

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.