

HOUSE REPUBLICAN STAFF ANALYSIS

Bill: HF 68/HSB 1	House Committee: PASSED on 1/18 (3/2)
Committee: Education Reform	House Floor: PASSED on 1/23 (55-45)
Floor Manager Representative Wills	Senate Floor: PASSED on 1/23 (31-18)
Date: January 18, 2023	Governor: SIGNED on 1/24
Staff: Kristin Rozeboom (1-3015)	

Students First Act

- Provide an ESA that is equal to the regular program state cost per pupil for the same school budget year.
 - SY 23-24: all current public-school students, incoming kindergarteners, and current nonpublic school families whose household income is at or below 300% FPL
 - SY 24-25: all current public-school students, incoming kindergarteners, and current nonpublic school families whose household income is at or below 400% FPL
 - SY 25 and beyond: all public and nonpublic school students are eligible
- An ESA can only be used for qualified educational expenses as spelled out in the bill.
- Nonpublic schools who accept ESA funds will be given the maximum freedom possible to provide for the educational needs of the school's students.
- Eligible students will take the state achievement tests and the results sent to the Dept. of Ed.
- The Dept. of Ed. will collect data that tracks student graduation and outcomes.
- Students in nonpublic schools that receive an ESA will be counted in a public-school district's enrollment and generate funding for Teacher Salary Supplement, Professional Development Supplement, Early Intervention Supplement, and Teacher Leadership Supplement.
- Flexibility for school districts on how they use Teacher Leadership money, Teacher Salary Supplement money, professional development money, and Talented and Gifted money.

Section by Section Analysis

Division I: Short Title

Section 1. Title

This act shall be cited as the "Students First Act."

Division II: Education Savings Account Program

Section 2. Section 256.9 New Subsection

Adopt rules relating to the Education Savings Account Program including application processing timelines and information required to be submitted by a parent/guardian.

Section 3. Section 257.10(9)(c)(1)

The Teacher Salary Supplement (TSS) formula is amended to say that it will be district cost per pupil for each school district multiplied by the sum of the budget enrollment PLUS the number of resident pupils in the school district that received an education savings account (ESA) payment.

Section 4. Section 157.10(10)(c)(1)

The Professional Development (PD) supplement formula is amended to state that it will be the district cost per pupil multiplied by the sum of the budget enrollment PLUS the number of resident pupils in the school district that received an ESA payment.

Section 5. Section 257.10(11)(c)(1)

The Early Intervention Supplement formula is amended to state that it will be the district cost per pupil multiplied by the sum of the budget enrollment PLUS the number of resident pupils in the school district that received an ESA payment.

Section 6. Section 257.10(12)(c)(1)

The Teacher Leadership Supplement is amended to state that it will be the district cost per pupil multiplied by the sum of the budget enrollment PLUS the number of resident pupils in the school district that received an ESA payment.

Section 7. Section 257.11B Education Savings Account Program—New Section

“Nonpublic school” means those nonpublic schools accredited by the department of education and nonpublic institutions which comply with state board of education standards for providing special education programs.

“Qualified educational expenses” includes tuition and fees at a nonpublic schools, textbooks, fees or payments for educational therapies, including tutoring or cognitive skills training, curriculum fees, software, and materials for a course of study for a specific subject matter or grade level, tuition or fees for a nonpublic online education program, tuition for vocational and life skills education approved by the Dept. of Ed., education materials and services for pupils with disabilities from an accredited provider, including the cost of paraprofessionals and assistants who are trained in accordance with state law, standardized test fees, and advanced placement exams or exams related to postsecondary education admission or credentialing.

- Qualified educational expenses are limited to those listed above and rules adopted by the department of education and does not include transportation costs for the pupil, the cost of food or refreshments consumed by the pupil, the cost of clothing for the pupil, or the cost of disposable materials. (i.e. paper, notebooks, pencils, pens, and art supplies.)

“Resident” means the same as code section 282.1(2)

Eligibility:

For the school budget year beginning July 1, 2023, the following pupils who attend nonpublic school for that school budget year shall be eligible to receive an ESA:

- A resident pupil who is eligible to enroll in kindergarten.

- A resident pupil who is eligible to enroll in grades 1-12 and was not enrolled in a nonpublic school for the school year immediately preceding the year for which the ESA is requested.
- A resident pupil who is eligible to enroll in grades 1-12 and was enrolled in a nonpublic school year immediately preceding the school year for which the ESA is requested if the pupil's household income has an annual income less than or equal to 300% FPL.

For the school budget year beginning July 1, 2024, the following pupils who attend a nonpublic school for that school budget year shall be eligible for an ESA:

- A resident pupil who is eligible to enroll in kindergarten.
- A resident pupil who is eligible to enroll in grades 1-12 and was not enrolled in a nonpublic school for the school year immediately preceding the year for which the ESA is requested.
- A resident pupil who is eligible to enroll in grades 1-12 and was enrolled in a nonpublic school year immediately preceding the school year for which the ESA is requested if the pupil's household income has an annual income less than or equal to 400% FPL.
- A resident pupil who received an ESA in the immediately preceding school budget year.

For the school budget years beginning on or after July 1, 2025, resident pupils eligible to enroll in kindergarten through grade 12 who attend a nonpublic school for the applicable school budget year shall be eligible to receive an ESA.

ESA payments shall be made available to parents and guardians in the manner authorized for the payment of qualified educational expenses.

On or after January 1, but on or before June 30, preceding the school year for which the ESA is requested, the parent/guardian of an eligible pupil may request an ESA by submitting an application to the Dept. of Ed.

Within 30 days following submission of an application, the Dept. of Ed, or a third party entity shall notify the parent/guardian of each pupil approved for the following school year and specify the amount of the ESA, if known at the time of notice. As soon as practical following the processing of all applications, the Dept. of Ed or a third-party entity shall determine the number of pupils in each school district approved for the school budget year and provide that information to the Dept. of Management.

ESA payments shall only be approved for one school year and applications must be submitted annually.

Each ESA payment shall be equal to the regular program state cost per pupil for the same school budget year.

An ESA fund is created in the state treasury under the control of the department of education consisting of moneys appropriated to the department of education for the purpose of providing ESAs. For FY beginning July 1, 2023 and each succeeding fiscal year, there is appropriated from the general fund of the Dept. of Ed. to be credited to the fund the amount necessary to pay all ESA payments approved for that fiscal year.

The director of the department of education has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this section pertaining to the fund, including the power to do the following:

- Make and enter into contracts with a third-party entity necessary for the administration of the program.
- Procure insurance against any loss in connection with the assets of the fund or require a surety bond.
- Contract with a qualified firm, including but not limited to the third-party entity to allocate funds from each pupil's account for the payment of qualified expenses.
- Require the qualified firm to offer the Dept. of Ed. the capability of automated clearinghouse transactions, electronic commerce transactions, reimbursement transactions, and debit card payments. The director of the department of education shall determine which transaction capabilities will be available to participating parents/guardians.

- Reduce the possibility of waste, fraud, and abuse, and ensure any technology used meets the state's highest security requirements.
- Conduct audits or other reviews necessary
- Adopt rules for the administration of the fund and accounts within the fund.

For each pupil approved for an ESA, the Dept. of Ed. or a third-party entity shall establish an individual account for that pupil. The amount shall be deposited on July 15 or 30 days following the submission of the application, whichever is later. The amount shall be immediately available for the payment of qualified educational expenses.

A nonpublic school or other provider of qualified educational expenses that accepts payment from a parent/guardian shall not refund, rebate, or share any portion of payment with the parent, guardian, or pupil.

Moneys remaining in the account upon conclusion of the fiscal year shall remain in the account for future qualified educational expenses or until the pupil becomes ineligible at which time the remaining amount is transferred to the state general fund.

A person who makes a false claim or knowingly receives the payment or makes a payment from an account without being legally entitled to do so is guilty of fraudulent practice. The false claim for an ESA is disallowed. The Dept. of Ed. or third-party entity shall also close the pupil's individual account and transfer any remaining funds to the general fund. If the improperly obtained amounts have been disbursed, the amount is recoverable, including using legal proceedings if necessary. A parent/guardian who commits fraud is prohibited from participating in the ESA program in the future.

Moneys remaining in the account when the pupil graduates from high school or turns 20 years of age, whichever occurs first, shall be transferred by the Dept. of Ed. to the general fund.

A parent may appeal to the State Board of Education any administrative decision the Dept. of Ed. or third-party entity makes pursuant to this section, including determinations of eligibility, allowable expenses, and removal from the program. The Dept. or third-party entity shall notify the parent/guardian in writing of the appeals process at the same time the Department of Ed. notifies the parent/guardian of the administrative decision.

The State Board of Education shall establish the appeals process and shall post such appeal process information on their website.

The State Board of Education shall refer cases of substantial misuse of ESA funds to the attorney general if the State Board obtains evidence of fraudulent use of an account.

This section shall not be construed to authorize the state or any political subdivision to exercise authority over any nonpublic school to modify its academic standards for admission or educational program in order to receive payment.

This shall not be construed to expand the authority of the state or any political subdivision of the state to impose regulations upon any nonpublic school that are not necessary to implement this section.

A nonpublic school that accepts payment from an ESA account is not an agent of this state or of a political subdivision of this state.

Rules adopted by the Dept. of Ed. to implement this section that impose an undue burden on a nonpublic school are invalid.

A nonpublic school that accepts payment from an ESA shall be given the maximum freedom possible to provide for the educational needs of the school's students, consistent with state and federal law.

Each pupil participating in the ESA program is required to take all applicable state and federally required student assessments and the results of those assessments shall be provided to the pupil's parents/guardians and reported to the Dept. of Ed.

The Dept. of Ed. shall compile all assessment results to analyze student proficiency and academic progress among pupils participating in the program. This includes graduation rates, proficiency, and progress based on grade level, gender, race, and household income level. The results shall be included in the annual Condition of Education report.

Section 8. Section 422.7 New Subsection

In the "net income—how computed" Code section, Subtract the amount of an ESA payment under Code section 257.11B received by the taxpayer for payment of qualified educational expenses.

Section 9. Emergency Rules

The Dept. of Ed. may adopt emergency rules to implement the provisions of the sections on ESAs.

Section 10. Effective Date

Takes effect upon enactment.

Section 11. Retroactive Applicability

The section enacting 422.7(44) applies retroactively to tax years beginning on or after January 1, 2023.

Division III. School District Categorical Funding

Section 12. Section 257.10(9)(d)

Professional development supplement funds, teacher leadership supplement funds, and talented and gifted program funds may be used for teacher salary supplements.

Section 13. Section 257.10(10)(d)

For professional development supplement funds, at the end of the fiscal year beginning on or after July 1, 2022, the school district may use all or a portion of funds for teacher salary supplement.

Section 14. Section 257.10(12)(d)

For teacher leadership supplement funds, at the end of fiscal year beginning on or after July 1, 2022, the school district may use all or a portion of funds for teacher salary supplement. Districts shall not be required to participate in or comply with TLC requirements in order to continue to receive funding.

Section 15. Section 257.11(5)—Shared operational functions—increased student opportunities—budget years beginning in 2014 through 2034

Moves shared operational funding out to 2034.

Section 16. Section 257.46(3)

For funds in a district's talented and gifted program, at the end of a fiscal year beginning on or after July 1, 2022, the district may use all or a portion of funds for teacher salary supplement.

Section 17. Section 284.15(7)

Strikes language relating to TLC program to reflect above changes.

Section 18. Effective Date

Takes effect upon enactment.