

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 83**

As Agreed to April 6, 2023

**Brief\***

House Sub. for SB 83 would create the Kansas Education Enrichment Program (KEEP), which would provide for awards or grants for qualified students and establish the Kansas Education Enrichment Program Fund.

The bill would also appropriate Special Education State Aid totaling \$592.7 million, including \$520.5 million from the State General Fund (SGF) and \$72.4 million from federal American Rescue Plan Act (ARPA) funds for FY 2024 and create a task force for special education topics.

***Appropriations for the Kansas State Department of Education; Task Force (Section 1)***

The bill would appropriate \$592.7 million, including \$520.5 million State General Fund (SGF) and \$72.4 million ARPA funds, to the Kansas State Department of Education (KSDE) for special education services in FY 2024.

The bill would also provide for creation of the Special Education and Related Services Task Force (Task Force) for FY 2024; the Task Force would be required to study and make recommendations for changes in the existing state funding formula for special education and related services.

*Organization of Task Force*

**Membership.** The Task Force would consist of the following 11 members:

- Two members to be appointed by the Speaker of the House;
- Two members to be appointed by the President of the Senate;
- One member to be appointed by the Minority Leader of the House;
- One member to be appointed by the Minority Leader of the Senate;

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- One member to be appointed by the State Board of Education;
- Three members to be appointed by KSDE including two members who are professionals in the field of special education and related services, and one professional in early childhood development and provides services for a tiny-K program; and
- One member who is a parent of a student who receives special education services. The appointment would be for one year and alternate between the Speaker of the House and the President of the Senate.

**Task force leadership.** Under the bill, the Speaker of the House would designate one of the Speaker's appointments to call the first meeting of the Task Force.

### *Compensation*

The bill would provide that Task Force members attending meetings authorized by the Task Force would receive compensation, subsistence allowances, and mileage, and other expenses as provided under KSA 75-3223.

### ***Transfers (Sections 2-3)***

The bill would specifically authorize the transfer of \$25.4 million from the Legislative Employment Security Fund of the Legislative Coordinating Council to the Special Education and Related Services Aid ARPA Fund in the KSDE. The bill would also provide for the transfer of \$47.0 million from the American Rescue Plan – State Fiscal Relief Federal Fund (Governor's Office, expenditures and obligations for learning loss programming) to the Special Education and Related Services Aid ARPA Fund in the KSDE. [Note: Additional SGF transfer provisions are included in section 9 of this bill.]

### ***Kansas Education Enrichment Program; Awards and Grants for Qualified Students (Sections 4-10)***

#### *Act and Program Definitions (Section 4)*

The bill would create the Kansas Education and Enrichment Program Act, establish the Kansas Education Enrichment Program (KEEP or program), and provide definitions for terms including, but not limited to, the following:

- "Award" would mean a KEEP award provided to a qualified student who attends a public school;
- "Grant" would mean a KEEP grant established in an account on behalf of a qualified student who attends a non-public school;
- "Parent" would mean a Kansas resident who is the parent, stepparent, legal guardian, custodian, or other person with authority to act on behalf of a qualified student;

- “Qualified education service provider” would mean any business, organization, or individual that provides educational goods or services that are authorized for purchase or reimbursement under the program and includes any school located in Kansas that is either a non-public preschool, elementary, or secondary school that has been approved to participate; and
- “Qualified student” would mean a Kansas resident who is enrolled and attending kindergarten or grades 1 through 12 in a public or non-public elementary or secondary school in the state; and
  - Has a household family income of 250 percent or less of the Federal Poverty Level;
  - Attended, in the previous year, a school building in a school district that has since been closed by the district and has to travel 15 miles or more from the students residence to attend the new assigned school; or
  - Has previously received a grant and entered a written agreement to receive a subsequent grant.

The bill would also establish definitions for the terms “BASE Aid,” “immediate family member,” “program,” “school district,” and “treasurer.”

*KEEP Administration; Transfer (Section 5)*

The bill would provide the program to be a continuation and supplement to the existing KEEP and require the State Treasurer (termed “Treasurer” in the KEEP Act) to administer the program. On July 1, 2023, all aspects of KEEP approved by the State Finance Council resolution 22-741 would transfer to the Office of the State Treasurer. This would include maintaining all the terms and conditions of any existing contracts that were executed prior to the transfer.

[*Note:* Resolution 22-741 authorizes the approval of the request of the SPARK Executive Committee to approve the allocation of State Fiscal Recovery Fund (SFRF) funding for economic revitalization, health and education, and connectivity, and the Kansas Board of Regents expenditures from the Governor’s Emergency Education Relief (GEER) II funds. Among the authorized funding is \$50.0 million in health and education to assist students with learning and recovery and is designed to provide a menu of options for the highest need students to support their educational success.]

The KEEP would provide for two options for qualified students:

- \$1,000 for those who would enroll in a public elementary or secondary school to be used for purchases from a qualified education service provider; and
- 95 percent of Base Aid for Student Excellence (BASE) for those who will enroll in a non-public elementary or secondary school to be used for purchases from a qualified education service provider.

The bill would also make four findings regarding the purpose of the KEEP Act.

### *Powers and Duties of the Treasurer (Section 6)*

The bill would detail additional oversight and administrative duties of the Treasurer, including accepting applications throughout the year, enrolling qualified students, and notifying parents of completed forms. The bill would require the Treasurer to maintain on the Treasurer's website and provide an electronic or hard copy to the parent of a qualifying student prior to any expenditures from the account established for the qualified student, a list of the following:

- Allowable expenditures;
- Responsibilities for the qualifying student's parents; and
- Impact of a qualifying student participating with an individualized education program (IEP) or a plan under section 504 of the federal Rehabilitation Act of 1973.

The bill would prohibit the Treasurer from disclosing any qualified student's personal information without the written permission of the student's parent for each disclosure. The Treasurer would be required to conduct or contract to conduct financial audits of the use of account moneys and could adopt rules and regulations for the administration and implementation of KEEP.

### *Program Enrollment; Qualified Students and Awards Criteria (Section 7)*

To receive a \$1,000 award, the bill would require the parent of the qualifying student who will enroll in a public elementary or secondary school to apply on a form and in the manner prescribed by the Treasurer. The written agreement would state that the one-time award would be used to pay for goods and services from a qualified education service provider. A qualified student may not receive a grant in the same year that an award was received.

**Allowable expenses for award funding.** The bill would require a parent to only expend a qualified student's award for the following:

- Day or overnight in-person camps that are primarily academic in nature related to the student's academic curriculum;
- Online or in-person language classes offered by a licensed organization;
- Purchase or rental of instruments, purchases of sheet music, music books and music materials, and music lessons;
- Tutoring services provided by a tutor who is not an immediate family member of the qualified student;
- Curriculum materials, school supplies, and authorized educational technology devices; and
- Any other education expenses approved by the Treasurer.

**Prohibited uses of award funding.** The bill would further specify that no award funding could be used for:

- Sporting goods or services, including sports camps;
- Driver's education-related fees or services;
- Non-academic lessons or courses including personal hygiene, self-care, self-esteem, or other non-academic lessons or courses;
- Tuition or school registration fees;
- Goods or services provided by immediate family members;
- Field trips or admission tickets to museums, zoos, theaters, historical landmarks, or other locations;
- Fees associated with transportation services, including parking fees;
- Clothing or uniforms;
- Food or meals; or
- Daycare services.

**Online education marketplace.** The bill would also provide that any award may be used in the online education marketplace from a qualified education service provider. A parent would be required to submit a request prior to any expenditures for any goods or services not pre-approved by the Treasurer.

**Written agreement.** The bill would require the parent of a qualified student to enter into a written agreement with the Treasurer to receive an award. Once the agreement is approved, a \$1,000 award will be authorized for each qualified student. The bill would further specify that each written agreement would be for one year, but it could be suspended or terminated if the money in the account has been used improperly or the qualified student is no longer a Kansas resident.

The bill would also permit the parent to terminate the agreement with written notification. Once an agreement has been terminated, the bill would require the Treasurer to close the account and transfer any remaining balance to the SGF.

*Program Enrollment; Qualified Students and Grants Criteria (Section 8)*

To receive the \$5,000 grant, the bill would require the parent of the qualifying student who would enroll in a non-public elementary or secondary school to apply on a form and in the manner prescribed by the Treasurer. The bill would require the parent of a qualified student to enter into a written agreement with the Treasurer to establish the grant.

**Provisions of written agreements for qualified students.** All written agreements would be required to contain the following provisions:

- Money in the grant would be required to be used to educate the qualifying student, at a minimum, in reading, grammar, mathematics, social studies, and science;

- Upon receipt of the grant, the qualifying student could not enroll full-time in any school district;
- No immediate family member of a qualified student could collect payment, tuition, or fees for educational therapies or services or tutoring;
- Money in a qualified student's grant could only be expended on goods and services from a qualified education service provider;
- Payments from a grant for a student's enrollment at a non-public school would only be made to a qualified education service provider;
- The qualifying student could accept a scholarship pursuant to the Tax Credit for Low-income Students Scholarship Program Act, if eligible; and
- The parent of a qualified student would be required to comply with rules and regulations and all other requirements of this act.

**Allowable expenses for grant funding.** The bill would require a parent to only expend a qualified student's grant for the following:

- Enrollment costs charged by a qualified education service provider;
- Textbooks and other supplies required by a qualified education service provider;
- Educational therapies or services provided by a licensed provider;
- Tutoring services provided by a tutor who is not an immediate family member of the qualified student;
- Curriculum materials;
- Uniforms purchased, if required for attendance;
- Enrollment costs charged by an online learning program;
- Contracted services from a public school district offered outside of the traditional school year and hours for students;
- Fees for any nationally standardized norm-referenced achievement test, advanced placement examination, or examination related to admission to a postsecondary institution;
- Fees or costs required to apply for or acquire occupational licenses, certificates, apprenticeships, or other professional qualifications;
- Fees for transportation services approved by the Treasurer that are used for transportation to and from a qualified school;
- Computer hardware and technological devices primarily used for educational purposes, including personal computers, laptops, tablet devices, microscopes, telescopes, and printers; and

- Any other education expenses approved by the Treasurer.

**Prohibited uses of grant funding.** The bill would prohibit the use of expenditures for sporting goods or services, including sports caps, or instruction, or tutoring provided by an immediate family member for qualifying students who are schooled at home.

**Written agreement.** The bill would require the parent of a qualified student to enter into a written agreement with the Treasurer to receive a grant. Once the agreement is approved, a grant would be authorized for each qualified student. The bill would further specify that only one grant could be provided to each qualified student per school year, and a parent acting on behalf of a student would be required to have a separate written agreement for each qualified student.

The bill would permit the parent to terminate the agreement with written notification. Once an agreement has been terminated, the bill would require the Treasurer to close the account and transfer any remaining balance to the SGF.

**Agreement terms.** The bill would provide that once the agreement is approved, one account would be authorized for each qualified student. The bill would further specify that each written agreement would be for one year and remain active until:

- A written agreement is terminated;
- A parent does not renew the qualified student's written agreement;
- The student enrolls in a school district on a full-time basis;
- The student is no longer a qualified student under the program; or
- Moneys have been used for purposes other than those allowed under the program.

The bill would also provide that unless an account has been closed pursuant to the KEEP Act, any amount remaining in the account would be rolled over into the account for the succeeding year if the student and parent renew a written agreement to continue. The bill would prohibit any personal deposits into the account.

**Misuse of funds.** The Treasurer could refer cases to the Attorney General for collection or criminal investigation if the Treasurer finds evidence of substantial misuse of funds.

#### *KEEP Fund; Certification (Section 9)*

The bill would establish the KEEP Fund (Fund), which would be administered by the Treasurer. Money from the Fund could be used only for purposes authorized by the KEEP Act.

**Certification of federal funds; demand transfer.** The Treasurer would determine the amount of federal funds available in the Fund. If the Treasurer determines the available funds would be insufficient to provide awards and grants, the Treasurer would certify to the Director of the Budget such information. Under the bill, the Treasurer would annually determine the amount to be transferred to the Fund by multiplying the amount equal to the BASE by the number of qualified students eligible for grants and by multiplying \$1,000 by the number of qualified students eligible for an award. The Treasurer would certify that amount to the Director

of Accounts and Reports who would then transfer that amount from the SGF to the Fund and record the transaction as a demand transfer.

**Transfer, reporting.** The bill would also require the Treasurer to transfer annually an amount equal to 95 percent of the BASE aid to all full-time qualified student accounts or a proportional amount to part-time qualified student accounts. The bill would specify that payments must be made in two installments, one in August and one in January. The Treasurer would be required, during each legislative session, to provide an estimate of the amount to fund the awards and grants for the next succeeding year.

#### *Governmental Control (Section 10)*

The bill would state that nothing in the KEEP Act would be construed to permit any governmental agency to exercise control or supervision over any non-public school or home school. Any qualified school or tutor that accepts a payment from a parent of a qualified student participating in the program would not be an agent of the State.

#### **Compulsory School Attendance (Section 11)**

The bill would amend school attendance law to state that a qualified student participating in a KEEP grant would be deemed to meet the requirements of compulsory school attendance.

#### **Second Conference Committee Action**

The second Conference Committee agreed to the contents of House Sub. for SB 83, as passed by the House. The Conference Committee further agreed to amend the bill as follows:

- Delete \$72.4 million SGF for Special Education State Aid and replace the same amount from ARPA funds;
- Add one member to the Task Force;
- Remove the language creating the Sunflower Education Equity Scholarship Act and add language creating the KEEP Act;
- Remove language that would provide for a salary increase for all school district licensed teachers; and
- Remove language that would amend school finance law to allow certain school districts to use total enrollment.

#### **Background**

The bill, as agreed to by the Conference Committee, makes several changes to House Sub. for SB 83. Following is information regarding the Senate and House's consideration of SB 83 and the topics of this Conference Committee report.



### ***SB 83—House Sub. for SB 83***

The House Committee on K-12 Budget recommended a substitute bill incorporating provisions establishing the Sunflower Education Equity Act originally contained in HB 2218, as amended by the House Committee on K-12 Budget. The provisions in the substitute bill are included below.

SB 83, as amended by the Senate Committee of the Whole, would have increased student eligibility in the Low-income Student Scholarship Program and increased tax credits for contributions to the program. [Note: The Senate provisions pertaining to the low-income student scholarship were not retained in the substitute bill.]

### ***HB 2218—Sunflower Education Equity Act***

HB 2218 was introduced by the House Committee on K-12 Budget at the request of Representative Kristey Williams.

#### *House Committee on K-12 Budget*

In the House Committee hearing on February 6, 2023, **proponent** testimony was provided by representatives of Americans for Prosperity, Berean Academy, Black Alliance for Educational Options, Freedom Learning Academy, Kansas Family Voice, Kansas Policy Institute, and Yes Every Kid; the Central Christian Schools superintendent; and two private citizens. The proponents stated their support for education savings accounts. Written-only proponent testimony was provided by 16 private citizens.

Neutral testimony was provided by a representative of the Christian Home Education Coalition of Kansas, who stated appreciation for reducing regulation on home schools. Written-only neutral testimony was provided by a representative of Kansas Home Educators.

**Opponent** testimony was provided by representatives of the Christian Home Education Coalition of Kansas; Game on for Kansas Schools; Kansas Association of School Boards; Kansas National Education Association; Kansas Parent and Teachers Association; State Board of Education; United School Administrators of Kansas; USDs 252, 265, 393, 409, and 445; and four private citizens. Testimony generally stated opposition to reducing funding to public schools. Written-only opponent testimony was provided by 252 private citizens.

On February 8, 2023, the House Committee amended the bill to:

- Provide clarification regarding:
  - Compulsory attendance (add section of law);
  - Services required of the web-based portal; and
  - Eligible expenditures with regards to tuition;
- Phase-in the implementation of the Act over four years with each consecutive year increasing the maximum number of qualified students allowed to have an account; and

- Make technical amendments.

On March 6, 2023, the House Committee amended the bill to remove the contents of SB 83 and inserted the contents of HB 2218, as amended by House Committee.

The House Committee further amended the bill to:

- Appropriate special education funding [*Note:* The Conference Committee modified this provision.];
- Create the Task Force [*Note:* The Conference Committee retained this provision.];
- Provide for a salary increase for school district licensed teachers [*Note:* The Conference Committee did not retain this provision.]; and
- Provide certain school districts an alternate method to maximize student enrollment counts [*Note:* The Conference Committee did not retain this provision.].

The House Committee recommended a substitute bill.

#### *House Committee of the Whole*

On March 14, 2023, the House Committee of the Whole amended the bill to remove the establishment of the Sunflower Education Equity Board and instead, gave those responsibilities to the Office of the State Treasurer. [*Note:* The Conference Committee adopted an amendment to assign oversight of KEEP. The provisions related to the Board are not retained.]

The House Committee further amended the bill by providing the Kansas State High School Activities Association (KSHSAA) classified 1A or 2A school districts an alternate method to maximize student enrollment counts. [*Note:* The Conference Committee did not retain this provision.]

#### **Fiscal Information**

[*Note:* A fiscal note was not available for the substitute bill for action taken by the House Committee, House Committee of the Whole, or Conference Committee.]

Education; appropriations; Kansas Education Enrichment Program Act; KEEP; awards and grants; qualified students; special education funding; special education and related services task force; State Treasurer

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