

SESSION OF 2023

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 83**

As Recommended by House Committee on
K-12 Education Budget

Brief*

House Sub. for SB 83 would create the Sunflower Education Equity Act (Sunflower Act) by providing for education savings accounts for students, establishing the Sunflower Education Equity Board, and establishing the Sunflower Education Equity Scholarship Fund. The bill would also amend the Kansas School Equity and Enhancement Act (KSEEA) to allow certain unified school districts (USDs) to utilize current year enrollment or higher enrollment of any of the previous four years to determine State Foundation Aid.

Further, the bill would appropriate \$592.7 million from the State General Fund (SGF) for special education for FY 2024 and create a task force for special education topics. The bill would also provide for a salary increase for all school district licensed teachers and amend school finance law to allow certain school districts to use total enrollment.

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

***Appropriations, Kansas State Department of Education
(New Section 1)***

The bill would appropriate \$592.7 million to the Kansas State Department of Education (KSDE) for special education services in FY 2024.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would also provide for creation of the Special Education and Related Services Task Force for FY 2024; this 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 ten members:

- Two members to be appointed by the Speaker of the House of Representatives;
- Two members to be appointed by the President of the Senate;
- One member to be appointed by the Minority Leader of the House of Representatives;
- One member to be appointed by the Minority Leader of the Senate;
- One member to be appointed by the State Board of Education;
- Two members to be appointed by KSDE who are professionals in the field of special education and related services; and
- One member to be a parent of a student who receives special education services. The appointment would be for one year and alternate between the Speaker and the President.

Task force leadership. Under the bill, the Speaker 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.

Sunflower Act—Program Definitions (New Section 2)

The bill would establish definitions for terms including, but not limited to, the following:

- “Parent” means 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 school” means any school located in Kansas that is either a nonpublic preschool, elementary or secondary school that has been approved to participate; and
- “Qualified student” means a resident of Kansas who is eligible to enroll in a public elementary or secondary school in this state or a preschool school student aged three or four whose parent has verified on a board approved form that the student:
 - Qualifies for the national school lunch free program;
 - Has a custodial parent that is unmarried on the first day of school;
 - Has a parent that was a teenager when the student was born;
 - Has a parent that lacks a high school diploma, general education development credential or high school equivalency credential on the first day of school;

- Has limited English proficiency.
- Has a lower than expected developmental progress as determined by a train professional but not low enough to be eligible for special education services;
- Qualifies for migrant status; or
- Is experiencing homelessness.

***Sunflower Education Equity Program and Board;
Program Administration (New Section 3)***

The bill would establish the the Sunflower Education Equity Program (Program). The bill would also establish the Sunflower Education Equity Board (Board), which would provide general management, oversight, and appeals process of the Program. The bill would also require the State Treasurer (Treasurer) or designee of the Treasurer to administer the Program at the direction of the Board.

The Treasurer would be directed to accept applications, retain program data, establish and administer both program accounts and the Sunflower Education Equity Scholarship Fund (Fund), and establish and administer processes and procedures as necessary. The bill would further provide that KSDE is required to cooperate and collaborate in the implementation and administration of the Program as requested by the Board or Treasurer.

The bill would also provide that qualified students participating in the Program and such student's parents would be subject to the Sunflower Act's requirements and any adopted rules and regulations related to the Act.

***Sunflower Education Equity Board Membership (New
Section 4)***

The bill would establish the Board, which would consist of nine voting members and one non-voting member, all

whom are required to be Kansas residents. The voting members would include:

- The Treasurer, who would serve as the Board chairperson;
- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House of Representatives;
- One member appointed by the Minority Leader of the Senate;
- One member appointed by the Minority Leader of the House of Representatives;
- The chairperson of either the House of Representatives Education Committee or the K-12 Budget Committee as determined by the Speaker;
- The chairperson of the Senate Education Committee;
- A parent with a qualified student in the Program appointed by the Governor with the initial appointment of a parent of a student eligible for the Program; and
- A representative of a qualified school appointed by the Governor with the initial appointment of a parent of a student eligible for the Program.

The bill would designate a KSDE representative as the nonvoting member.

The bill would provide that initial terms for members would be one year for Governor appointed members, two years for minority party appointed members, and three years for President and Speaker appointed members. The bill

would further specify that subsequent appointments will be for four-year terms and initial members could be reappointed. Vacancies on the Board would be filled in the same manner provided for the original appointment.

The bill would require the board meetings occur at least twice a year on call of the chairperson. Further, a majority of voting members would constitute a quorum. Members attending authorized board or subcommittee meetings would be paid as provided for in KSA 75-3223.

Board Power and Duties (New Section 5)

The bill would detail additional oversight and administrative duties of the Board, including the following:

- Establishing an appeals process in accordance with the bill (Section 11);
- Conducting or contracting to conduct financial audits of the use of account moneys;
- Establishing or contracting for the establishment of fraud reporting services;
- Establishing or contracting with a private entity for the establishment of a commercially viable and user-friendly website to establish digital spending accounts and provide at least the following services:
 - Account management;
 - Payment processing by electronic fund transfers;
 - Reimbursement by electronic funds transfer;
 - Monitor and creation of reports in real time;
 - Temporary hold status placement on accounts;

- Reduction of the possibility of fraud, waste and abuse; and
- Meeting of Board determined standards for data privacy and cybersecurity;
- Requiring surety bond or insurance of at least \$100,000 for education service providers that provide services to more than five students annually [*Note*: This requirement would not apply to a provider who is an immediate family member of the qualified students];
- Providing and updating a handbook for program applicants and participants, at a minimum, the policies and procedures of the Sunflower Education Equity Scholarship accounts; and
- Exercising other functions and duties as provided in the Sunflower Act.

The bill would prohibit the Board from disclosing any qualified student's personal information without the written permission of the student's parent for each disclosure.

State Treasurer's Duties (New Section 6)

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, a list of the following:

- Allowable expenditures;
- Responsibilities for the qualifying student's parents;
- Impact of a qualifying student participating with an individualized education program or a section 504 plan of federal Rehabilitation Act of 1973;
- The appeals process;

- The handbook;
- The duties of the Treasurer; and
- The duties of the board.

The bill would require KSDE to include information about the Program and a link to the Treasurer’s website about the program on its website.

Phasing Implementation of the Program (New Section 7)

The bill would provide participation requirements for qualified students by school year, as follows:

- **School year 2023-2024.** A qualified student could participate in the Program if the student was attending or is eligible to attend preschool, or enrolled and attending a public school in school year 2022-2023 in either kindergarten, grades 1 through 12 and is either eligible for the national free or reduced-priced lunch program or scored at a performance level 1 on the language arts or mathematics state assessment;
 - If the qualified student is eligible to enroll in kindergarten or grades 1 through 12 and does not meet this eligibility criteria and has annual family income of 300 percent of the federal poverty guidelines, the qualified student could participate if the total number of qualified student is less than 2,000;
- **School year 2024-2025.** A qualified student could participate in the Program if the student was attending or is eligible to attend preschool, or enrolled in the previous year or was enrolled and attending a public school in school year 2023-2024 in either kindergarten, grades 1 through 12 and is either eligible for the national free or reduced-

priced lunch program or scored at a performance level 1 on the language arts or mathematics state assessment;

- If the qualified student is eligible to enroll in kindergarten or grades 1 through 12 and does not meet this eligibility criteria and has annual family income of 400 percent of the federal poverty guidelines, the qualified student could participate if the total number of qualified student is less than 4,000;
- **School year 2025-2026.** A qualified student could participate in the Program if the student was attending or is eligible to attend preschool, or enrolled in the previous year or was enrolled and attending a public school in school year 2024-2025 in either kindergarten, grades 1 through 12 and is either eligible for the national free or reduced-priced lunch program or scored at a performance level 1 on the language arts or mathematics state assessment;
 - If the qualified student is eligible to enroll in kindergarten or grades 1 through 12 and does not meet this eligibility criteria and has annual family income of less than or equal to 400 percent of the federal poverty guidelines, the qualified student could participate if the total number of qualified student is less than 8,000; and
- **School year 2026-2027, subsequent years.** The bill would provide that any qualified student that has annual family income of less than or equal to 600 percent of the federal poverty guidelines could participate in the Program.

The bill would also specify that in years in which the number of applicants exceeds the number of qualified students allowed to participate in the Program, the Treasurer

would be required to accept qualified students on a first come, first served basis.

***Program Enrollment, Establishing an Account
(New Section 8)***

The bill would require the parent of the qualifying student to submit an application on a form and in the manner prescribed by the Board. If the qualifying student is schooled at home, the bill would provide the application would not constitute registration pursuant to requirements for KSA 72-4346 (registration of private elementary and secondary schools with the State Board of Education).

The bill would provide that beginning in school year 2024-2025, after accepting the application and any other required documentation throughout the school year, the Treasurer would enroll the qualifying student in the Program and notify the parent within 30 days after receipt of all necessary information. The Treasurer would also be required to provide the parent with all the information required to be made available on the Treasurer's website. The bill would specify that all notifications, applications, or documents could be provided electronically to the Treasurer with the Treasurer confirming receipt electronically or by hard copy.

The bill would require the parent of a qualified student to enter into a written agreement with the Treasurer, in the manner provided for by the Board, to establish the account. The Board would then be required to approve each written agreement. All written agreements would be required to contain the following provisions:

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

- Upon receipt of the scholarship, the qualifying student cannot enroll full-time in any school district;
- No immediate family member of a qualified student may collect payment, tuition or fees for educational therapies or services, or tutoring;
- Money in a qualified student's account can only be expended as authorized by the Sunflower Act;
- Payments from an account for tuition could only be made to a qualified school or a postsecondary educational institution;
- The qualifying student may accept a scholarship pursuant to the Tax Credit for Low-income Students Scholarship Program Act, if eligible; and
- The parent of a qualified student must comply with the rules and regulations and all other requirements of this act.

The bill would provide that once the agreement is approved, one account 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 for cause. The qualified student's account could be renewed annually, and the bill would provide that the Treasurer must notify the parent of the renewal requirements 30 calendar days prior to the end of each term year.

The bill would permit the Treasurer to suspend the written agreement if:

- The money in the account has been used improperly;
- The qualified student is no longer a resident of Kansas; or

- The qualified student has enrolled in a school district full-time.

The bill would further provide that when the Treasurer suspends the agreement, notice must be given to the parent that no expenditure may be made from the account. The notice would be required to include the reason for the suspension all the parent 15 business days to respond or take corrective action. The Treasurer would be permitted to terminate the agreement if the parent fails to respond with the requested report or additional information with the 15 business days or fails to repay any unauthorized expenditures.

The bill would also permit the parent to terminate the agreement with written notification. Once an agreement has been terminated, the bill would provide that the Treasurer must close the account.

Qualified Student Expenditures (New Section 9)

The bill would require a parent to only expend a qualified student's account for the following:

- Tuition or fees charged by a qualified school;
- Textbooks and other supplies required by a qualified school;
- Educational therapies or services provided by a licensed or accredited education provider;
- Tutoring services provided by a tutor, who is not an immediate family member of the qualified student;
- Curriculum materials;
- Uniforms purchased as required for attendance at a qualified school;

- Tuition or fees charged by an online learning program;
- Contracted services from a public school district, including individual classes;
- Fees for any nationally standardized norm-referenced achievement test, advanced placement examination or examination related to admission to a postsecondary institution;
- Tuition and fees charged by a postsecondary educational institution;
- Textbooks required by a postsecondary educational 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 board 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 Board.

The bill would prohibit the use of expenditures for athletic training or coaching, or instruction or tutoring provided by an immediate family member for qualifying students who are schooled at home. The bill would also specify that the content or religious nature of a product or service could not be considered when determining an allowable expenditure from an account.

The Treasurer would be required to notify a parent of any non-qualifying expenditures, which must be repaid by the parent within 30 calendar days of notification and would be credited back to the qualifying student's account. The Board or Treasurer would be permitted to refer cases of substantial misuse of account funds to the Attorney General for possible criminal investigation.

***Sunflower Education Equity Scholarship Fund
(New Section 10)***

The bill would establish the Fund, which would be administered by the Treasurer. Money from the Fund could be used only for purposes authorized by this act.

On or before August 1 of each year, the Treasurer would determine the amount to be transferred to the Fund by multiplying the amount equal to the BASE aid by the number of qualified students and provide an estimate to the Legislature of the amount to be transferred to the Fund for the succeeding year.

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 bill would also provide that unless an account has been closed pursuant to the Sunflower Act, any amount remaining in the account would be rolled over into the account for the succeeding year. No personal funds would be permitted to be deposited into the account.

The bill would provide that an account is to remain active until:

- A written agreement is terminated;

- The agreement is not renewed by the parent for three years and the parent fails to timely respond to the notice sent by the Treasurer that the account will close in 60 calendar days if the written agreement is not renewed;
- Upon the student's graduation from a postsecondary educational institution; or
- Four consecutive years after a student's graduation from high school or award of a high school equivalency certificate and the student is not enrolled in a postsecondary educational institution.

Under the bill, the Treasurer would determine when an account would be closed and, upon certification of the money remaining within the account, all remaining funds would be transferred to the State General Fund. The bill would permit the Treasurer to deduct 5.0 percent of the BASE aid for each qualified student for administrative costs to conduct the Program.

The bill would also specify that the Board may contract with a private financial firm to manage the account, and it must provide for annual and random quarterly financial audits to ensure compliance with the Sunflower Act and to oversee the audits.

In addition, the bill would provide that money in the account of the qualified student cannot be included as taxable income to the parent.

Appeals Process (New Section 11)

The bill would provide that a parent, or a designee, may appeal the Board's or Treasurer's administrative decisions including the determination of allowable expenditures and enrollment eligibility. The Treasurer would be required to notify each parent that an appeal may be made for any

administrative decision and provide the Board's established process to make the appeal.

The bill provides that if the parent wins the appeal of an account suspension, the Treasurer cannot withhold any funding or refuse to enter into an agreement with the parent unless otherwise directed by the Board.

Application for Tutors and Qualified Schools (New Section 12)

The bill would require the Board to provide an application process and form to allow tutors or school to provide services to a qualified student. The tutor's application must include the name, address, and phone number of the tutor and a website or email address if available.

A school seeking approval as a qualified school would be required to submit an application that includes the name, address, phone number, email address, and primary contact of school. The primary contact would be required to provide, in writing, the intent of the school to provide all qualified students instruction in reading, grammar, mathematics, and social studies.

Exceptions to Services Provided to Qualified Students (New Section 13)

The bill would require a qualified school to provide all qualified student, enrolled full-time, instruction in the subjects of reading, grammar, mathematics, social studies, and science. If enrolled part-time, the qualified school would be required to provide the Board a statement declaring which of the required subjects are being provided to the qualified student. The bill would specify that these requirements would not apply to the following:

- Any postsecondary educational institution with enrolled qualified students;
- A qualified student with a disability, including, but not limited to, a student:
 - Eligible to receive services pursuant to article 34 of chapter 72 of the *Kansas Statutes Annotated*;
 - Identified as having a disability under section 504 of the federal Rehabilitation Act of 1973; or
 - Whose parent states in writing such student has a disability and provides documentation that may include:
 - A notarized affidavit or the student’s disability;
 - A prior individualized education or 504 plan;
 - A diagnosis signed by an appropriate health care provider or psychologist; or
 - A form showing the eligibility for vocational rehabilitation or pre-employment services; and
- Any qualified student attending school at home if instruction is provided by an immediate family member.

The bill would also state that nothing in this section would require any qualified school to provide instruction on any subjects other than the required subjects.

Assessment Tests (New Section 14)

The bill would require qualified schools with 50 or more qualified students enrolled to annually provide to parents of qualified students seeking enrollment aggregate test scores

of either all students or qualified students by school building and grade the following:

- Any standardized achievement examination or state assessment; and
- Any college examination assessing reading and mathematics.

The bill would also allow a parent of a qualified student to request the student take the state assessment, at no charge, at the school district where the student resides. The school district would be permitted to allow an alternate date and time if requested by the qualified student's parent.

The bill would prohibit the submission of any data on the student's feeling, attitudes, beliefs, or practices to the Board. In addition, the qualified school would not be permitted to disclose any qualified students personal information without the written permission of the student's parent for each disclosure or release.

Governmental Control (New Section 15)

The bill would state that nothing in this act shall be construed to permit any governmental agency to exercise control or supervision over any nonpublic 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 this state.

Kansas School Equity and Enhancement Act—Teacher Salary Increase (New Section 16)

The bill would also create law that would be supplemental to the Kansas School Equity and Enhancement Act (KSEEA) to require school districts to provide licensed teachers a salary increase. The salary increase would be in addition to any salary increase approved by the board of

education of the school district prior to July 1, 2023, and based on the amount of BASE aid increase through the statutory inflation calculation.

The bill would require KSDE to determine the individual teacher salary increase that each school district would provide to licensed teachers using the following formula:

- Subtract the school year 2022-2023 BASE aid amount from the inflation-adjusted school year 2023-2024 BASE aid amount;
- Multiply the difference as calculated above times the adjusted weighted student FTE for the 2023-2024 school year to calculate the inflation adjusted amount;
- Multiply the inflation adjusted amount calculated above by 50 percent; and
- Divide that amount by the total statewide FTE number of licensed school district teachers for school year 2023-2024.

Compulsory School Attendance (Section 17)

The bill would also amend school attendance law to state that a qualified student participating in the Program is deemed to meet the requirements of compulsory school attendance. The bill would add a definition for “private school,” to mean the competent, private instruction of a child directed by a parent or person acting as a parent. The bill would further specify “private school” would not apply in terms of attendance requirements for instruction provided pursuant to Program participation.

***KSEEA—Small School District Enrollment Count
(Section 18)***

The bill would amend the KSEEA definitions section to allow any school district with a high school designated as a 1A member by the Kansas State High School Activities Association located in that school district to use either the total enrollment on September 20 of the current school year or the total enrollment for any of the previous four school years.

Background

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.

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 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 K. 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, the Black Alliance for Educational Options, Freedom Learning Academy, Kansas Family Voice, Kansas Policy Institute, the

Central Christian Schools superintendent, Yes Every Kid, and two private citizens. The proponents stated support for education savings accounts.

Written-only proponent testimony was provided by 16 private citizens.

Neutral testimony was provided by a representative on Christian Home Education Coalition of Kansas. The conferee 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; Kansas State Board of Education; United School Administrators of Kansas; USDs 252, 265, 393, 409, 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 of 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

- Technical amendments.

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

The House Committee further amended the bill to appropriate special education funding, create a special education task force, provide for a salary increase for school district licensed teachers, and provide certain school districts an alternate method to maximize student enrollment counts. The House Committee recommended a substitute bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the HB 2218, as introduced, the net effect to the State General Fund would be a decrease of \$151.9 million dollars. This was to show the effect of all accredited private schools, and one percent of public school students, non-accredited private school students and eligible preschool student requesting scholarships. The State Treasurer noted the need for additional staff, office space, and computer upgrades. Any fiscal effect from enactment of the bill is not reflected in *The FY 2024 Governor's Budget Report*. [Note: A fiscal note was not immediately available for the substitute bill.]

Education; Education Savings Accounts; Sunflower Education Equity Act; Sunflower Education Equity Board; Sunflower Education Equity Scholarship Fund; State Treasurer; Kansas School Equity and Enhancement Act; teacher salary; enrollment