

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1153

FINAL READING

Introduced by Raikes, 25.

Read first time January 23, 2008

Committee: Education

A BILL

1 FOR AN ACT relating to education; to amend sections 79-1104.01
2 and 79-1104.02, Revised Statutes Cumulative Supplement,
3 2006, sections 79-1103 and 79-1104.04, Revised Statutes
4 Supplement, 2007, and section 13, Legislative Bill 988,
5 One Hundredth Legislature, Second Session, 2008; to
6 provide for a certificate of attendance for students
7 receiving special education services; to permit certain
8 early childhood education programs to enroll certain
9 kindergarten-age students; to change provisions relating
10 to calculation of state aid; to change and eliminate
11 provisions relating to early childhood education
12 endowment funds; to provide a duty for the Revisor of
13 Statutes; to provide operative dates; to repeal the

1 original sections; and to declare an emergency.

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

1 Section 1. At the request of a parent or guardian, a
2 school district shall issue a certificate of attendance to a
3 student who receives special education services under the Special
4 Education Act, who has reached seventeen years of age, and who
5 has not completed his or her individualized education plan. A
6 school district shall allow a student who receives a certificate
7 of attendance under this section to participate in the high school
8 graduation ceremony of such high school with students receiving
9 high school diplomas. A student may receive only one certificate of
10 attendance and may participate in only one graduation ceremony
11 based on such certificate. The receipt of a certificate of
12 attendance pursuant to this section shall not affect a school
13 district's obligation to continue to provide special education
14 services to a student receiving such certificate.

15 This section does not preclude a student from receiving
16 a high school diploma by meeting the school district's graduation
17 requirements established pursuant to section 79-729 or in his
18 or her individualized education plan or receiving a diploma of
19 high school equivalency under section 79-730 upon completing the
20 requirements of such section. The school district may allow a
21 student who has previously participated in a graduation ceremony
22 based on a certificate of attendance to participate in an
23 additional graduation ceremony when such student receives a high
24 school diploma.

25 Sec. 2. For school year 2008-09, any early childhood

1 education program as defined in section 79-1101 established by a
2 school board or an educational service unit that is not receiving a
3 grant pursuant to section 79-1103 or funding through the Tax Equity
4 and Educational Opportunities Support Act may enroll children who
5 meet the age requirements to be enrolled in kindergarten pursuant
6 to section 79-214, but who are not then enrolled in kindergarten
7 and who are not of mandatory attendance age pursuant to section
8 79-201.

9 Sec. 3. Section 79-1103, Revised Statutes Supplement,
10 2007, is amended to read:

11 79-1103 (1)(a) The State Department of Education shall
12 establish and administer the Early Childhood Education Grant
13 Program. Upon the effective date of an endowment agreement,
14 administration of the Early Childhood Education Grant Program
15 with respect to programs for children from birth to age three
16 shall transfer to the board of trustees. If there is no endowment
17 agreement in effect, the department shall request proposals in
18 accordance with this section for all early childhood education
19 programs from school districts, individually or in cooperation
20 with other school districts or educational service units, working
21 in cooperation with existing nonpublic programs which meet the
22 requirements of subsection (2) of section 79-1104. If there is
23 an endowment agreement in effect, the board of trustees shall
24 administer the Early Childhood Education Grant Program with respect
25 to programs for children from birth to age three pursuant to

1 section 79-1104.02 and the department shall continue to administer
2 the Early Childhood Education Grant Program with respect to
3 other prekindergarten programs pursuant to sections 79-1101 to
4 79-1104.05. All administrative procedures of the board of trustees,
5 including, but not limited to, rules, grant applications, and
6 funding mechanisms, shall harmonize with those established by the
7 department for other prekindergarten programs.

8 (b) The first priority shall be for (i) continuation
9 grants for programs that received grants in the prior school
10 fiscal year and for which the state aid calculation pursuant to
11 the Tax Equity and Educational Opportunities Support Act does not
12 include early childhood education students, in an amount equal
13 to the amount of such grant, except that if the grant was a
14 first-year grant the amount shall be reduced by thirty-three
15 percent, (ii) continuation grants for programs for which the
16 state aid calculation pursuant to the act includes early childhood
17 education students, in an amount equal to the amount of the grant
18 for the school fiscal year prior to the first school fiscal year
19 for which early childhood education students were included in the
20 state aid calculation for the school district's local system minus
21 the calculated state aid amount, and (iii) for school fiscal year
22 2007-08, continuation grants for programs for which the state aid
23 calculation pursuant to the act includes early childhood education
24 students, but such state aid calculation does not result in the
25 school district receiving any equalization aid, in an amount equal

1 to the amount of the grant received in school fiscal year 2006-07.
2 The calculated state aid amount shall be calculated by multiplying
3 the ~~cost grouping cost per student~~ basic funding per formula
4 student for the school ~~district's local system cost grouping by~~
5 ~~the adjusted~~ district by the formula students attributed to the
6 early childhood education programs pursuant to the Tax Equity and
7 Educational Opportunities Support Act.

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

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

1 received under the first priority.

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

15 (2) Each program proposal which is approved by the
16 department shall include (a) a planning period, (b) an agreement
17 to participate in periodic evaluations of the program to be
18 specified by the department, (c) evidence that the program will
19 be coordinated or contracted with existing programs, including
20 those listed in subdivision (d) of this subsection and nonpublic
21 programs which meet the requirements of subsection (2) of section
22 79-1104, (d) a plan to coordinate and use a combination of
23 local, state, and federal funding sources, including, but not
24 limited to, programs for children with disabilities below five
25 years of age funded through the Special Education Act, the Early

1 Intervention Act, funds available through the flexible funding
2 provisions under the Special Education Act, the federal Head
3 Start program, 42 U.S.C. 9831 et seq., the federal Even Start
4 Family Literacy Program, 20 U.S.C. 6361 et seq., Title I of
5 the federal Improving America's Schools Act of 1994, 20 U.S.C.
6 6301 et seq., and child care assistance through the Department
7 of Health and Human Services, (e) a plan to use sliding fee
8 scales and the funding sources included in subdivision (d) of
9 this subsection to maximize the participation of economically and
10 categorically diverse groups and to ensure that participating
11 children and families have access to comprehensive services, (f)
12 the establishment of an advisory body which includes families
13 and community members, (g) the utilization of appropriately
14 qualified staff, (h) an appropriate child-to-staff ratio, (i)
15 appropriate group size, (j) compliance with minimum health and
16 safety standards, (k) appropriate facility size and equipment,
17 (l) a strong family development and support component recognizing
18 the central role of parents in their children's development, (m)
19 developmentally and culturally appropriate curriculum, practices,
20 and assessment, (n) sensitivity to the economic and logistical
21 needs and circumstances of families in the provision of services,
22 (o) integration of children of diverse social and economic
23 characteristics, (p) a sound evaluation component, including at
24 least one objective measure of child performance and progress, (q)
25 continuity with programs in kindergarten and elementary grades,

1 (r) instructional hours that are similar to or less than the
2 instructional hours for kindergarten, (s) well-defined language
3 development and early literacy emphasis, including the involvement
4 of parents in family literacy activities, (t) a plan for ongoing
5 professional development of staff, and (u) inclusion of children
6 with disabilities as defined in the Special Education Act, all as
7 specified by rules and regulations of the department in accordance
8 with sound early childhood educational practice.

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

11 (4) A report evaluating the programs shall be made to the
12 State Board of Education and the Legislature by January 1 of each
13 odd-numbered year. Up to five percent of the total appropriation
14 for the Early Childhood Education Grant Program may be reserved
15 by the department for evaluation and technical assistance for the
16 programs.

17 (5) Programs may be approved for purposes of the Tax
18 Equity and Educational Opportunities Support Act, expansion grants,
19 and continuation grants on the submission of a continuation
20 plan demonstrating that the program will continue to meet the
21 requirements of subsection (2) of this section and a proposed
22 operating budget demonstrating that the program will continue to
23 receive resources from other sources equal to or greater than the
24 sum of any grant received pursuant to this section for the prior
25 school year plus any calculated state aid as calculated pursuant to

1 subsection (1) of this section for the prior school year.

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

12 Sec. 4. Section 79-1104.01, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 79-1104.01 (1) Within ninety days after July 14, 2006,
15 the State Department of Education shall request proposals from
16 private endowments with experience in managing public and private
17 funds for the benefit of children and families in multiple
18 locations in Nebraska to be the endowment provider for the Nebraska
19 Early Childhood Education Endowment upon the terms set forth in
20 this section.

21 (2) An endowment seeking to become the endowment provider
22 for the Nebraska Early Childhood Education Endowment shall agree
23 to:

24 (a) Irrevocably commit, subject to subdivision (4)(a) of
25 this section, no less than twenty million dollars in a private

1 endowment to be used solely as part of the Nebraska Early Childhood
2 Education Endowment within five years after the effective date of
3 the endowment agreement, of which no less than five million dollars
4 shall be pledged on the effective date of the endowment agreement.
5 A minimum of one million dollars shall be placed in the private
6 endowment prior to December 31, 2006, and a minimum of five million
7 dollars shall be placed in the private endowment prior to June 30,
8 2007;

9 (b) Commit all ~~interest, earnings, and proceeds~~ earnings
10 deposited from such private endowment for deposit into the Early
11 Childhood Education Endowment Cash Fund;

12 (c) Permit the board of trustees to determine the
13 allocation of funds from the Early Childhood Education Endowment
14 Cash Fund pursuant to section 79-1104.02; and

15 (d) Submit to the State Department of Education an
16 annual financial statement of the private endowment, audited by
17 an independent auditor and complying with all applicable Internal
18 Revenue Service requirements. The financial statement shall report
19 details on the private endowment, including the current value
20 of the corpus and the annual receipts to the private endowment
21 categorized by donations and interests, together with a report
22 listing the amount and purpose of expenditures from the private
23 endowment.

24 (3) Upon selection of an endowment provider, the State
25 Department of Education and such endowment provider shall enter

1 into an endowment agreement pursuant to which the state and the
2 endowment provider will agree to deposit funds as provided in
3 subsection (4) of this section.

4 (4) (a) Upon the effective date of an endowment agreement,
5 the state shall provide for the Early Childhood Education
6 Endowment Fund, which is hereby created, in accordance with section
7 79-1104.05. Any money in the fund available for investment shall be
8 invested by the state investment officer pursuant to the Nebraska
9 Capital Expansion Act and the Nebraska State Funds Investment Act.
10 The endowment agreement may provide that the obligations of the
11 endowment provider will terminate if the funds allocated to the
12 Early Childhood Education Endowment Fund pursuant to subsection
13 (11) of section 84-612 terminate as set forth in such section and
14 are not replaced by a minimum of forty million dollars from another
15 source on and after July 1, 2007.

16 (b) All interest, earnings, and proceeds from the Early
17 Childhood Education Endowment Fund shall be deposited in the Early
18 Childhood Education Endowment Cash Fund, which is hereby created.
19 Any money in the fund available for investment shall be invested
20 by the state investment officer pursuant to the Nebraska Capital
21 Expansion Act and the Nebraska State Funds Investment Act. All
22 interest, earnings, and proceeds from the Early Childhood Education
23 Endowment Cash Fund shall be retained in such fund.

24 (c) Upon the effective date of an endowment agreement,
25 the endowment provider shall deposit the amounts set forth in the

1 endowment agreement into a private endowment for the sole benefit
2 of the Early Childhood Education Endowment Fund. Money in the
3 private endowment shall be managed by the endowment provider in
4 accordance with sound, professional, fiduciary practices and in
5 accordance with the endowment agreement.

6 (d) ~~All interest, earnings, and proceeds~~ Earnings
7 deposited from the private endowment shall be deposited into
8 the Early Childhood Education Endowment Cash Fund ~~no less than~~
9 ~~quarterly.~~ at least annually or as the endowment agreement
10 provides.

11 Sec. 5. Section 79-1104.02, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 79-1104.02 (1) The Early Childhood Education Endowment
14 Cash Fund, consisting of the interest, earnings, and proceeds from
15 the Early Childhood Education Endowment Fund and the ~~interest,~~
16 ~~earnings, and proceeds~~ from the private endowment created by the
17 endowment provider, and any additional private donations made
18 directly thereto, shall be used exclusively to provide funds for
19 the Early Childhood Education Grant Program for at-risk children
20 from birth to age three as set forth in this section.

21 (2) Grants provided by this section shall be to school
22 ~~districts, and cooperatives of school districts, and educational~~
23 ~~service units~~ for early childhood education programs for at-risk
24 children from birth to age three, as determined by the board
25 of trustees pursuant to criteria set forth by the board of

1 trustees. School districts~~7~~ and cooperatives of school districts~~7~~
2 ~~and educational service units~~ may establish agreements with other
3 public and private entities to provide services or operate
4 programs.

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

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

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

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

1 age three.

2 Sec. 6. Section 79-1104.04, Revised Statutes Supplement,
3 2007, is amended to read:

4 79-1104.04 (1) The board of trustees shall include the
5 following six members:

6 (a) The Commissioner of Education or his or her designee;

7 (b) The chief executive officer of the Department of
8 Health and Human Services or his or her designee; and

9 (c) The following persons appointed by the Governor, in
10 his or her discretion:

11 (i) Two persons nominated by the endowment provider;

12 (ii) An early childhood professional representing an
13 urban at-risk area appointed pursuant to subsection (5) of this
14 section; and

15 (iii) An early childhood professional representing a
16 rural at-risk county appointed pursuant to subsection (6) of this
17 section.

18 (2) The terms of office for members initially appointed
19 under subsection (1) of this section shall be three years. Upon
20 completion of the initial terms of such members, the Governor shall
21 appoint the two members under subdivision (1)(c)(i) of this section
22 for terms of one and two years, the member under subdivision
23 (1)(c)(ii) of this section for a term of three years, and the
24 member under subdivision (1)(c)(iii) of this section for a term of
25 two years. Succeeding appointees shall be appointed for terms of

1 three years. An appointee to a vacancy occurring from an unexpired
2 term shall serve out the term of his or her predecessor. Members
3 whose terms have expired shall continue to serve until their
4 successors have been appointed and qualified.

5 (3) The board of trustees shall by majority vote annually
6 elect a chairperson from among the members of the board of
7 trustees.

8 (4) The members of the board of trustees shall be
9 reimbursed for their actual and necessary expenses incurred while
10 engaged in the performance of their official duties as provided in
11 sections 81-1174 to 81-1177.

12 (5) The Governor shall, in his or her discretion,
13 appoint one member to the board of trustees who resides or
14 works in ~~identify~~ an at-risk urban area consisting of not less
15 than ten contiguous census tracts, as determined by the United
16 States Bureau of the Census for the 2000 United States Census,
17 within a city of the metropolitan class, which each contain a
18 percentage of families below the poverty line of greater than
19 twenty percent, as reported by the United States Bureau of the
20 Census for the 2000 United States Census. ~~The Governor shall~~
21 ~~request that a committee, consisting of (a) the member of the~~
22 ~~Legislature representing the district containing the preponderance~~
23 ~~of geographic area of such at-risk area, (b) the member of the~~
24 ~~board of county commissioners representing the district containing~~
25 ~~the preponderance of geographic area of such at-risk area, and (c)~~

1 the member of the city council representing the district containing
2 the preponderance of geographic area of such at-risk area, develop
3 a list of not less than two and not more than four nominees for
4 appointment to the board of trustees. Upon receipt of a list of
5 nominees signed by at least two members of the committee, the
6 Governor shall, in his or her discretion, appoint a member to the
7 board of trustees from such list of nominees.

8 (6) The Governor shall, in his or her discretion, appoint
9 one member to the board of trustees who resides or works in a
10 county which does not contain a city of the metropolitan class or
11 a city of the primary class and which contains a percentage of
12 families below the poverty line of greater than eight and one-half
13 percent, as reported by the United States Bureau of the Census for
14 the 2000 United States Census.

15 Sec. 7. Section 13, Legislative Bill 988, One Hundredth
16 Legislature, Second Session, 2008, is amended to read:

17 (1) Except as otherwise provided in this section, for
18 school fiscal year 2008-09, each school district's formula need
19 shall equal the difference of the sum of the school district's
20 basic funding, poverty allowance, limited English proficiency
21 allowance, elementary class size allowance, focus school and
22 program allowance, summer school allowance, special receipts
23 allowance, transportation allowance, elementary site allowance,
24 distance education and telecommunications allowance, averaging
25 adjustment, and teacher education adjustment, minus the sum of the

1 limited English proficiency allowance correction, poverty allowance
2 correction, and local choice adjustment.

3 (2) Except as otherwise provided in this section, for
4 school fiscal years 2009-10 and 2010-11, each school district's
5 formula need shall equal the difference of the sum of the
6 school district's basic funding, poverty allowance, limited
7 English proficiency allowance, elementary class size allowance,
8 focus school and program allowance, summer school allowance,
9 special receipts allowance, transportation allowance, elementary
10 site allowance, instructional time allowance, distance education
11 and telecommunications allowance, averaging adjustment, teacher
12 education adjustment, new learning community transportation
13 adjustment, student growth adjustment, and new school adjustment,
14 minus the sum of the limited English proficiency allowance
15 correction, poverty allowance correction, and local choice
16 adjustment.

17 (3) Except as otherwise provided in this section, for
18 school fiscal years 2011-12 and 2012-13, each school district's
19 formula need shall equal the difference of the sum of the
20 school district's basic funding, poverty allowance, limited
21 English proficiency allowance, elementary class size allowance,
22 focus school and program allowance, summer school allowance,
23 special receipts allowance, transportation allowance, elementary
24 site allowance, instructional time allowance, distance education
25 and telecommunications allowance, averaging adjustment, teacher

1 education adjustment, new learning community transportation
2 adjustment, student growth adjustment, any positive student growth
3 adjustment correction, and new school adjustment, minus the sum
4 of the limited English proficiency allowance correction, poverty
5 allowance correction, any negative student growth adjustment
6 correction, and local choice adjustment.

7 (4) Except as otherwise provided in this section, for
8 school fiscal year 2013-14 and each school fiscal year thereafter,
9 each school district's formula need shall equal the difference of
10 the sum of the school district's basic funding, poverty allowance,
11 limited English proficiency allowance, focus school and program
12 allowance, summer school allowance, special receipts allowance,
13 transportation allowance, elementary site allowance, instructional
14 time allowance, distance education and telecommunications
15 allowance, averaging adjustment, teacher education adjustment,
16 new learning community transportation adjustment, student growth
17 adjustment, any positive student growth adjustment correction,
18 and new school adjustment, minus the sum of the limited English
19 proficiency allowance correction, poverty allowance correction, any
20 negative student growth adjustment correction, and local choice
21 adjustment.

22 (5) If the formula need calculated for a school district
23 pursuant to subsections (1) through (4) of this section is less
24 than one hundred percent of the formula need for such district
25 for the school fiscal year immediately preceding the school fiscal

1 year for which aid is being calculated, the formula need for such
2 district shall equal one hundred percent of the formula need for
3 such district for the school fiscal year immediately preceding
4 the school fiscal year for which aid is being calculated. If
5 the formula need calculated for a school district pursuant to
6 subsections (1) through (4) of this section is more than one
7 hundred twelve percent of the formula need for such district for
8 the school fiscal year immediately preceding the school fiscal
9 year for which aid is being calculated, the formula need for such
10 district shall equal one hundred twelve percent of the formula
11 need for such district for the school fiscal year immediately
12 preceding the school fiscal year for which aid is being calculated,
13 except that the formula need shall not be reduced pursuant to
14 this subsection for any district (a) receiving a student growth
15 adjustment for the school fiscal year for which aid is being
16 calculated or (b) for school fiscal year 2008-09, for which
17 the formula students for the certification of aid pursuant to
18 section 79-1022 for school fiscal year 2008-09 minus the formula
19 students for the certification of aid pursuant to section 79-1022
20 for school fiscal year 2007-08 equals at least the greater of
21 twenty-five students or one percent of the formula students for the
22 certification of aid pursuant to section 79-1022 for school fiscal
23 year 2007-08. For purposes of this subsection, the formula need
24 for the school fiscal year immediately preceding the school fiscal
25 year for which aid is being calculated shall be the formula need

1 used in the final calculation of aid pursuant to section 79-1065
2 and for districts that were affected by a reorganization with an
3 effective date in the calendar year preceding the calendar year
4 in which aid is certified for the school fiscal year for which
5 aid is being calculated, the formula need for the school fiscal
6 year immediately preceding the school fiscal year for which aid
7 is being calculated shall be attributed to the affected school
8 districts based on information provided to the department by the
9 school districts or proportionally based on the adjusted valuation
10 transferred if sufficient information has not been provided to the
11 department.

12 Sec. 8. The Revisor of Statutes shall assign section 1 of
13 this act within Chapter 79, article 7.

14 Sec. 9. Sections 7, 9, 11, and 12 of this act become
15 operative on their effective date. The other sections of this act
16 become operative three calendar months after the adjournment of
17 this legislative session.

18 Sec. 10. Original sections 79-1104.01 and 79-1104.02,
19 Revised Statutes Cumulative Supplement, 2006, and sections 79-1103
20 and 79-1104.04, Revised Statutes Supplement, 2007, are repealed.

21 Sec. 11. Original section 13, Legislative Bill 988, One
22 Hundredth Legislature, Second Session, 2008, is repealed.

23 Sec. 12. Since an emergency exists, this act takes effect
24 when passed and approved according to law.