

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 473**

Introduced by DeBoer, 10.

Read first time January 15, 2021

Committee: Education

1 A BILL FOR AN ACT relating to special education; to amend section  
2 79-1142, Revised Statutes Cumulative Supplement, 2020; to adopt the  
3 Extraordinary Increase in Special Education Cost Act; to harmonize  
4 provisions; to repeal the original section; and to declare an  
5 emergency.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 4 of this act shall be known and may be  
2 cited as the Extraordinary Increase in Special Education Cost Act.

3           Sec. 2. The Legislature finds that:

4           (1) The cost to educate students with special needs has increased in  
5 recent years;

6           (2) Special education costs can be unpredictable for school  
7 districts, particularly for school districts with small student  
8 populations, and can change dramatically from year to year as students  
9 with varying needs join or leave the school district;

10          (3) School districts may have difficulty covering large unexpected  
11 special education costs; and

12          (4) Assisting school districts upfront with large unexpected special  
13 education costs allows such school districts to more easily meet the  
14 needs of all students.

15          Sec. 3. (1) On or after September 21 of each school fiscal year, a  
16 school district may apply to the State Department of Education for a  
17 payment from the Extraordinary Increase in Special Education Cost Fund to  
18 cover an extraordinary increase in special education costs pursuant to  
19 the requirements of this section. A school district shall qualify for  
20 such payment if the special education budget of expenditures for the then  
21 current school fiscal year exceeds the special education budget of  
22 expenditures for the immediately preceding school fiscal year by an  
23 amount equal to or greater than seven percent of the special education  
24 budget of expenditures for the immediately preceding school fiscal year.

25          (2) Except as provided in subsection (3) of this section, each  
26 qualifying applicant school district shall receive a payment from the  
27 Extraordinary Increase in Special Education Cost Fund equal to the  
28 difference of the amount by which the special education budget of  
29 expenditures for the then current school fiscal year exceeds the special  
30 education budget of expenditures for the immediately preceding school  
31 fiscal year minus two and one-half percent of the special education

1 budget of expenditures for the immediately preceding school fiscal year.

2 (3) If there are not sufficient unobligated funds available in the  
3 Extraordinary Increase in Special Education Cost Fund for one or more  
4 payments calculated pursuant to this section at the time such payments  
5 are calculated, payments pursuant to this section shall be proportionally  
6 reduced for each school district that, at the time such payments are  
7 calculated, has applied for a payment pursuant to this section and has  
8 not yet received such payment.

9 (4) For purposes of this section, special education budget of  
10 expenditures includes any amendments to the special education budget of  
11 expenditures.

12 Sec. 4. (1) The Extraordinary Increase in Special Education Cost  
13 Fund is created. The fund shall be administered by the State Department  
14 of Education and shall consist of money appropriated by the Legislature.  
15 Any money in the fund available for investment shall be invested by the  
16 state investment officer pursuant to the Nebraska Capital Expansion Act  
17 and the Nebraska State Funds Investment Act.

18 (2) The department shall make a payment to each qualifying applicant  
19 school district from the Extraordinary Increase in Special Education Cost  
20 Fund pursuant to section 3 of this act for an extraordinary increase in  
21 special education costs. The department shall reimburse the fund for each  
22 such payment from the appropriation for special education and support  
23 services reimbursements pursuant to section 79-1142 in the school fiscal  
24 year immediately following the school fiscal year in which such payment  
25 was made.

26 (3) It is the intent of the Legislature to appropriate three million  
27 dollars to the Extraordinary Increase in Special Education Cost Fund for  
28 fiscal year 2021-22. The Legislature may appropriate additional money in  
29 future fiscal years as needed.

30 Sec. 5. Section 79-1142, Revised Statutes Cumulative Supplement,  
31 2020, is amended to read:

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

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

15           (3) Except as provided in subsection (6) of this section, for ~~For~~  
16 special education and support services provided in each school fiscal  
17 year, the department shall reimburse each school district in the  
18 following school fiscal year a pro rata amount determined by the  
19 department. The reimbursement percentage shall be the ratio of the  
20 difference of the appropriations for special education approved by the  
21 Legislature minus the amounts set aside pursuant to subsection (5) of  
22 this section divided by the total allowable excess costs for all special  
23 education programs and support services.

24           (4) Cooperatives of school districts or educational service units  
25 shall also be eligible for reimbursement for cooperative programs  
26 pursuant to this section if such cooperatives or educational service  
27 units have complied with the reporting and approval requirements of  
28 section 79-1155 for cooperative programs which were offered in the  
29 preceding school fiscal year. The payments shall be made by the  
30 department to the school district of residence, cooperative of school  
31 districts, or educational service unit each school fiscal year in a

1 minimum of seven payments between the fifth and twentieth day of each  
2 month beginning in December. Additional payments may be made based upon  
3 additional valid claims submitted. The State Treasurer shall, between the  
4 fifth and twentieth day of each month, notify the Director of  
5 Administrative Services of the amount of funds available in the General  
6 Fund for payment purposes. The director shall, upon receiving such  
7 certification, draw warrants against funds appropriated.

8 (5) Residential settings described in subdivision (10)(c) of section  
9 79-215 shall be reimbursed for the educational services, including  
10 special education services and support services in an amount determined  
11 pursuant to the average per pupil cost of the service agency.  
12 Reimbursements pursuant to this section shall be made from funds set  
13 aside for such purpose within sixty days after receipt of a reimbursement  
14 request submitted in the manner required by the department and including  
15 any documentation required by the department for educational services  
16 that have been provided, except that if there are not any funds available  
17 for the remainder of the state fiscal year for such reimbursements, the  
18 reimbursement shall occur within thirty days after the beginning of the  
19 immediately following state fiscal year. The department may audit any  
20 required documentation and subtract any payments made in error from  
21 future reimbursements. The department shall set aside separate amounts  
22 from the appropriations for special education approved by the Legislature  
23 for reimbursements pursuant to this subsection for students receiving  
24 special education services and for students receiving support services  
25 for each state fiscal year. The amounts set aside for each purpose shall  
26 be based on estimates of the reimbursements to be requested during the  
27 state fiscal year and shall not be less than the total amount of  
28 reimbursements requested in the prior state fiscal year plus any unpaid  
29 requests from the prior state fiscal year.

30 (6) For each school district that received a payment from the  
31 Extraordinary Increase in Special Education Cost Fund in the school

1 fiscal year for which special education costs are being reimbursed  
2 pursuant to subsection (3) of this section, an amount equal to such  
3 payment shall be subtracted from the reimbursement calculated pursuant to  
4 subsection (3) of this section and such amount shall be transferred to  
5 the Extraordinary Increase in Special Education Cost Fund.

6       Sec. 6.   Original section 79-1142, Revised Statutes Cumulative  
7 Supplement, 2020, is repealed.

8       Sec. 7.   Since an emergency exists, this act takes effect when  
9 passed and approved according to law.