

LEGISLATIVE BILL 495

Approved by the Governor April 24, 2013

Introduced by Sullivan, 41.

FOR AN ACT relating to education; to amend sections 9-812 and 79-1104.02, Reissue Revised Statutes of Nebraska, and section 79-1103, Revised Statutes Cumulative Supplement, 2012; to change allocations of the Education Innovation Fund; to state intent; to change provisions relating to the Early Childhood Education Grant Program; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; to outright repeal section 79-1102.01, Revised Statutes Cumulative Supplement, 2012; and to declare an emergency.

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

Section 1. Section 9-812, Reissue Revised Statutes of Nebraska, is amended to read:

9-812 (1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) Beginning October 1, 2003, a portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817;

(b) Nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(c) Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Opportunity Grant Fund;

(d) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(e) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided

by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(f) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817.

(4) (a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

~~(b) For fiscal year 2010-11, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.~~

~~(c) For fiscal year 2011-12, the Education Innovation Fund shall be allocated as follows: (i) The first two hundred twenty-five thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Attracting Excellence to Teaching Program; (ii) the next three million three hundred sixty-five thousand nine hundred sixty-two dollars shall be distributed to school districts as grants pursuant to the Early Childhood Education Grant Program; (iii) the next two million one hundred seventy-five thousand six hundred seventy-three dollars shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02; (iv) the next four hundred ninety-one thousand five hundred forty-one dollars shall be used by the State Department of Education for the development of an integrated early childhood, elementary, secondary, and postsecondary student information system; (v) the next four hundred fifty thousand dollars shall fund the Center for Student Leadership and Extended Learning Act; (vi) the next one hundred fourteen thousand six hundred twenty-nine dollars shall fund the multicultural education program created under section 79-720; (vii) the next one hundred twenty-three thousand four hundred sixty-eight dollars shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868; (viii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 79-759; and (ix) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.~~

~~(d) (b) For fiscal year 2012-13, the Education Innovation Fund shall be allocated as follows: (i) The first forty-five thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Attracting Excellence to Teaching Program; (ii) the next three million three hundred sixty-five thousand nine hundred sixty-two dollars shall be distributed to school districts as grants pursuant to the Early Childhood Education Grant Program; (iii) the next two million one hundred seventy-five thousand six hundred seventy-three dollars shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02; (iv) the next one hundred eight thousand one hundred thirty-six dollars shall be used by the department State Department of Education for the development of an integrated early childhood, elementary, secondary, and postsecondary student information system; (v) the next four hundred fifty thousand dollars shall fund the Center for Student Leadership and Extended Learning Act; (vi) the next one hundred fourteen thousand six hundred twenty-nine dollars shall be used by the department to fund the multicultural education program created under section 79-720; (vii) the next one hundred twenty-three thousand four hundred sixty-eight dollars shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868; (viii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 79-759; (ix) the next twenty-seven thousand two hundred dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (x) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; and (xi) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.~~

~~(e) (c) For fiscal year 2013-14, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in~~

Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; ~~(iii) the next allocation shall be used by the State Department of Education for the integrated early childhood, elementary, secondary, and postsecondary student information system in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(iv) the next allocation shall fund the Center for Student Leadership and Extended Learning Act in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(v) the next allocation shall be used by the department to fund the multicultural education program created under section 79-720 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(vi) the next allocation shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(vii) (iii) up to the next one hundred sixty thousand dollars shall be used by the department~~ State Department of Education to implement section 79-759; ~~(viii) (iv) the next one million seven hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the department pursuant to section 79-1103;~~ (v) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (vi) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vii) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; and ~~(ix) (viii) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.~~

~~(f)~~ (d) For fiscal year 2014-15, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; ~~(iii) the next allocation shall be used by the State Department of Education for the integrated early childhood, elementary, secondary, and postsecondary student information system in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(iv) the next allocation shall fund the Center for Student Leadership and Extended Learning Act in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(v) the next allocation shall be used by the department to fund the multicultural education program created under section 79-720 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(vi) the next allocation shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(vii) (iii) the next one million eight hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103;~~ (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vi) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; and ~~(viii) (vii) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.~~

~~(g)~~ (e) For fiscal year 2015-16, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in

Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; ~~(iii) the next allocation shall be used by the State Department of Education for the integrated early childhood, elementary, secondary, and postsecondary student information system in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(iv) the next allocation shall fund the Center for Student Leadership and Extended Learning Act in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(v) the next allocation shall be used by the department to fund the multicultural education program created under section 79-720 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ ~~(vi) the next allocation shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025;~~ and ~~(vii)~~ (iii) the next one million nine hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; and (vi) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

~~(h)~~ (f) For fiscal year 2016-17 and each fiscal year thereafter, the Education Innovation Fund shall be allocated, after administrative expenses, for education purposes as provided by the Legislature.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(6) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

(7) It is the intent of the Legislature to replace funding from the Education Innovation Fund with General Fund appropriations to the State Department of Education beginning with FY2013-14 for (a) the integrated early childhood, elementary, secondary, and postsecondary student information system, (b) the Center for Student Leadership and Extended Learning Act, (c) the multicultural education program created under section 79-720, and (d) the employment of persons to investigate and prosecute alleged violations as provided in section 79-868.

Sec. 2. Section 79-1103, Revised Statutes Cumulative Supplement, 2012, is amended to read:

79-1103 (1)(a) The State Department of Education shall establish and administer the Early Childhood Education Grant Program. Upon the effective date of an endowment agreement, administration of the Early Childhood Education Grant Program with respect to programs for children from birth to age three shall transfer to the board of trustees. If there is no endowment agreement in effect, the department shall request proposals in accordance with this section for all early childhood education programs from school districts, individually or in cooperation with other school districts or educational service units, working in cooperation with existing nonpublic programs which meet the requirements of subsection (2) of section 79-1104. If there is an endowment agreement in effect, the board of trustees shall administer the Early Childhood Education Grant Program with respect to programs for children from birth to age three pursuant to section 79-1104.02 and the department shall continue to administer the Early Childhood Education Grant Program with respect to other prekindergarten programs pursuant to sections 79-1101 to 79-1104.05. All administrative procedures of the board of trustees, including, but not limited to, rules, grant applications, and funding mechanisms, shall harmonize with those established by the department for other prekindergarten programs.

(b) The first priority shall be for (i) continuation grants for

programs that received grants in the prior school fiscal year and for which the state aid calculation pursuant to the Tax Equity and Educational Opportunities Support Act does not include early childhood education students, in an amount equal to the amount of such grant, except that if the grant was a first-year grant the amount shall be reduced by thirty-three percent, (ii) continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, in an amount equal to the amount of the grant for the school fiscal year prior to the first school fiscal year for which early childhood education students were included in the state aid calculation for the school district's local system minus the calculated state aid amount, and (iii) for school fiscal year 2007-08, continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, but such state aid calculation does not result in the school district receiving any equalization aid, in an amount equal to the amount of the grant received in school fiscal year 2006-07. The calculated state aid amount shall be calculated by multiplying the basic funding per formula student for the school district by the formula students attributed to the early childhood education programs pursuant to the Tax Equity and Educational Opportunities Support Act.

(c) The second priority shall be for new grants and expansion grants for programs that will serve at-risk children who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half of the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half of the budget for expanding the capacity of the program to serve additional children.

(d) The third priority shall be for new grants, expansion grants, and continuation grants for programs serving children younger than those who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half the budget for expanding the capacity of the program to serve additional children. Continuation grants under this priority may be given annually in an amount up to one-half the total budget of the program per year minus any continuation grants received under the first priority.

(e) Programs serving children who will be eligible to attend kindergarten the following school year shall be accounted for separately for grant purposes from programs serving younger children, but the two types of programs may be combined within the same classroom to serve multi-age children. Programs that receive grants for school fiscal years prior to school fiscal year 2005-06 to serve both children who will be eligible to attend kindergarten the following school year and younger children shall account for the two types of programs separately for grant purposes beginning with school year 2005-06 and shall be deemed to have received grants prior to school fiscal year 2005-06 for each year that grants were received for the types of programs representing the age groups of the children served.

(2) Each program proposal which is approved by the department shall include (a) a planning period, (b) an agreement to participate in periodic evaluations of the program to be specified by the department, (c) evidence that the program will be coordinated or contracted with existing programs, including those listed in subdivision (d) of this subsection and nonpublic programs which meet the requirements of subsection (2) of section 79-1104, (d) a plan to coordinate and use a combination of local, state, and federal funding sources, including, but not limited to, programs for children with disabilities below five years of age funded through the Special Education Act, the Early Intervention Act, funds available through the flexible funding provisions under the Special Education Act, the federal Head Start program, 42 U.S.C. 9831 et seq., the federal Even Start Family Literacy Program, 20 U.S.C. 6361 et seq., Title I of the federal Improving America's Schools Act of 1994, 20 U.S.C. 6301 et seq., and child care assistance through the Department of Health and Human Services, (e) a plan to use sliding fee scales and the funding sources included in subdivision (d) of this subsection to maximize the participation of economically and categorically diverse groups and to ensure that participating children and families have access to comprehensive services, (f) the establishment of an advisory body which includes families and community members, (g) the utilization of appropriately qualified staff, (h) an appropriate child-to-staff ratio, (i) appropriate group size, (j) compliance with minimum health and safety standards, (k) appropriate facility size and equipment, (l) a strong family development and support component recognizing the central role of parents in their children's development, (m) developmentally and culturally appropriate curriculum, practices, and assessment, (n) sensitivity to the economic and

logistical needs and circumstances of families in the provision of services, (o) integration of children of diverse social and economic characteristics, (p) a sound evaluation component, including at least one objective measure of child performance and progress, (q) continuity with programs in kindergarten and elementary grades, (r) instructional hours that are similar to or less than the instructional hours for kindergarten except that a summer session may be offered, (s) well-defined language development and early literacy emphasis, including the involvement of parents in family literacy activities, (t) a plan for ongoing professional development of staff, and (u) inclusion of children with disabilities as defined in the Special Education Act, all as specified by rules and regulations of the department in accordance with sound early childhood educational practice.

(3) The department shall make an effort to fund programs widely distributed across the state in both rural and urban areas.

(4) A report evaluating the programs shall be made The department, in collaboration with the board of trustees if an endowment agreement is in effect, shall provide a report evaluating the programs to the State Board of Education and the Legislature by January 1 of each odd-numbered year. The report submitted to the Legislature shall be submitted electronically. The Education Committee of the Legislature shall hold a public hearing regarding the report. Up to five percent of the total appropriation for the Early Childhood Education Grant Program for grants administered by the department may be reserved by the department for evaluation and technical assistance for the programs.

(5) Early childhood education programs, whether established pursuant to this section or section 79-1104, may be approved for purposes of the Tax Equity and Educational Opportunities Support Act, expansion grants, and continuation grants on the submission of a continuation plan demonstrating that the program will meet the requirements of subsection (2) of this section and a proposed operating budget demonstrating that the program will receive resources from other sources equal to or greater than the sum of any grant received pursuant to this section for the prior school year plus any calculated state aid as calculated pursuant to subsection (1) of this section for the prior school year.

(6) The State Board of Education may adopt and promulgate rules and regulations to implement the Early Childhood Education Grant Program, except that if there is an endowment agreement in effect, the board of trustees shall recommend any rules and regulations relating specifically to the Early Childhood Education Grant Program with respect to programs for children from birth to age three. It is the intent of the Legislature that the rules and regulations for programs for children from birth to age three be consistent to the greatest extent possible with those established for other prekindergarten programs.

Sec. 3. Section 79-1104.02, Reissue Revised Statutes of Nebraska, is amended to read:

79-1104.02 (1) The Early Childhood Education Endowment Cash Fund, consisting of the interest, earnings, and proceeds from the Early Childhood Education Endowment Fund and the earnings from the private endowment created by the endowment provider, funds transferred from the Education Innovation Fund pursuant to section 9-812, and any additional private donations made directly thereto, shall be used exclusively to provide funds for the Early Childhood Education Grant Program for at-risk children from birth to age three as set forth in this section.

(2) Grants provided by this section shall be to school districts and cooperatives of school districts for early childhood education programs for at-risk children from birth to age three, as determined by the board of trustees pursuant to criteria set forth by the board of trustees. School districts and cooperatives of school districts may establish agreements with other public and private entities to provide services or operate programs.

(3) Each program selected for a grant pursuant to this section may be provided a grant for up to one-half of the total budget of such program per year. Programs selected for grant awards may receive continuation grants subject to the availability of funding and the submission of a continuation plan which meets the requirements of the board of trustees.

(4) Programs shall be funded across the state and in urban and rural areas to the fullest extent possible.

(5) Each program selected for a grant pursuant to this section shall meet the requirements described in subsection (2) of section 79-1103, except that the periodic evaluations of the program are to be specified by the board of trustees and the programs need not include continuity with programs in kindergarten and elementary grades and need not include instructional hours that are similar to or less than the instructional hours for kindergarten.

(6) Up to ten percent of the total amount deposited in the Early Childhood Education Endowment Cash Fund each fiscal year may be reserved by the board of trustees for evaluation and technical assistance for the Early Childhood Education Grant Program with respect to programs for at-risk children from birth to age three.

Sec. 4. Original sections 9-812 and 79-1104.02, Reissue Revised Statutes of Nebraska, and section 79-1103, Revised Statutes Cumulative Supplement, 2012, are repealed.

Sec. 5. The following section is outright repealed: Section 79-1102.01, Revised Statutes Cumulative Supplement, 2012.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.