

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 153

Introduced by DeBoer, 10; Wishart, 27.

Read first time January 09, 2023

Committee: Education

- 1 A BILL FOR AN ACT relating to education; to amend section 79-1142,
- 2 Revised Statutes Cumulative Supplement, 2022; to adopt the
- 3 Extraordinary Increase in Special Education Expenditures Act; to
- 4 create a fund; to harmonize provisions; to repeal the original
- 5 section; and to declare an 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 Expenditures
3 Act.

4 Sec. 2. The Legislature finds that:

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

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

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

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

16 Sec. 3. (1) On or before January 15 of each school fiscal year, a
17 school district may submit an application as prescribed by the State
18 Department of Education to the department for a payment from the
19 Extraordinary Increase in Special Education Expenditures Fund to cover an
20 extraordinary increase in special education expenditures pursuant to the
21 requirements of this section. Such application shall include the special
22 education expenditures of the applicant school district as of the
23 immediately preceding December 31 for the school fiscal year in which the
24 application is submitted.

25 (2) The department shall divide the special education expenditures
26 for the school fiscal year immediately preceding the school fiscal year
27 in which an application is submitted by two and multiply the result by
28 one hundred seven percent for each applicant school district.

29 (3) Each applicant school district shall qualify for a maximum
30 payment equal to the difference of the special education expenditures for
31 the current school fiscal year submitted pursuant to subsection (1) of

1 this section minus the amount calculated pursuant to subsection (2) of
2 this section for such school district for such school fiscal year.

3 (4) The department shall make a payment to each applicant school
4 district on or before January 31 for the school fiscal year in which the
5 application is submitted. Such payment shall equal the maximum payment
6 determined pursuant to subsection (3) of this section, except if the sum
7 of all maximum payments for applicant school districts for such school
8 fiscal year exceeds the available balance in the Extraordinary Increase
9 in Special Education Expenditures Fund, each payment shall be reduced
10 proportionally so that the sum of all payments for applicant school
11 districts for such school fiscal year equals the available balance in the
12 fund.

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

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

27 (3) It is the intent of the Legislature to appropriate ten million
28 dollars from the General Fund to the Extraordinary Increase in Special
29 Education Expenditures Fund for fiscal year 2023-24 and make future
30 appropriations as necessary.

31 Sec. 5. Section 79-1142, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

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

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

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

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

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

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

31 (6) For each school district that received a payment from the

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

8 Sec. 6. Original section 79-1142, Revised Statutes Cumulative
9 Supplement, 2022, is repealed.

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