

HB 538-FN - AS INTRODUCED

2023 SESSION

23-0046

10/04

HOUSE BILL ***538-FN***

AN ACT establishing a local education freedom account program.

SPONSORS: Rep. Verville, Rock. 2; Rep. Hill, Merr. 2

COMMITTEE: Education

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.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT establishing a local education freedom account program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

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

3 CHAPTER 194-G

4 LOCAL EDUCATION FREEDOM ACCOUNTS

5 194-G:1 Definitions. In this chapter:

- 6 I. "Adequate education grant" means the grant calculated under RSA 198:41.
- 7 II. "Curriculum" means the lessons and academic content taught in a specific course,
8 program, or grade level.
- 9 III. "Department" means the department of education.
- 10 IV. "Education freedom account" or "EFA" means the account to which funds are allocated
11 by the scholarship organization to the parent of an EFA student in order to pay for qualifying
12 education expenses to educate the EFA student under this chapter.
- 13 V. "Education service provider" means a person or organization that receives payments from
14 education freedom accounts to provide educational goods and services to EFA students.
- 15 VI. "Eligible student" means a resident of a school district that adopts the provisions of this
16 chapter, who is at least 5 years of age and not more than 20 years of age, who has not graduated
17 from high school and is:
 - 18 (a) Currently attending a New Hampshire public school, including a chartered public
19 school; or
 - 20 (b) A kindergarten student; or
 - 21 (c) Receiving home education pursuant to RSA 193-A.
- 22 VII. "EFA student" means an eligible student who is participating in the EFA program.
23 An EFA student participating under this chapter shall be counted in the average daily membership
24 in residence of their school district.
- 25 VIII. "Full-time" means more than 50 percent of instructional time.
- 26 IX. "Remote or hybrid" shall mean any public school that is not providing instruction in
27 person where the student or the educator are both not physically present in the traditional
28 classroom due to full-time or part-time classroom closure.
- 29 X. "Parent" means a biological or adoptive parent, legal guardian, custodian, or other person
30 with legal authority to act on behalf of an EFA student.
- 31 XI. "Program" means the education freedom account program established in this chapter.

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

3 194-G:2 Program Eligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 X. The resident school district shall receive funding for EFA students pursuant to RSA
7 198:40-a.

8 194-G:3 Application for an Education Freedom Account.

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

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

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

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

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

19 (c) Funds are available for the EFA.

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

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

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

27 (3) To provide an annual record of educational attainment by having the student
28 take the statewide student assessment test pursuant to RSA 193-C:6.

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

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

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

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

35 VI. Upon notice to the scholarship organization, an EFA student may choose to stop
36 receiving EFA funding and enroll full-time in a public school. A new EFA may be established if the
37 student's EFA was closed.

1 194-G:4 Authority and Responsibilities of the Scholarship Organization. The scholarship
2 organization shall have the following additional duties, obligations, and authority:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (a) The scholarship organization shall create procedures to ensure that a fair process
15 exists to determine whether an intentional and substantial misuse of EFA funds has 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 refer suspected cases of intentional and
20 substantial misuse of EFA funds to the attorney general for investigation if evidence of fraudulent
21 use of EFA funds is obtained.

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

24 XI. The scholarship organization may bar an education service provider from accepting
25 payments from EFAs if the scholarship organization determines that the education service provider
26 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 XII. The scholarship organization shall create procedures to ensure that a fair process exists
31 to determine whether an education service provider may be barred from receiving payments from
32 EFAs.

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

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

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

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

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

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

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

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

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

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

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

19 194-G:5 Computation of Local Education Funds.

20 I. The local education freedom account shall be funded by the local district at an original
21 amount equal to twice the per pupil adequate education grant amount under RSA 198:40-a, plus any
22 differentiated aid that would have been provided to a public school for that eligible student.

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

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

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

32 194-G:6 Program Funding and Payment.

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

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

1 III. In exchange for the parent's agreement pursuant to RSA 194-G:2, the superintendent
2 shall transfer funding to the eligible student's account established by the scholarship organization.
3 The transfers shall be made quarterly at the same time as state grants are distributed under RSA
4 198:42.

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

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

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

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

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

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

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

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

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

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

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

28 194-G:7 Scholarship Organization: Requirements. A scholarship organization shall:

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

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

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

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

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

35 VI. Conduct an annual survey of parents of eligible students with accounts. The survey
36 shall include the number of years the parent has been in the program, the relative satisfaction of the

1 parent with the program, and suggestions of the parent for improvement. The survey shall be
2 included in the annual report.

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

4 194-G:8 Schools and Providers of Educational Services; Requirements.

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

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

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

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

15 194-G:9 Responsibilities of Public Schools and School Districts. A public school, or school
16 district, that previously enrolled an EFA student shall provide a private school that is also an
17 education service provider and that has enrolled an EFA student with a complete copy of the ESA
18 student's school records, in a timely manner, while complying with 20 U.S.C. section 1232g, the
19 Family Educational Rights and Privacy Act of 1974.

20 194-G:10 Legal Proceedings.

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

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

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

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

35 194-G:11 Rescission. If a school district that has adopted local education freedom account
36 accounts votes to rescind its action under RSA 197:3-b, IV, any parent of an eligible student who has
37 entered into a contract with a scholarship organization prior to the time of such rescission may

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1 continue to receive grants as long as the eligible student is under the age of 20 years and has not
2 graduated from high school.

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

5 197:3-b Method of Adopting Local Education Freedom Accounts.

6 I. Upon the written application of 25 or more registered voters or 2 percent of the registered
7 voters in the school district, whichever is less, although in no event shall fewer than 10 registered
8 voters be sufficient, presented to the school board or one of them not later than the fifth Tuesday
9 before the day prescribed for an annual meeting, the school board shall insert in their warrant for
10 such meeting the petitioned article with only such minor textual changes as may be required. Such
11 corrections shall not in any way change the intended effect of the article as presented in the original
12 language of the petition. For the purposes of this section, the number of registered voters in a school
13 district shall be the number of voters registered prior to the last state general election. The right to
14 have an article inserted in the warrant conferred by this section shall not be invalidated by the
15 provisions of RSA 32. In school districts with fewer than 10,000 inhabitants upon the written
16 application of 50 or more voters or 1/4 of the voters in town, whichever is fewer, and in school
17 districts with 10,000 or more inhabitants upon the written application of 5 percent of the registered
18 voters in the district, so presented not less than 60 days before the next annual meeting, the school
19 board shall warn a special meeting to act upon any question specified in such application. The
20 checklist for an annual or special school district meeting shall be corrected by the supervisors of the
21 checklist as provided in RSA 654:25-31. Those persons qualified to vote whose names are on the
22 corrected checklist shall be entitled to vote at the meeting. The same checklist used at a recessed
23 school district meeting shall be used at any reconvened session of the same school district meeting.
24 In no event shall a special school district meeting be held on the biennial election day.

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

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

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

37 3 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0046
1/9/23

**HB 538-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT establishing a local education freedom account program.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, **as introduced**, as it is awaiting information from the Department of Education. The Department was initially contacted on 10/03/22 and most recently contacted on 12/06/22. When completed, the fiscal note will be forwarded to the House Clerk's Office.

AGENCIES CONTACTED:

Department of Education