private school.

4 4. The school district, charter school authorized under section 118.40 (2r) or
5 (2x) of the statutes, or private school participating in a program under section 118.60
6 or 119.23 of the statutes in which each pupil who received a scholarship was enrolled
7 during the 2018-19 school year.

8 5. The grade in which each pupil who received a scholarship was enrolled
9 during the 2018-19 school year.

10 6. The eligible expenses on which scholarships were used during the school
11 year.

12 7. The total amount disbursed for eligible expenses under the program during
13 the school year.

14 8. The disbursement method that was used most frequently.

15 9. Parental satisfaction with the program.

16 10. Pupil satisfaction with the program.

17 11. How many pupils and eligible educational providers were suspended or
18 barred from the program.

19 12. If a 3rd party administers any part of the program under a contract
20 approved under section 115.49 (9) of the statutes, how effective the 3rd party was in
21 administering the program and at what financial cost to the department.

22 13. Recommendations for improving the program.

23 (c) The legislative audit bureau shall file its report as described under section
24 13.94 (1) (b) of the statutes by January 31, 2020.

SENATE BILL 725

1 (4) EMERGENCY RULE MAKING. The department of public instruction may
2 promulgate emergency rules under section 227.24 of the statutes to implement
3 section 115.49 of the statutes. Notwithstanding section 227.24 (1) (e) 1d. of the
4 statutes, the department of public instruction is not required to prepare a statement
5 of the scope of the rules required under section 115.49 of the statutes if emergency
6 rules are promulgated under this subsection. Notwithstanding section 227.24 (1) (c)
7 and (2) of the statutes, emergency rules promulgated under this subsection remain
8 in effect until July 1, 2019, or the date on which permanent rules take effect,
9 whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes,
10 the department is not required to provide evidence that promulgating a rule under
11 this subsection as an emergency rule is necessary for the preservation of the public
12 peace, health, safety, or welfare and is not required to provide a finding of emergency
13 for a rule promulgated under this subsection.

14 (END)