LEGISLATIVE BILL 673

Introduced by Murman, 38; Aguilar, 35; Brewer, 43; Clements, 2; Dorn, 30; Erdman, 47; Flood, 19; Gragert, 40; Groene, 42; Halloran, 33; Hansen, B., 16; Lowe, 37; Sanders, 45; Slama, 1.

Read first time January 20, 2021

Committee: Education

A BILL FOR AN ACT relating to education; to amend sections 9-812, 79-258, 79-2,144, 79-1001, 79-1022, 79-1022.02, and 79-1031.01, Revised Statutes Cumulative Supplement, 2020; to adopt the Education Behavioral Awareness and Support Act; to change the distribution of lottery funds; to add duties for the state school security director; to change the Tax Equity and Educational Opportunities Support Act; to distribute funds; to change the determination and certification dates relating to the distribution of aid and duties of the Appropriations Committee of the Legislature; 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. Sections 1 to 6 of this act shall be known and may be cited as the Education Behavioral Awareness and Support Act.

Sec. 2. (1)(a) Prior to the end of school year 2023-24, each school district shall ensure that administrators, teachers, paraprofessionals, school nurses, and counselors receive behavioral awareness and intervention training. Each school district may provide such training, or similar training, to any other school employees at the discretion of the school district. In addition, all school employees shall have a basic awareness of the goals, strategies, and schoolwide plans included in such training.

(b) Beginning in school year 2021-22, each school district shall ensure that behavioral awareness and intervention training is offered annually. Administrators, teachers, paraprofessionals, school nurses, and counselors who have received such training from the school district in which they are employed shall receive a behavioral awareness and intervention training review at least once every three years.

(c) Any protections and defenses found in the Education Behavioral Awareness and Support Act shall not be made contingent on whether or not an employee of a school district has completed behavioral awareness and intervention training.

(d) Behavioral awareness and intervention training shall include, but not be limited to, evidence-based training on a continuum that includes:

(i) Recognition of detrimental factors impacting student behavior, including, but not limited to, signs of trauma;

(ii) Positive behavior support and proactive teaching strategies, including, but not limited to, expectations and boundaries;

(iii) Verbal intervention and de-escalation techniques;

(iv) Clear guidelines on removing students from and returning students to a class;

(v) Behavioral interventions and supports that will take place when
a student has been removed from a class; and

(vi) Physical intervention for safety.

(e) In addition to the requirements contained in subdivision (1)(d) of this section, behavioral awareness and intervention training shall be consistent with the Education Behavioral Awareness and Support Act, include an awareness of the protections for school personnel found in the act, include an awareness of the requirement for written consent of a parent or guardian pursuant to section 79-258, and include the identification and role of each employee designated as the behavioral awareness and intervention point of contact.

(2)(a) Each school district shall designate one or more school employees as a behavioral awareness and intervention point of contact for each school building or other division as determined by such school district. Each behavioral awareness and intervention point of contact shall be trained in behavioral awareness and intervention and shall have knowledge of community service providers and other resources that are available for the students and families in such school district.

(b) Each school district shall maintain or have access to an existing registry of local mental health and counseling resources. The registry shall include resource services that can be accessed by families and individuals outside of school. Each behavioral awareness and intervention point of contact shall coordinate access to support services for students whenever possible. Except as provided in section 43-2101, if information for an external support service is provided to an individual student, school personnel shall notify a parent or guardian of such student in writing unless law enforcement or child protective services is involved. Each school district shall indicate each behavioral awareness and intervention point of contact for such school district on the web site of the school district and in any school directory for the school that the behavioral awareness and intervention point of contact serves.

(3)(a) On or before September 1, 2021, and on or before September 1
of each year thereafter, each school district shall submit a behavioral
awareness and intervention training report to the state school security
director. Such report shall include the school district behavioral
awareness and intervention training plan, summarize how such plan
fulfills the requirements of this section, and provide any other
information required by rules and regulations adopted and promulgated
pursuant to section 6 of this act.

(b) Behavioral awareness and intervention training required pursuant
to this section shall be funded from the Behavioral Training Cash Fund
pursuant to section 11 of this act. Any school district that fails to
file the behavioral awareness and intervention training report required
pursuant to subdivision (3)(a) of this section with the state school
security director or that is found to be in noncompliance with the
requirements of this section shall not receive behavioral awareness and
intervention training funding pursuant to section 11 of this act for such
school year.

(c) On or before October 31, 2021, and each October 31 thereafter,
the state school security director shall certify the compliance or
noncompliance with the requirements of this section of each school
district to the Commissioner of Education.

Sec. 3. The Behavioral Training Cash Fund is created. The fund
shall be administered by the State Department of Education and shall
consist of money received pursuant to section 9-812 and any money
appropriated by the Legislature. The department shall distribute money in
the fund pursuant to section 11 of this act to school districts for
behavioral awareness and intervention training required pursuant to
section 4 of this act. Any money in the 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.

Sec. 4. (1) Teachers and other school personnel may use reasonable
physical intervention to safely manage the behavior of a student to:

(a) Protect such student, another student, a teacher or other school personnel, or another person from physical injury; or

(b) Secure property in the possession of such student if the possession of such property by such student poses a threat of physical injury to such student, another student, a teacher or other school personnel, or another person.

(2) Any physical intervention by a teacher or other school personnel pursuant to subdivision (1)(a) or (b) of this section shall not be used for the purpose of inflicting bodily pain as a penalty for disapproved behavior.

(3) Following the use of physical intervention pursuant to this section, a teacher or other school personnel shall contact and notify the affected parent or guardian of the use of physical intervention.

(4) No teacher or other school personnel shall be subject to professional or administrative discipline and no teacher, other school personnel, or school district shall be held criminally or civilly liable for the use of physical intervention pursuant to subdivision (1)(a) or (b) of this section if such physical intervention was reasonable. Nothing in this section shall be construed to limit any defense that may be available under any provision of law, including, but not limited to, any defense relating to self-protection, the protection of others, or the Political Subdivisions Tort Claims Act.

Sec. 5. (1) Each school district shall have a policy that describes the process of removing a student from a class and returning a student to a class. Such policy shall: (a) Describe how and when a student may be removed from a class and returned to a class; (b) use a discipline process that is proactive, instructive, and restorative; (c) require appropriate communication between administrators, teachers or other school personnel, students, and parents or guardians. Such policy shall be made available to the public.
(2) Unless prohibited by the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or a plan developed pursuant to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as such acts existed on January 1, 2021, an administrator or administrator's designee shall immediately remove a student from a class upon request by a teacher or other school personnel if such teacher or other school personnel has followed school policy in requesting the removal of such student.

(3) When a student is removed from a class, the goal must be to return the student to the class as soon as possible after appropriate instructional or behavioral interventions or supports have been implemented to increase the likelihood the student will be successful. For a student with a pattern of disruptive behavior, the school shall provide additional interventions or supports.

(4) No teacher or other school personnel shall be subject to professional or administrative discipline and no teacher, other school personnel, or school district shall be held criminally or civilly liable for the removal of a student from a class pursuant to this section if such teacher or other school personnel acted in a reasonable manner and in accordance with school policy.

Sec. 6. The State Department of Education may adopt and promulgate rules and regulations to carry out the Education Behavioral Awareness Act.

Sec. 7. Section 9-812, Revised Statutes Cumulative Supplement, 2020, 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) 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 Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund as provided in subsection (3) of this section. 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 Education Improvement 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 9-1006;

(b) Beginning July 1, 2016, 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 Education Improvement Fund;

(c) 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;

(d) 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

(e) 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 9-1006.

(4)(a) The Nebraska Education Improvement Fund is created. The fund shall consist of money transferred pursuant to subsection (3) of this section, money transferred pursuant to section 85-1920, and any other funds appropriated by the Legislature. The fund shall be allocated, after actual and necessary administrative expenses, as provided in this section for fiscal years 2016-17 through 2020-21. A portion of each allocation may be retained by the agency to which the allocation is made or the agency administering the fund to which the allocation is made for actual and necessary expenses incurred by such agency for administration,
evaluation, and technical assistance related to the purposes of the allocation, except that no amount of the allocation to the Nebraska Opportunity Grant Fund may be used for such purposes. On or before December 31, 2019, the Education Committee of the Legislature shall electronically submit recommendations to the Clerk of the Legislature regarding how the fund should be allocated to best advance the educational priorities of the state for the five-year period beginning with fiscal year 2021-22. For fiscal year 2016-17, an amount equal to ten percent of the revenue allocated to the Education Innovation Fund and to the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be retained in the Nebraska Education Improvement Fund. For fiscal years 2017-18 through 2020-21, an amount equal to ten percent of the revenue received by the Nebraska Education Improvement Fund in the prior fiscal year shall be retained in the fund. For fiscal years 2016-17 through 2020-21, the remainder of the fund, after payment of any learning community transition aid pursuant to section 79-10,145, shall be allocated as follows:

(i) (a) One percent of the allocated funds to the Expanded Learning Opportunity Grant Fund to carry out the Expanded Learning Opportunity Grant Program Act;

(ii) (b) Seventeen percent of the allocated funds to the Department of Education Innovative Grant Fund to be used (A) (i) for competitive innovation grants pursuant to section 79-1054 and (B) (ii) to carry out the purposes of section 79-759;

(iii) (c) Nine percent of the allocated funds to the Community College Gap Assistance Program Fund to carry out the community college gap assistance program;

(iv) (d) Eight percent of the allocated funds to the Excellence in Teaching Cash Fund to carry out the Excellence in Teaching Act;

(v) (e) Sixty-two percent of the allocated funds to the Nebraska Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in
conjunction with appropriations from the General Fund; and

(vi) (f) Three percent of the allocated funds to fund distance education incentives pursuant to section 79-1337.

(b) On August 1, 2021, the State Treasurer shall transfer the balance of the Nebraska Education Improvement Fund, after any transfers into the fund pursuant to section 79-8,137.05, to the Behavioral Training Cash Fund.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, the Nebraska Education Improvement 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.

Sec. 8. Section 79-258, Revised Statutes Cumulative Supplement, 2020, is amended to read:

79-258 Administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in the Student Discipline Act and the Education Behavioral Awareness and Support Act, which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include, but need not be limited to, counseling of students, parent conferences, referral to restorative justice practices or services, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the
written consent of a parent or guardian to such counseling or evaluation.

Sec. 9. Section 79-2,144, Revised Statutes Cumulative Supplement, 2020, is amended to read:

79-2,144 The state school security director appointed pursuant to section 79-2,143 shall be responsible for providing leadership and support for safety and security for the public schools. Duties of the director include, but are not limited to:

(1) Collecting safety and security plans, required pursuant to rules and regulations of the State Department of Education relating to accreditation of schools, and other school security information from each school system in Nebraska. School districts shall provide the state school security director with the safety and security plans of the school district and any other security information requested by the director, but any plans or information submitted by a school district may be withheld by the department pursuant to subdivision (8) of section 84-712.05;

(2) Recommending minimum standards for school security on or before January 1, 2016, to the State Board of Education;

(3) Conducting an assessment of the security of each public school building, which assessment shall be completed by August 31, 2019;

(4) Identifying deficiencies in school security based on the minimum standards adopted by the State Board of Education and making recommendations to school boards for remedying such deficiencies;

(5) Establishing security awareness and preparedness tools and training programs for public school staff;

(6) Establishing research-based model instructional programs for staff, students, and parents to address the underlying causes for violent attacks on schools;

(7) Overseeing suicide awareness and prevention training in public schools pursuant to section 79-2,146;

(8) Establishing tornado preparedness standards which shall include,
but not be limited to, ensuring that every school conducts at least two
tornado drills per year;

(9) Collecting behavioral awareness and intervention training plans
and certifying compliance or noncompliance with section 2 of this act to
the Commissioner of Education for each school district;

(10) (9) Responding to inquiries and requests for assistance
relating to school security from private, denominational, and parochial
schools; and

(11) (10) Recommending curricular and extracurricular materials to
assist school districts in preventing and responding to cyberbullying and
digital citizenship issues.

Sec. 10. Section 79-1001, Revised Statutes Cumulative Supplement,
2020, is amended to read:

79-1001 Sections 79-1001 to 79-1033 and section 11 of this act shall
be known and may be cited as the Tax Equity and Educational Opportunities
Support Act.

Sec. 11. (1) For school fiscal year 2021-22 and each school fiscal
year thereafter, using data from the fall personnel report filed pursuant
to section 79-804 for the immediately preceding school fiscal year, each
school district shall receive behavioral training funding paid from the
Behavioral Training Cash Fund for each school within such school district
that has any grade above kindergarten, including, but not limited to, a
special education school, an alternative school, or a focus school.

(2) Except as otherwise provided in subsection (6) of this section,
the behavioral training funding for each school described in subsection
(1) of this section shall equal the base training reimbursement plus any
additional training reimbursement units calculated pursuant to this
section.

(3) The base training reimbursement shall be two thousand dollars.

(4) Each school that has a full-time teacher equivalent greater than
or equal to eighty teachers shall qualify for additional training
reimbursement units as follows:

(a) Three additional training reimbursement units for each school with a full-time teacher equivalent greater than or equal to two hundred forty teachers;

(b) Two additional training reimbursement units for each school with a full-time teacher equivalent greater than or equal to one hundred sixty teachers but less than two hundred forty teachers; and

(c) One additional training reimbursement unit for each school with a full-time teacher equivalent greater than or equal to eighty teachers but less than one hundred sixty teachers.

(5) The amount to be paid for each additional training reimbursement unit for each school fiscal year shall equal the ratio of (a) the difference of the amount available for distribution in the Behavioral Training Cash Fund on August 10 immediately preceding such school fiscal year minus the total of the base training reimbursements for all school districts divided by (b) the total additional training reimbursement units for all school districts.

(6) For any school fiscal year when the amount available for distribution in the Behavioral Training Cash Fund on August 10 immediately preceding such school fiscal year is less than the total of the base training reimbursements for all schools as calculated pursuant to subsection (3) of this section, the base training reimbursements shall be reduced proportionally such that the total of the base training reimbursements for all schools equals the amount available for distribution. Payment shall not be made for any additional training reimbursement units pursuant to subsections (4) and (5) of this section for such school fiscal year.

(7) For school fiscal year 2021-22, each school district shall qualify for behavioral training funding. For school fiscal year 2022-23 and each school fiscal year thereafter, each school district in compliance with the behavioral awareness and intervention training
requirements provided in section 2 of this act, as certified by the state
school security director, shall be eligible for behavioral training
funding.

(8) Funds received from the Behavioral Training Cash Fund pursuant
to this section shall be considered special grant funds and shall not be
included in the calculation of formula resources pursuant to section
79-1017.01.

(9) Behavioral training funding shall be distributed directly to
school districts from the Behavioral Training Cash Fund in the same
manner as and in conjunction with funds distributed pursuant to section
79-1022.

Sec. 12. Section 79-1022, Revised Statutes Cumulative Supplement,
2020, is amended to read:

79-1022 (1) On or before June 10, 2021 May 1, 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 10, 2021 May 1, 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. 13. Section 79-1022.02, Revised Statutes Cumulative Supplement, 2020, 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 2021-22 is null and void.

Sec. 14. Section 79-1031.01, Revised Statutes Cumulative Supplement, 2020, 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 10, 2021 May 1, 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. 15. Original sections 9-812, 79-258, 79-2,144, 79-1001,
79-1022, 79-1022.02, and 79-1031.01, Revised Statutes Cumulative
Supplement, 2020, are repealed.

Sec. 16. Since an emergency exists, this act takes effect when

passed and approved according to law.