

Amendment to HB 607-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2
3 1 New Chapter; Local Education Freedom Accounts. Amend RSA by inserting after chapter
4 194-F the following new chapter:

5 CHAPTER 194-G

6 LOCAL EDUCATION FREEDOM ACCOUNTS

7 194-G:1 Definitions. In this chapter:

8 I. "Adequate education grant" means the grant calculated under RSA 198:41.

9 II. "Curriculum" means the lessons and academic content taught in a specific course,
10 program, or grade level.

11 III. "Department" means the department of education.

12 IV. "Education freedom account" or "EFA" means the account to which funds are allocated
13 by the scholarship organization to the parent of an EFA student in order to pay for qualifying
14 education expenses to educate the EFA student under this chapter.

15 V. "Education service provider" means a person or organization that receives payments from
16 education freedom accounts to provide educational goods and services to EFA students.

17 VI. "Eligible student" means a resident of a school district that adopts the provisions of this
18 chapter, who is at least 5 years of age and not more than 20 years of age, who has not graduated
19 from high school and is:

20 (a) Currently attending a New Hampshire public school, including a chartered public
21 school; or

22 (b) A kindergarten student; or

23 (c) Receiving home education pursuant to RSA 193-A.

24 VII. "EFA student" means an eligible student who is participating in the EFA program.

25 An EFA student participating under this chapter shall be counted in the average daily membership
26 in residence of their school district.

27 VIII. "Full-time" means more than 50 percent of instructional time.

28 IX. "Remote or hybrid" shall mean any public school that is not providing instruction in
29 person where the student or the educator are both not physically present in the traditional
30 classroom due to full-time or part-time classroom closure.

31 X. "Parent" means a biological or adoptive parent, legal guardian, custodian, or other person
32 with legal authority to act on behalf of an EFA student.

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1 XI. "Program" means the education freedom account program established in this chapter.

2 XII. "Scholarship organization" means a scholarship organization approved under RSA 77:G,
3 that administers and implements education freedom accounts.

4 194-G:2 Program Eligibility.

5 I. There is established a local education freedom account program. In any school district
6 that adopts this chapter pursuant to RSA 197:3-b, the parent of an eligible student may receive a
7 grant from a scholarship organization if the parent signs a contract with the scholarship
8 organization.

9 II. The parent of an eligible student who signs a contract with a scholarship organization
10 agrees to use the funds deposited in an eligible student's account for any of the following qualifying
11 educational expenses:

12 (a) Tuition for course fees at any public school, chartered public school, nonpublic school,
13 or program approved by the department pursuant to RSA 186-C:5.

14 (b) Textbooks, curriculum, or materials required to supplement or administer the
15 curriculum.

16 (c) Payment to a tutor or tutoring facility.

17 (d) Fees for transportation to and from an educational service provider paid to a fee-for-
18 service transportation provider, not to exceed \$750 per school year.

19 (e) Tuition and fees for online learning programs.

20 (f) Educational services or therapies from a licensed or certified practitioner or provider,
21 including licensed or certified paraprofessionals or educational aides.

22 (g) Computer hardware and software and other assistive devices if an eligible school,
23 licensed or certified tutor, licensed or certified educational service practitioner or provider, or
24 licensed medical professional verifies in writing that these items are essential for the student to
25 meet annual, measurable goals.

26 (h) Fees for a nationally standardized norm-referenced achievement test, advanced
27 placement examination, or any exam related to college admission.

28 III. The parent of an eligible student shall be provided copies of all signed agreements.

29 IV. The parent of an eligible student shall be required to annually renew the agreement to
30 continue participation in the program.

31 V. No eligible student shall receive a grant under this chapter and an education tax credit
32 scholarship pursuant to RSA 77-G in the same school year.

33 VI. Eligible students participating in the program may participate in curricular and co-
34 curricular courses and programs pursuant to RSA 193:1-c.

35 VII. An agreement shall be automatically terminated if the eligible student no longer resides
36 in the school district, and all unencumbered moneys shall revert back to the school district.

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VIII. The failure to enter into an agreement pursuant to this chapter for any school year for which an eligible student is required to attend a public school shall not preclude the parent of such student from entering into an agreement for a subsequent school year.

IX. An EFA student shall remain a student in their resident school district for the purposes of RSA 193:1.

X. The resident school district shall receive funding for EFA students pursuant to RSA 198:40-a.

194-G:3 Application for an Education Freedom Account.

I. A parent may apply to the scholarship organization to establish an EFA for an eligible student. The scholarship organization shall accept and approve applications each year and shall establish procedures for approving applications in an expeditious manner.

II. The scholarship organization shall create a standard form that parents can submit to establish their student's eligibility for the EFA program and shall ensure that the application is publicly available and may be submitted through various sources, including the Internet.

III. The scholarship organization shall approve an application for an EFA if:

(a) The parent submits an application for an EFA in accordance with application procedures established by the scholarship organization.

(b) The student on whose behalf the parent is applying is an eligible student.

(c) Funds are available for the EFA.

(d) The parent signs an agreement with the scholarship organization:

(1) To provide an education for the eligible student in the core knowledge domains that include science, mathematics, language, government, history, health, reading, writing, spelling, the history of the constitutions of New Hampshire and the United States, and an exposure to and appreciation of art and music.

(2) Not to enroll the eligible student as a full-time student in their resident district public school while participating in the EFA program.

(3) To provide an annual record of educational attainment by:

(A) Having the student take a nationally-standardized, norm-referenced achievement test and to provide the results to the scholarship organization by the end of each school year which the scholarship organization shall make available to the department as aggregate scores; or

(B) Having the student take the statewide student assessment test pursuant to RSA 193-C:6; or

(C) Maintaining a portfolio including, but not limited to, a log which designates by title the reading materials used; samples of writings, worksheets, workbooks, or creative materials used or developed by the student. The parent shall have a certified teacher or a teacher

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1 currently teaching in a nonpublic school, who is selected by the parent, evaluate the student's
2 educational progress upon review of a portfolio and discussion with the parent or student.

3 (4) To use the funds in the EFA only for qualifying expenses to educate the eligible
4 student as established by the EFA program.

5 (5) To comply with the rules and requirements of the EFA program.

6 IV. The signed agreement between the parent and the scholarship organization shall satisfy
7 the compulsory school attendance requirements of RSA 193:1.

8 V. The scholarship organization shall annually renew a student's EFA if funds are available.

9 VI. Upon notice to the scholarship organization, an EFA student may choose to stop
10 receiving EFA funding and enroll full-time in a public school.

11 (a) Enrolling as a full-time student in the resident district public school shall result in
12 the immediate suspension of payment of additional funds into the student's EFA. However, an EFA
13 that has been open for at least one full school year shall remain open and active for the parent to
14 make qualifying expenditures to educate the student from funds remaining in the EFA. When no
15 funds remain in the student's EFA, the scholarship organization may close the EFA.

16 (b) If an eligible student decides to return to the EFA program, payments into the
17 student's existing EFA may resume if the EFA is still open and active. A new EFA may be
18 established if the student's EFA was closed.

19 194-G:4 Authority and Responsibilities of the Scholarship Organization. The scholarship
20 organization shall have the following additional duties, obligations, and authority:

21 I. The scholarship organization shall maintain an updated list of education service providers
22 and shall ensure that the list is publicly available through various sources, including the Internet.

23 II. The scholarship organization shall provide parents with a written explanation of the
24 allowable uses of EFA funds, the responsibilities of parents, the duties of the scholarship
25 organization, and the role of any financial management firms that the scholarship organization may
26 contract with to administer any aspect of the EFA program.

27 III. The scholarship organization shall ensure that parents of students with disabilities
28 receive notice that the EFA student will still be eligible to receive services from the resident school
29 district in accordance with Individuals With Disabilities Education Act (IDEA) and any existing
30 individualized education program (IEP).

31 IV. The scholarship organization may withhold from deposits or deduct from EFAs an
32 amount to cover the costs of administering the EFA program, up to a maximum of 10 percent
33 annually.

34 V. The scholarship organization shall implement a commercially viable system for payment
35 of services from EFAs to education service providers by electronic or online funds transfer.

36 (a) The scholarship organization shall not adopt a system that relies exclusively on
37 requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum

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1 flexibility to parents by facilitating direct payments to education service providers. Scholarship
2 organizations may pre-approve requests for reimbursements for qualifying expenses, including
3 expenses pursuant to RSA 194-G:2, II, but shall not disperse funds to parents without receipt that
4 such pre-approved purchase has been made.

5 (b) A scholarship organization may contract with a private institution or organization to
6 develop the payment system.

7 VI. The scholarship organization may also seek to implement a commercially viable system
8 for parents to publicly rate, review, and share information about education service providers, ideally
9 as part of the same system that facilitates the electronic or online funds transfers.

10 VII. If an education service provider requires partial payment of tuition or fees prior to the
11 start of the academic year to reserve space for an EFA student admitted to the education service
12 provider, such partial payment may be paid by the scholarship organization, if funds are available,
13 prior to the start of the school year in which the EFA is awarded and deducted in an equitable
14 manner from subsequent quarterly EFA deposits to ensure adequate funds remain available
15 throughout the school year; but if an EFA student decides not to use the education service provider,
16 the partial reservation payment shall be returned to the scholarship organization by such education
17 service provider and credited to the student's EFA.

18 VIII. The scholarship organization shall continue making deposits into a student's EFA
19 until:

20 (a) The scholarship organization determines that the EFA student is no longer an
21 eligible student.

22 (b) The scholarship organization determines that there was intentional and substantial
23 misuse of the funds in the EFA.

24 (c) The parent or EFA student withdraws from the EFA program.

25 (d) The EFA student enrolls full-time in the resident district public school.

26 (e) The EFA student graduates from high school.

27 IX. The scholarship organization may conduct or contract for the auditing of individual
28 EFAs, and shall at a minimum conduct random audits of EFAs on an annual basis.

29 X. The scholarship organization may make any parent or EFA student ineligible for the EFA
30 program in the event of intentional and substantial misuse of EFA funds.

31 (a) The scholarship organization shall create procedures to ensure that a fair process
32 exists to determine whether an intentional and substantial misuse of EFA funds has occurred.

33 (b) If an EFA student is free from personal misconduct, that student shall be eligible for
34 an EFA in the future if placed with a new guardian or other person with the legal authority to act on
35 behalf of the student.

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1 (c) The scholarship organization may refer suspected cases of intentional and
2 substantial misuse of EFA funds to the attorney general for investigation if evidence of fraudulent
3 use of EFA funds is obtained.

4 (d) A parent or EFA student may appeal the scholarship organization's decision to deny
5 eligibility for the EFA program to the department.

6 XI. The scholarship organization may bar an education service provider from accepting
7 payments from EFAs if the scholarship organization determines that the education service provider
8 has:

9 (a) Intentionally and substantially misrepresented information or failed to refund any
10 overpayments in a timely manner.

11 (b) Routinely failed to provide students with promised educational goods or services.

12 XII. The scholarship organization shall create procedures to ensure that a fair process exists
13 to determine whether an education service provider may be barred from receiving payments from
14 EFAs.

15 (a) If the scholarship organization bars an education service provider from receiving
16 payments from EFAs, it shall notify parents and EFA students of its decision as quickly as possible.

17 (b) Education service providers may appeal the scholarship organization's decision to bar
18 them from receiving payments from the EFA to the department.

19 XIII. The scholarship organization may accept gifts and grants from any source to cover
20 administrative costs, to inform the public about the EFA program, or to fund additional EFAs.

21 XIV. The department shall adopt rules that are necessary for the administration of this
22 chapter.

23 XV. The scholarship organization shall adopt policies or procedures that are necessary for
24 the administration of this chapter. This may include policies or procedures:

25 (a) Establishing or contracting for the establishment of an online anonymous fraud
26 reporting service.

27 (b) Establishing an anonymous telephone number for fraud reporting.

28 (c) Requiring a surety bond for education service providers receiving more than \$100,000
29 in EFA funds.

30 (d) Refunding payments from education service providers to EFAs.

31 (e) Ensuring appropriate use and rigorous oversight of all funds expended under this
32 program.

33 XVI. The scholarship organization shall not exclude, discriminate against, or otherwise
34 disadvantage any education provider with respect to programs or services under this section based
35 in whole or in part on the provider's religious character or affiliation, including religiously based or
36 mission-based policies or practices.

37 194-G:5 Computation of Local Education Funds.

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I. The superintendent of the school district shall calculate the funds for local education freedom accounts based on the local district's approved budget from the previous year as follows: the total moneys raised by local education taxes under RSA 76:8, III, less special education spending multiplied by 80 percent, and divided by the previous year's average daily membership in attendance. The funds shall not include any federal grants or state funding. The superintendent of the school district shall make such funds available to each student requesting a local education freedom account.

II. The scholarship amount shall be recalculated annually. The amount granted shall be the original grant or the recalculated grant, whichever is greater. No eligible student shall receive a scholarship that is less than the scholarship the student received in his or her first year of participation in the program,

III. If a student no longer resides in the local district, or attends the chartered public school, during the regular school year, the funds the student has been approved to receive shall be prorated and the balance shall be distributed to the local school district.

IV. The superintendent of the local school district shall transfer the funds to each student's local education freedom account no later than July 14 prior to the beginning of the school year.

194-G:6 Program Funding and Payment.

I. The scholarship organization shall notify the superintendent of the school district of any eligible student whose parents have signed an agreement under RSA 194-G:2.

II. Funds received pursuant to this program shall not constitute income taxable to the parent of the eligible student or to the eligible student.

III. In exchange for the parent's agreement pursuant to RSA 194-G:2, the superintendent shall transfer funding to the eligible student's account established by the scholarship organization. The transfers shall be made quarterly at the same time as state grants are distributed under RSA 198:42.

IV. All eligible student accounts shall be held in institutions qualified by the school district.

V. The scholarship organization may remove any eligible student from the program for non-compliance with program eligibility requirements of RSA 194-G:2.

(a) The parent may appeal the decision of the scholarship organization to the superintendent.

(b) Any funds remaining in the account for that student shall revert to the school district.

VI. The scholarship organization may refer cases of fraudulent misuse of funds for investigation.

VII.(a) The scholarship organization may approve education service providers on its own initiative, at the request of parents, or by notice to the scholarship organization provided by prospective education service providers.

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1 (b) A prospective education service provider that wishes to receive payments from EFAs
2 shall:

3 (1) Submit notice to the scholarship organization that it wishes to receive payments
4 from EFAs.

5 (2) Agree not to refund, rebate, or share EFA funds with parents or EFA students in
6 any manner, except that funds may be remitted or refunded to an EFA in accordance with
7 procedures established by the scholarship organization.

8 VIII. Parents may make payments for the costs of educational programs and services not
9 covered by the funds in their accounts.

10 IX. A scholarship organization may receive and expend gifts, grants, and donations of any
11 kind from any public or private entity to carry out the purposes of this chapter.

12 194-G:7 Scholarship Organization: Requirements. A scholarship organization shall:

13 I. Develop and maintain agreement forms in cooperation with the superintendent.

14 II. Provide copies of agreements signed by parents of eligible students to the superintendent.

15 III. Comply with all federal and state laws regarding student privacy.

16 IV. Review all receipts for fees and services pursuant to 194-G:2, II.

17 V. Provide annual reports on the number of students participating in the program, the
18 providers of services to students, and the value of the program funds to the school district.

19 VI. Conduct an annual survey of parents of eligible students with accounts. The survey
20 shall include the number of years the parent has been in the program, the relative satisfaction of the
21 parent with the program, and suggestions of the parent for improvement. The survey shall be
22 included in the annual report.

23 VII. Conduct an annual audit of all accounts of eligible students.

24 194-G:8 Schools and Providers of Educational Services; Requirements.

25 I. Schools and educational service providers shall comply with all federal and state laws
26 regarding student privacy.

27 II. Schools and educational service providers shall furnish receipts for eligible services
28 pursuant to RSA 194-G:2, II to the parent.

29 III. The school district in which the eligible student resides shall provide a participating
30 school or educational service provider that has admitted an eligible student under this program with
31 a copy of the student's school records, while complying with the Family Educational Rights and
32 Privacy Act of 1974, 20 U.S.C. section 1232 (g), and state policies.

33 IV. Special education services to students in an EFA program under this chapter shall be at
34 a location that is at the discretion of the school district.

35 194-G:9 Responsibilities of Public Schools and School Districts. A public school, or school
36 district, that previously enrolled an EFA student shall provide a private school that is also an
37 education service provider and that has enrolled an EFA student with a complete copy of the ESA

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1 student's school records, in a timely manner, while complying with 20 U.S.C. section 1232g, the
2 Family Educational Rights and Privacy Act of 1974.

3 194-G:10 Legal Proceedings.

4 I. In any legal proceeding challenging the application of this chapter to an education service
5 provider, the state bears the burden of establishing that the law is necessary and does not impose
6 any undue burden on the education service provider.

7 II. No liability shall arise on the part of the scholarship organization or the state or of any
8 public school or school district based on the award of or use of an EFA pursuant to this chapter.

9 III. If any part of this chapter is challenged in a state court as violating either the state or
10 federal constitutions, parents of eligible and/or EFA students shall be permitted to intervene as of
11 right in such lawsuit for the purposes of defending the EFA program's constitutionality. However,
12 for the purposes of judicial administration, a court may require that all parents file a joint brief, so
13 long as they are not required to join any brief filed on behalf of any named defendant.

14 IV. If any provision of this chapter, or the application thereof to any person or
15 circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this
16 chapter which can be given effect without the invalid provision or application, and to this end the
17 provisions of this chapter are declared to be severable.

18 194-G:11 Rescission. If a school district that has adopted local education freedom account
19 accounts votes to rescind its action under RSA 197:3-b, IV, any parent of an eligible student who has
20 entered into a contract with a scholarship organization prior to the time of such rescission may
21 continue to receive grants as long as the eligible student is under the age of 20 years and has not
22 graduated from high school.

23 2 New Section; Method of Adopting Local Education Freedom Accounts. Amend RSA 197 by
24 inserting after section 3-a the following new section:

25 197:3-b Method of Adopting Local Education Freedom Accounts.

26 I. Upon the written application of 25 or more registered voters or 2 percent of the registered
27 voters in the school district, whichever is less, although in no event shall fewer than 10 registered
28 voters be sufficient, presented to the school board or one of them not later than the fifth Tuesday
29 before the day prescribed for an annual meeting, the school board shall insert in their warrant for
30 such meeting the petitioned article with only such minor textual changes as may be required. Such
31 corrections shall not in any way change the intended effect of the article as presented in the original
32 language of the petition. For the purposes of this section, the number of registered voters in a school
33 district shall be the number of voters registered prior to the last state general election. The right to
34 have an article inserted in the warrant conferred by this section shall not be invalidated by the
35 provisions of RSA 32. In school districts with fewer than 10,000 inhabitants upon the written
36 application of 50 or more voters or 1/4 of the voters in town, whichever is fewer, and in school
37 districts with 10,000 or more inhabitants upon the written application of 5 percent of the registered

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1 voters in the district, so presented not less than 60 days before the next annual meeting, the school
2 board shall warn a special meeting to act upon any question specified in such application. The
3 checklist for an annual or special school district meeting shall be corrected by the supervisors of the
4 checklist as provided in RSA 654:25-31. Those persons qualified to vote whose names are on the
5 corrected checklist shall be entitled to vote at the meeting. The same checklist used at a recessed
6 school district meeting shall be used at any reconvened session of the same school district meeting.
7 In no event shall a special school district meeting be held on the biennial election day.

8 II. The wording of the question shall be: "Shall we adopt the provisions of RSA 194-G to
9 allow the establishment of a local education freedom account program in (local school district)?"

10 III. If a 3/5 majority of those voting on the question vote "yes," RSA 194-G shall apply within
11 the school district at the annual or special meeting next following. Only votes in the affirmative or
12 negative shall be included in the calculation of the 3/5 majority.

13 IV. Any school district which has adopted RSA 194-G may consider rescinding its action in
14 the manner described in paragraphs I-III, except that the question shall be placed on the official
15 ballot. The wording of the question shall be: "Shall we rescind the provisions of RSA 194-G, as
16 adopted by the (local school district) on (date of adoption), so that a local education freedom account
17 program will no longer be used in the district?" A 3/5 majority of those voting on the question shall
18 be required to rescind the provisions of this chapter. Only votes in the affirmative or negative shall
19 be included in the calculation of the 3/5 majority.

20 3 Effective Date. This act shall take effect 60 days after its passage.

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2021-2250h

AMENDED ANALYSIS

This bill allows school districts to adopt a program for local education freedom accounts for a parent of an eligible student to receive a grant from a scholarship organization for qualifying educational expenses at a public school, chartered public school, nonpublic school, or program approved by the department of education.