

LEGISLATIVE BILL 583

Approved by the Governor May 31, 2023

Introduced by Sanders, 45; Conrad, 46; at the request of the Governor.

A BILL FOR AN ACT relating to education; to amend sections 79-1001, 79-1009, 79-1017.01, 79-1022, 79-1022.02, 79-1023, 79-1027, 79-1031.01, and 79-1142, Revised Statutes Cumulative Supplement, 2022; to provide for foundation aid and change provisions relating to net option funding, local system formula resources, and certain certification dates under the Tax Equity and Educational Opportunities Support Act; to change reimbursement provisions under the Special Education Act; to provide duties for school districts and the State Department of Education; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 79-1001, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1001 Sections 79-1001 to 79-1033 and sections 3 and 10 of this act shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

Sec. 2. Section 79-1009, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1009 (1)(a) A district shall receive net option funding if (i) option students as defined in section 79-233 were actually enrolled in the school year immediately preceding the school year in which the aid is to be paid, (ii) option students as defined in such section will be enrolled in the school year in which the aid is to be paid as converted contract option students, or (iii) for the calculation of aid for school fiscal year 2017-18 for school districts that are members of a learning community, open enrollment students were actually enrolled for school year 2016-17 pursuant to section 79-2110.

(b) The determination of the net number of option students shall be based on (i) the number of students enrolled in the district as option students and the number of students residing in the district but enrolled in another district as option students as of the day of the fall membership count pursuant to section 79-528, for the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, (ii) the number of option students that will be enrolled in the district or enrolled in another district as converted contract option students for the fiscal year in which the aid is to be paid, and (iii) for the calculation of aid for school fiscal year 2017-18 for school districts that are members of a learning community, the number of students enrolled in the district as open enrollment students and the number of students residing in the district but enrolled in another district as open enrollment students as of the day of the fall membership count pursuant to section 79-528 for school fiscal year 2016-17.

(c) Except as otherwise provided in this subsection, net number of option students means the difference of the number of option students enrolled in the district minus the number of students residing in the district but enrolled in another district as option students. For purposes of the calculation of aid for school fiscal year 2017-18 for school districts that are members of a learning community, net number of option students means the difference of the number of students residing in another school district who are option students or open enrollment students enrolled in the district minus the number of students residing in the district but enrolled in another district as option students or open enrollment students.

(2)(a) ~~For all school fiscal years prior to school fiscal year 2023-24 except school fiscal years 2017-18 and 2018-19, net option funding shall be the product of the net number of option students multiplied by the statewide average basic funding per formula student.~~

~~(b) For school fiscal year 2023-24 and each school fiscal year thereafter, net option funding shall be the product of the net number of option students multiplied by the difference of the statewide average basic funding per formula student minus the amount of foundation aid paid per formula student pursuant to section 3 of this act. For school fiscal years 2017-18 and 2018-19, net option funding shall be the product of the net number of option students multiplied by ninety-five and five-tenths percent of the statewide average basic funding per formula student.~~

(3) A district's net option funding shall be zero if the calculation produces a negative result.

Payments made under this section for school fiscal years prior to school fiscal year 2017-18 shall be made from the funds to be disbursed under section 79-1005.01.

Such payments shall go directly to the option school district but shall count as a formula resource for the local system.

Sec. 3. (1) For school fiscal year 2023-24 and each school fiscal year thereafter, the department shall determine the foundation aid to be paid to each school district in accordance with subsection (2) of this section.

(2) The foundation aid to be paid to each school district in each school

fiscal year shall equal one thousand five hundred dollars multiplied by the number of formula students for such school district.

(3) Twenty-four percent of the total amount of foundation aid paid each school fiscal year shall be paid from money appropriated from the Education Future Fund.

(4) For school fiscal years 2023-24 and 2024-25, one hundred percent of foundation aid shall be included as a formula resource pursuant to section 79-1017.01. For school fiscal year 2025-26 and each school fiscal year thereafter, sixty percent of foundation aid shall be included as a formula resource pursuant to section 79-1017.01.

Sec. 4. Section 79-1017.01, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1017.01 (1) For state aid calculated for each school fiscal year prior to school fiscal year 2023-24, local system formula resources includes other actual receipts determined pursuant to section 79-1018.01, net option funding determined pursuant to section 79-1009, allocated income tax funds determined pursuant to section 79-1005.01, and community achievement plan aid determined pursuant to section 79-1005, and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

(2) For state aid calculated for school fiscal year 2023-24 and each school fiscal year thereafter, local system formula resources includes other actual receipts determined pursuant to section 79-1018.01, net option funding determined pursuant to section 79-1009, allocated income tax funds determined pursuant to section 79-1005.01, community achievement plan aid determined pursuant to section 3 of this act, and a percentage of foundation aid determined pursuant to section 3 of this act, and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

Sec. 5. Section 79-1022, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1022 (1) On or before June 15 May 1, 2023 2020, and on or before March 1 of each year thereafter, the department shall determine the amounts to be distributed to each local system for the ensuing school fiscal year pursuant to the Tax Equity and Educational Opportunities Support Act and shall certify the amounts to the Director of Administrative Services, the Auditor of Public Accounts, and each local system. On or before June 15 May 1, 2023 2020, and on or before March 1 of each year thereafter, the department shall report the necessary funding level for the ensuing school fiscal year to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature. The report submitted to the committees of the Legislature shall be submitted electronically. Except as otherwise provided in this subsection, certified state aid amounts, including adjustments pursuant to section 79-1065.02, shall be shown as budgeted non-property-tax receipts and deducted prior to calculating the property tax request in the local system's general fund budget statement as provided to the Auditor of Public Accounts pursuant to section 79-1024.

(2) Except as provided in this subsection, subsection (8) of section 79-1016, and sections 79-1005, 79-1033, and 79-1065.02, the amounts certified pursuant to subsection (1) of this section shall be distributed in ten as nearly as possible equal payments on the last business day of each month beginning in September of each ensuing school fiscal year and ending in June of the following year, except that when a local system is to receive a monthly payment of less than one thousand dollars, such payment shall be one lump-sum payment on the last business day of December during the ensuing school fiscal year.

Sec. 6. Section 79-1022.02, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1022.02 Notwithstanding any other provision of law, any certification of state aid pursuant to section 79-1022, certification of budget authority pursuant to section 79-1023, and certification of applicable allowable reserve percentages pursuant to section 79-1027 completed prior to the effective date of this act February 13, 2020, for school fiscal year 2023-24 2020-21 are null and void.

Sec. 7. Section 79-1023, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1023 (1) On or before June 15 May 1, 2023 2020, and on or before March 1 of each year thereafter, the department shall determine and certify to each school district budget authority for the general fund budget of expenditures for the ensuing school fiscal year.

(2) Except as provided in sections 79-1028.01, 79-1029, 79-1030, and 81-829.51, each school district shall have budget authority for the general fund budget of expenditures equal to the greater of (a) the general fund budget of expenditures for the immediately preceding school fiscal year minus exclusions pursuant to subsection (1) of section 79-1028.01 for such school fiscal year with the difference increased by the basic allowable growth rate for the school fiscal year for which budget authority is being calculated, (b) the general fund budget of expenditures for the immediately preceding school fiscal year minus exclusions pursuant to subsection (1) of section 79-1028.01 for such school fiscal year with the difference increased by an amount equal to any student growth adjustment calculated for the school fiscal year for which budget authority is being calculated, or (c) one hundred ten percent of formula need for the school fiscal year for which budget authority is being calculated

minus the special education budget of expenditures as filed on the school district budget statement on or before September 30 for the immediately preceding school fiscal year, which special education budget of expenditures is increased by the basic allowable growth rate for the school fiscal year for which budget authority is being calculated.

(3) For any school fiscal year for which the budget authority for the general fund budget of expenditures for a school district is based on a student growth adjustment, the budget authority for the general fund budget of expenditures for such school district shall be adjusted in future years to reflect any student growth adjustment corrections related to such student growth adjustment.

Sec. 8. Section 79-1027, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1027 No district shall adopt a budget, which includes total requirements of depreciation funds, necessary employee benefit fund cash reserves, and necessary general fund cash reserves, exceeding the applicable allowable reserve percentages of total general fund budget of expenditures as specified in the schedule set forth in this section.

Average daily membership of district	Allowable reserve percentage
0 - 471	45
471.01 - 3,044	35
3,044.01 - 10,000	25
10,000.01 and over	20

On or before ~~June 15~~ ~~May 1, 2023~~ ~~2020~~, and on or before March 1 each year thereafter, the department shall determine and certify each district's applicable allowable reserve percentage for the ensuing school fiscal year.

Each district with combined necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves less than the applicable allowable reserve percentage specified in this section may, notwithstanding the district's applicable allowable growth rate, increase its necessary general fund cash reserves such that the total necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves do not exceed such applicable allowable reserve percentage.

Sec. 9. Section 79-1031.01, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1031.01 The Appropriations Committee of the Legislature shall annually include the amount necessary to fund the state aid that will be certified to school districts on or before ~~June 15~~ ~~May 1, 2023~~ ~~2020~~, and on or before March 1 of each year thereafter for each ensuing school fiscal year in its recommendations to the Legislature to carry out the requirements of the Tax Equity and Educational Opportunities Support Act.

Sec. 10. (1) For school fiscal year 2023-24 and each school fiscal year thereafter, each school district shall submit a report to the department that includes the following information:

(a) The amount by which the school district reduced its property tax request for such school fiscal year, if any such reduction occurred; and

(b) Other information as required by the department.

(2) The department shall compile the information received from school districts under subsection (1) of this section and shall submit a comprehensive report of all such information annually to the Governor, the chairperson of the Education Committee of the Legislature, and the Clerk of the Legislature. The report submitted to the committee and the Clerk of the Legislature shall be submitted electronically.

Sec. 11. Section 79-1142, Revised Statutes Cumulative Supplement, 2022, is amended to read:

79-1142 (1) Level I services refers to services provided to children with disabilities who require an aggregate of not more than three hours per week of special education services and support services and includes all administrative, diagnostic, consultative, and vocational-adjustment counselor services.

(2) The total allowable reimbursable cost for support services shall not exceed a percentage, established by the State Board of Education, of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services. The percentage established by the board for support services shall not exceed the difference of ten percent minus the percentage of the appropriations for special education approved by the Legislature set aside for reimbursements for support services pursuant to subsection (5) of this section.

(3) For special education and support services provided in each school fiscal year, the department shall reimburse each school district in the following school fiscal year eighty percent of a pro-rata amount determined by the department. The reimbursement percentage shall be the ratio of the

~~difference of the appropriations for special education approved by the Legislature minus the amounts set aside pursuant to subsection (5) of this section divided by the total allowable excess costs for all special education programs and support services.—(4) Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this section if such cooperatives or educational service units have complied with the reporting and approval requirements of section 79-1155 for cooperative programs which were offered the preceding year.~~

(4)(a) The payments shall be made by the department to the school district of residence, cooperative of school districts, or educational service unit each year in a minimum of seven payments between the fifth and twentieth day of each month beginning in December. Additional payments may be made based upon additional valid claims submitted. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund and the Education Future Fund for payment purposes. The director shall, upon receiving such certification, draw warrants against such funds as appropriated.

(b) If the General Fund appropriations for special education approved by the Legislature, minus the amounts set aside pursuant to subsection (5) of this section, are insufficient to reimburse eighty percent of the total allowable excess costs for all special education programs and support services for any school fiscal year:

(i) Such allowable excess costs shall be reimbursed from the General Fund appropriations for special education approved by the Legislature, minus the amounts set aside pursuant to subsection (5) of this section, on a pro rata basis at the maximum rate of reimbursement such appropriations will allow as determined by the department; and

(ii) The remainder of the eighty percent reimbursement of such allowable excess costs shall be paid from the Education Future Fund.

(5) Residential settings described in subdivision (10)(c) of section 79-215 shall be reimbursed for the educational services, including special education services and support services, in an amount determined pursuant to the average per pupil cost of the service agency. Reimbursements pursuant to this section shall be made from funds set aside for such purpose within sixty days after receipt of a reimbursement request submitted in the manner required by the department and including any documentation required by the department for educational services that have been provided, except that if there are not any funds available for the remainder of the state fiscal year for such reimbursements, the reimbursement shall occur within thirty days after the beginning of the immediately following state fiscal year. The department may audit any required documentation and subtract any payments made in error from future reimbursements. The department shall set aside separate amounts from the appropriations for special education approved by the Legislature for reimbursements pursuant to this subsection for students receiving special education services and for students receiving support services for each state fiscal year. The amounts set aside for each purpose shall be based on estimates of the reimbursements to be requested during the state fiscal year and shall not be less than the total amount of reimbursements requested in the prior state fiscal year plus any unpaid requests from the prior state fiscal year.

(6) On or before November 15 of each year, the department shall submit to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature:

(a) The total allowable excess costs for all special education programs and support services for all school districts, cooperatives of school districts, and educational service units; and

(b) The total reimbursements requested pursuant to subsection (5) of this section for the most recently completed school fiscal year.

Sec. 12. Original sections 79-1001, 79-1009, 79-1017.01, 79-1022, 79-1022.02, 79-1023, 79-1027, 79-1031.01, and 79-1142, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 13. Since an emergency exists, this act takes effect when passed and approved according to law.