

Rep. Heath, Hills. 41
Rep. K. Murray, Rock. 22
Rep. Luneau, Merr. 9
April 4, 2023
2023-1310h
05/10

Floor Amendment to HB 2-FN-A-LOCAL

1 Amend the bill by inserting after section 447 the following new sections and renumber the effective
2 date to be the last numbered section:

3
4 448 New Paragraph; Education Freedom Accounts; Definition; Commissioner. Amend RSA 194-
5 F:1 by inserting after paragraph I the following new paragraph:

6 I-a. "Commissioner" means the commissioner of the department of education.

7 449 Definition; EFA. Amend RSA 194-F:1, IV to read as follows:

8 IV. "Education freedom account" or "EFA" means the account to which funds are allocated
9 by the ~~[scholarship organization]~~ **department** to the parent of an EFA student in order to pay for
10 qualifying education expenses to educate the EFA student under this chapter.

11 450 Education Freedom Accounts; Definition; Eligible Student. Amend RSA 194-F:1, VI to read
12 as follows:

13 VI. "Eligible student" means a resident of this state who is eligible to enroll in a public
14 elementary or secondary school and whose annual household income at the time the student applies
15 for the program, **and for each school year during the student's participation**, is less than or
16 equal to 300 percent of the federal poverty guidelines as updated annually in the Federal Register by
17 the United States Department of Health and Human Services under 42 U.S.C. section 9902(2). ~~[No~~
18 ~~income threshold need be met in subsequent years, provided the student otherwise qualifies.]~~
19 Students in the special school district within the department of corrections established in RSA
20 194:60 shall not be eligible students.

21 451 Definition; State Board. RSA 194-F:1, XII is repealed and reenacted to read as follows:

22 XII. "State board" means the state board of education.

23 452 Program; Funds Transfer. Amend RSA 194-F:2, I to read as follows:

24 I. The commissioner of the department of education shall transfer to the ~~[scholarship~~
25 ~~organization]~~ **student's EFA** the per pupil adequate education grant amount under RSA 198:40-a,
26 plus any differentiated aid that would have been provided to a public school for that eligible student.
27 The transfers shall be made in accordance with the distribution of adequate education grants under
28 RSA 198:42.

29 453 Qualifying Expenses. Amend RSA 194-F:2, II(o) to read as follows:

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(o) Any other educational expense approved by the ~~[scholarship organization]~~ **state board.**

454 Unused Funds. Amend RSA 194-F:2, VII to read as follows:

VII. An EFA shall remain in force, and any unused funds shall roll over from quarter-to-quarter ~~[and from year-to-year]~~ until the parent withdraws the EFA student from the EFA program, ***the student becomes ineligible***, or until the EFA student graduates from high school, unless the EFA is closed because of a substantial misuse of funds. Any unused funds shall revert to the education trust fund established in RSA 198:39 ~~[and be allocated to fund other EFAs]~~. ***Unused funds that roll over from year-to-year may not exceed the amount of one quarterly distribution into the student's EFA and any excess year-to-year roll over funds shall be returned to the education trust fund.***

455 Education Freedom Accounts. Amend RSA 194-F:3 to read as follows:

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

I. A parent may apply to the ~~[scholarship organization]~~ **department** to establish an EFA for an eligible student. The ~~[scholarship organization]~~ **department** shall accept and approve applications for the fall and spring semesters each year and shall establish procedures for approving applications in an expeditious manner.

II. The ~~[scholarship organization]~~ **department** 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]~~ **department** 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]~~ **department.**

(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]~~ **department:**

(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 ***to the department*** 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~~

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~~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)~~] **(B)** 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 currently teaching in a nonpublic school, who is selected by the parent, evaluate the
student's educational progress upon review of a portfolio and discussion with the parent or student.

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

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

IV. The signed agreement between the parent and the [~~scholarship organization~~]
department shall satisfy the compulsory school attendance requirements of RSA 193:1.

V. The [~~scholarship organization~~] **department** shall annually renew a student's EFA if
funds are available.

VI. Upon notice to the [~~scholarship organization~~] **department**, an EFA student may choose
to stop receiving EFA funding and enroll full-time in a public school.

(a) Enrolling as a full-time student in the resident district public school shall result in
the immediate suspension of payment of additional funds into the student's EFA, **termination of
the EFA, and the transfer of any remaining funds by the department back to the education
trust fund.** [~~However, an EFA that has been open for at least one full school year shall remain open
and active for the parent to make qualifying expenditures to educate the student from funds
remaining in the EFA. When no funds remain in the student's EFA, the scholarship organization
may close the EFA.~~]

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

456 Authority and Responsibilities of the Department. Amend RSA 194-F:4 to read as follows:

194-F:4 Authority and Responsibilities of the [~~Scholarship Organization~~] **Department**. The
[~~scholarship organization~~] **department** shall have the following additional duties, obligations, and
authority:

I. The [~~scholarship organization~~] **department** shall maintain an updated list of education
service providers and shall ensure that the list is publicly available through various sources,
including the [~~Internet~~] **department's website**.

II. The [~~scholarship organization~~] **department** shall provide parents with a written
explanation of the allowable uses of EFA funds, the responsibilities of parents, the duties of the

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1 ~~[scholarship organization]~~ **department**, and the role of any financial management firms that the
2 ~~[scholarship organization]~~ **department** may contract with to administer any aspect of the EFA
3 program.

4 III. The ~~[scholarship organization]~~ **department** shall ensure that parents of students with
5 disabilities receive notice that participation in the EFA program is a parental placement under 20
6 U.S.C. section 1412, Individuals with Disabilities Education Act (IDEA), along with an explanation
7 of the rights that parentally placed students possess under IDEA and any applicable state laws.

8 IV. The ~~[scholarship organization]~~ **department** shall~~[, in cooperation with the department,]~~
9 determine eligibility for differentiated aid subject to any applicable state and federal laws.

10 ~~[V. The scholarship organization may withhold from deposits or deduct from EFAs an~~
11 ~~amount to cover the costs of administering the EFA program, up to a maximum of 10 percent~~
12 ~~annually.]~~

13 ~~[VI.]~~ V. The ~~[scholarship organization]~~ **department** shall implement a commercially viable
14 system for payment of services from EFAs to education service providers by electronic or online
15 funds transfer.

16 (a) The ~~[scholarship organization]~~ **department** shall not adopt a system that relies
17 exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall
18 provide maximum flexibility to parents by facilitating direct payments to education service
19 providers. ~~[Scholarship organizations]~~ **The department** may pre-approve requests for
20 reimbursements for qualifying expenses, including expenses pursuant to RSA 194-F:2, II, but shall
21 not disperse funds to parents without receipt that such pre-approved purchase has been made.

22 (b) ~~[A scholarship organization]~~ **The department** may contract with a private
23 institution or organization to develop the payment system.

24 ~~[VII.]~~ VI. The ~~[scholarship organization]~~ **department** may also seek to implement a
25 commercially viable system for parents to publicly rate, review, and share information about
26 education service providers, ideally as part of the same system that facilitates the electronic or
27 online funds transfers.

28 ~~[VIII.]~~ VII. If an education service provider requires partial payment of tuition or fees prior
29 to the start of the academic year to reserve space for an EFA student admitted to the education
30 service provider, such partial payment may be paid by the ~~[scholarship organization]~~ **department**, if
31 funds are available, prior to the start of the school year in which the EFA is awarded and deducted
32 in an equitable manner from subsequent quarterly EFA deposits to ensure adequate funds remain
33 available throughout the school year; but if an EFA student decides not to use the education service
34 provider, the partial reservation payment shall be returned to the ~~[scholarship organization]~~
35 **department** by such education service provider and credited to the student's EFA.

36 ~~[IX.]~~ VIII. The ~~[scholarship organization]~~ **department** shall continue making deposits into
37 a student's EFA until:

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1 (a) The ~~[scholarship organization]~~ **department** determines that the EFA student is no
2 longer an eligible student.

3 (b) The ~~[scholarship organization]~~ **department** determines that there was substantial
4 misuse of the funds in the EFA.

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

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

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

8 ~~[X.] IX.~~ The ~~[scholarship organization]~~ **department** may conduct or contract for the
9 auditing of individual EFAs, and shall at a minimum conduct random audits of EFAs on an annual
10 basis.

11 ~~[XI.] X.~~ The ~~[scholarship organization]~~ **department** may make any parent or EFA student
12 ineligible for the EFA program in the event of intentional and substantial misuse of EFA funds.

13 (a) The ~~[scholarship organization]~~ **department** shall create procedures to ensure that a
14 fair process exists to determine whether an intentional and substantial misuse of EFA funds has
15 occurred.

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

19 (c) The ~~[scholarship organization may]~~ **department shall** refer suspected cases of
20 ~~[intentional and]~~ substantial misuse of EFA funds to the attorney general for investigation ~~[if~~
21 ~~evidence of fraudulent use of EFA funds is obtained]~~.

22 (d) A parent or EFA student may appeal the ~~[scholarship organization's]~~ **department's**
23 decision to deny eligibility for the EFA program to the ~~[department]~~ **state board**.

24 ~~[XII.] XI.~~ The ~~[scholarship organization]~~ **department** may bar an education service provider
25 from accepting payments from EFAs if the ~~[scholarship organization]~~ **department**
26 determines that the education service provider has:

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

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

30 ~~[XIII.] XII.~~ The ~~[scholarship organization]~~ **department** shall create procedures to ensure
31 that a fair process exists to determine whether an education service provider may be barred from
32 receiving payments from EFAs.

33 (a) If the ~~[scholarship organization]~~ **department** bars an education service provider
34 from receiving payments from EFAs, it shall notify parents and EFA students of its decision as
35 quickly as possible.

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(b) Education service providers may appeal the ~~[scholarship organization's]~~ **department's** decision to bar them from receiving payments from the EFA to the ~~[department]~~ **state board**.

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

~~XV.]~~ **XIII.** The department shall adopt rules that are necessary for the administration of this chapter.

~~[XVI. The scholarship organization shall adopt policies or procedures that are necessary for the administration of this chapter.]~~ This may include **rules for** policies or procedures:

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

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

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

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

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

~~[XVII.]~~ **XIV.** The ~~[scholarship organization]~~ **department** shall not exclude, discriminate against, or otherwise disadvantage any education provider with respect to programs or services under this section based in whole or in part on the provider's religious character or affiliation, including religiously based or mission-based policies or practices.

457 Advisory Commission. Amend RSA 194-F:5 to read as follows:

194-F:5 Parent and Education Service Provider Advisory Commission.

I. There is established the parent and education service provider advisory commission to assist the ~~[scholarship organization]~~ **department** by providing recommendations about implementing, administering, and improving the EFA program.

II. The commission shall consist of 7 members who shall be parents of EFA students or education service providers and shall represent no fewer than 4 counties in the state. The members shall be appointed by the ~~[director of the scholarship organization]~~ **commissioner** and serve at the ~~[director's]~~ **commissioner's** pleasure for one calendar year after which they may be reappointed. ~~[The director of the scholarship organization, or designee, shall serve as a non-voting chairperson of the commission.]~~ The commissioner of the department of education, or designee, shall serve as a non-voting member of the commission.

III. The ~~[scholarship organization]~~ **department** may request the commission to meet, in person or virtually, to review appeals of education service provider denials pursuant to RSA 194-F:4, ~~[XI]~~ **X** and to provide a recommendation to the ~~[scholarship organization]~~ **department** as to whether

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1 an education service provider should be allowed to receive, or continue receiving, payments from
2 EFAs.

3 458 Education Service Providers. Amend RSA 194-F:6 to read as follows:

4 194-F:6 Requirements for Education Service Providers.

5 I. The ~~[scholarship organization]~~ **department** may approve education service providers on
6 its own initiative, at the request of parents, or by notice to the ~~[scholarship organization]~~
7 **department** provided by prospective education service providers.

8 II. A prospective education service provider that wishes to receive payments from EFAs
9 shall:

10 (a) Submit notice to the ~~[scholarship organization]~~ **department** that it wishes to receive
11 payments from EFAs.

12 (b) Agree not to refund, rebate, or share EFA funds with parents or EFA students in any
13 manner, except that funds may be remitted or refunded to an EFA in accordance with procedures
14 established by the ~~[scholarship organization]~~ **department**.

15 (c) Comply with all state and federal anti-discrimination laws.

16 459 Liability. Amend RSA 194-F:9, II to read as follows:

17 II. No liability shall arise on the part of the ~~[scholarship organization]~~ **department** or the
18 state or of any public school or school district based on the award of or use of an EFA pursuant to
19 this chapter.

20 460 Education Freedom Accounts Program; Funding. Amend RSA 194-F:11 to read as follows:

21 194-F:11 Appropriation From Education Trust Fund. The ~~[amount necessary]~~ **amounts** to fund
22 ~~[any]~~ grants or transfers of funds authorized under this chapter ~~[is hereby appropriated to the~~
23 ~~department from the education trust fund created under RSA 198:39. The governor is authorized to~~
24 ~~draw a warrant from the education trust fund to satisfy the state's obligation under this section.~~
25 ~~Such warrant for payment shall be issued regardless of the balance of funds available in the~~
26 ~~education trust fund. If the balance in the education trust fund, after the issuance of any such~~
27 ~~warrant, is less than zero, the comptroller shall transfer sufficient funds from the general fund to~~
28 ~~eliminate such deficit. The commissioner of the department of administrative services shall inform~~
29 ~~the fiscal committee and the governor and council of such balance. This reporting shall not in any~~
30 ~~way prohibit or delay the distribution of any grant or transfer of funds authorized under this~~
31 ~~chapter]~~ **shall be made from funds appropriated in the biennial state operating budget for**
32 **such purposes. Payments under this chapter shall not exceed the amounts appropriated**
33 **for such purposes in the biennial state operating budget.**

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AMENDED ANALYSIS

Add:

139. Changes the administration of the education freedom account program under RSA 194-F from scholarship organizations to the department of education; requires annual determination of eligibility for awarding of education freedom account funds; and limits the amounts of funds appropriated from the education trust fund to the education freedom account program to budgeted sums.