

2021 Regular Session

HOUSE BILL NO. 556

BY REPRESENTATIVES DEVILLIER AND WRIGHT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SCHOOLS/CHOICE: Creates and provides for a program to provide state funding for the education of students not enrolled in public school

1 AN ACT

2 To enact Chapter 43-B of Title 17 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of R.S. 17:4036.1 through 4036.8, relative to elementary and secondary  
4 education; to create and provide for the administration of a program to provide state  
5 funding for the education of students not enrolled in public school; to provide  
6 relative to the eligibility of students, schools, and service providers participating in  
7 the program; to provide relative to program funds; to provide relative to the testing  
8 of students participating in the program; to require the state Department of Education  
9 to submit annual reports to the legislature relative to the program; to provide relative  
10 to rules; to provide relative to definitions; to provide for an effective date; and to  
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Chapter 43-B of Title 17 of the Louisiana Revised Statutes of 1950,  
14 comprised of R.S. 17:4036.1 through 4036.8, is hereby enacted to read as follows:

15 CHAPTER 43-B. EDUCATION SAVINGS ACCOUNT PROGRAM

16 §4036.1. Definitions

17 As used in this Chapter, unless otherwise clearly indicated, the following  
18 terms shall have the following meanings:

1           (1) "Account" means an education account established pursuant to this  
2           Chapter and composed of state funds deposited on behalf of a student eligible to  
3           participate in the program.

4           (2) "Account funds" means the funds deposited into an account on behalf of  
5           a participating student.

6           (3) "Curriculum" means a complete course of study for a particular content  
7           area.

8           (4) "Department" means the state Department of Education.

9           (5) "Parent" means a parent, legal guardian, custodian, or other person or  
10          entity with legal authority to act on behalf of a student.

11          (6) "Participating school" means a nonpublic school participating in the  
12          program pursuant to the requirements of this Chapter.

13          (7) "Participating student" means a student who has been determined to be  
14          eligible to participate in the program and for whom an account has been established  
15          pursuant to this Chapter.

16          (8) "Program" means the program created pursuant to this Chapter.

17          (9) "Qualified education expenses" means any of the following:

18          (a) Tuition, fees, and textbooks required by a participating school or service  
19          provider.

20          (b) Tutoring services provided by an educator with a valid Louisiana  
21          teaching certificate.

22          (c) Curriculum, including supplemental materials required by the curriculum.

23          (d) Technological devices used to meet the student's educational needs,  
24          subject to approval by the department or a licensed physician.

25          (10) "Resident school system" means the public school system in which the  
26          student would be enrolled based on his residence.

27          (11) "Service provider" means a person or an entity other than a participating  
28          school that provides services that are covered as qualified education expenses.

1           (12) "State board" means the State Board of Elementary and Secondary  
2           Education.

3           §4036.2. Program creation and administration; powers and duties of the State Board  
4           of Elementary and Secondary Education and state Department of Education;  
5           rules

6           The Education Savings Account Program is hereby created. The department  
7           shall administer the program, and the state board shall adopt rules and regulations  
8           for the administration of the program which shall, at minimum, provide for the  
9           following:

10           (1) Determination of the eligibility of students, participating schools, and  
11           service providers, including standards that schools and service providers shall meet  
12           as conditions of participation in the program.

13           (2) Audits of the program and accounts.

14           (3) The authority of the department to deem any participating student  
15           ineligible for the program and refer the case to the attorney general for investigation  
16           in the event of the misuse of account funds.

17           (4) The authority of the department to contract with a nonprofit organization  
18           for the administration of the program or parts of the program.

19           §4036.3. Account funds

20           A. The department shall allocate to each account annually, from funds  
21           appropriated or otherwise available for the program, an amount equal to the state's  
22           per-pupil allocation to the resident school system as provided in the minimum  
23           foundation program formula, considering all student characteristics.

24           B. The department shall develop a system for parents to direct account funds  
25           to participating schools and service providers by electronic funds transfer, automated  
26           clearing house transfer, the use of a debit card, or another system. The department  
27           may contract with a private financial management firm to manage the payment  
28           system.

1           C.(1) Account funds shall be used only for qualified education expenses for  
2           the participating student. Unused funds in an account, up to an amount not greater  
3           than fifty percent of the total funds deposited into the account for the current school  
4           year, shall be retained in the student's account for the following school year.

5           (2) The account shall be closed and the funds in the account shall be returned  
6           to the state general fund if the student is determined to be no longer eligible, if an  
7           account has been inactive for two consecutive years, or if a parent fails to comply  
8           with the provisions of this Chapter or state board rules pertaining to the program.

9           D. Account funds shall not constitute taxable income of the parent of the  
10          participating student and shall not be claimed as a credit, deduction, exemption, or  
11          rebate under Title 47 of the Louisiana Revised Statutes of 1950.

12          §4036.4. Student eligibility; initial and continuing

13          A. A student shall be initially eligible for an account if he is eligible to enroll  
14          in kindergarten or was enrolled in a Louisiana public school during the previous  
15          school year and meets all of the following criteria:

16                  (1) He meets at least one of the following criteria:

17                          (a) He has a parent or legal guardian who is an active duty military service  
18                          member.

19                          (b) His parent or legal guardian submitted an enrollment request for an  
20                          interdistrict or intradistrict transfer pursuant to R.S. 17:4035.1 during the most recent  
21                          transfer request period and such request was denied.

22                          (c) Pursuant to foster care placement through the Department of Children  
23                          and Family Services, he is residing with a prospective permanent placement or has  
24                          achieved permanency through adoption or permanent guardianship.

25                  (2) The student's parent submits an application for an account to the  
26                  department in accordance with program timelines.

27                  (3)(a) The student's parent signs an agreement promising all of the  
28                  following:

1           (i) To provide an education for the participating student in at least the  
2           subjects of English language arts, mathematics, social studies, and science.

3           (ii) Not to enroll the student in a public school while participating in the  
4           program.

5           (iii) To use account funds only for qualified education expenses of the  
6           participating student.

7           (iv) To comply with all program requirements.

8           (b) The signed agreement shall satisfy the compulsory school attendance  
9           requirements of R.S. 17:221.

10           B. A participating student shall continue to be eligible to participate in the  
11           program until he enrolls in a public school, he receives a high school diploma or its  
12           equivalent, or his account is closed.

13           C. A participating student shall not participate concurrently in the Course  
14           Choice Program, the Student Scholarships for Educational Excellence Program, the  
15           School Choice Program for Certain Students with Exceptionalities, or the Tuition  
16           Donation Credit Program.

17           §4036.5. Schools and service providers; eligibility; participation

18           A. To be eligible to participate in the program, a school shall meet all of the  
19           following criteria:

20           (1) Be approved, provisionally approved, or probationally approved by the  
21           state board pursuant to R.S. 17:11.

22           (2) Comply with the criteria set forth in Brumfield, et al. v. Dodd, et al. (E.D.  
23           La. 1977), 425 F. Supp. 528.

24           (3) Any other eligibility criteria set by the state board in program rules.

25           B. The state board shall provide eligibility criteria for service providers in  
26           program rules.

27           C. To be eligible to participate in the program, a school or service provider  
28           shall apply to the department to participate in the program and, if determined to be

1 eligible, accept account funds for providing services covered as qualified education  
2 expenses.

3 §4036.6. Student with exceptionalities

4 A. If a participating student enrolled in a participating school would have  
5 been entitled to receive special education services in the resident school system, his  
6 parent shall acknowledge in writing as part of the program enrollment process that  
7 the parent agrees to accept only such services as are available to all students enrolled  
8 in the participating school.

9 B. A parent may make a parental placement to receive special education and  
10 related services from a participating school that has demonstrated the capacity to  
11 offer such services.

12 C.(1) A participating school shall not discriminate against a child with  
13 special educational needs during the program admissions process. However, a  
14 participating school is required to offer only those services that it already provides  
15 or such services as necessary to assist students with special needs that it can provide  
16 with minor adjustments. A participating school may partner with the local school  
17 system to provide special education services.

18 (2) Information regarding the services a participating school is able to and  
19 shall provide, the services the local school system is able to and shall provide, and  
20 the services the local school system currently provides to children with special needs  
21 who are enrolled in a participating school shall be made available by the department  
22 to parents prior to the enrollment process.

23 D. To be determined to have demonstrated capacity to offer special  
24 education services pursuant to Subsection B of this Section, a participating school  
25 shall meet all of the following criteria:

26 (1) It has existed and provided educational services to students with  
27 exceptionalities as defined in R.S. 17:1942, excluding students deemed to be gifted  
28 or talented, for at least two years prior to participation in the program and such  
29 provision of services shall be pursuant to an established program in place at the

1 school that includes instruction by teachers holding appropriate certification in  
2 special education or other appropriate education or training as defined by the  
3 department and that is in accordance with a student's Individual Education Plan.

4 (2) In accordance with time lines as determined by the department, it informs  
5 the department of the types of student exceptionalities as defined in R.S. 17:1942  
6 that the school is able to serve.

7 §4036.7. Testing

8 A. A participating school shall ensure that participating students are  
9 administered all examinations required pursuant to the school and district  
10 accountability system at the prescribed grade levels and that the results of such  
11 examinations are provided to parents.

12 B. The department shall develop a process for the annual administration of  
13 a nationally norm-referenced test or a statewide assessment and the collection of  
14 results for participating students not enrolled full time in a participating school.

15 §4036.8. Reports

16 Not later than April thirtieth of each year, the department shall submit a  
17 written report to the House Committee on Education, the Senate Committee on  
18 Education, and the Joint Legislative Committee on the Budget regarding the  
19 implementation of the program. The report, at a minimum, shall include the  
20 following information:

21 (1) The total number of students participating in the program.

22 (2) A list of all participating schools and service providers.

23 (3) The total student enrollment of each participating school, the number of  
24 participating students enrolled in each school, and the percentage of the total  
25 enrollment of each school represented by program participants.

26 (4) Aggregate test result data for participating students.

27 (5) The percentage of funds used for each type of qualified education  
28 expense.

1                   (6) An analysis of the program's fiscal impact on the state and on local public  
 2                   school systems.

3                   Section 2. This Act shall become effective upon signature by the governor or, if not  
 4 signed by the governor, upon expiration of the time for bills to become law without signature  
 5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 6 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 7 effective on the day following such approval.

#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 556 Re-Reengrossed

2021 Regular Session

DeVillier

**Abstract:** Creates and provides for the administration of a program for the purpose of providing state funding for qualified education expenses for students in grades kindergarten through 12 who are not enrolled in a public school.

#### **Education Savings Account (ESA) Program; creation and administration**

Proposed law creates the Education Savings Account (ESA) Program and provides for program administration by the state Dept. of Education (DOE) in accordance with State Board of Elementary and Secondary Education (BESE) rules which shall, at minimum, provide for:

- (1) Determination of eligibility of students, participating schools, and service providers.
- (2) Audits of the program and accounts.
- (3) DOE's authority to:
  - (a) Deem any participating student ineligible for the program in the event of the misuse of account funds and to refer cases of misuse of account funds to the attorney general for investigation.
  - (b) Contract with a nonprofit organization for the administration of the program or parts of the program.

#### **Funds**

Proposed law requires DOE to:

- (1) Allocate to each account annually, from funds appropriated or otherwise available for the program, an amount equal to the state's per-pupil allocation as provided in the minimum foundation program (MFP) formula, considering all student characteristics.



- (2) Develop a system for parents to direct account funds to participating schools and service providers by electronic funds transfer, automated clearing house transfer, the use of a debit card, or another system.

Proposed law further provides as follows:

- (1) Limits authorized use of funds to qualified education expenses.
- (2) Unused funds in an account, up to an amount not greater than 50% of the total funds deposited into the account for the current school year, shall remain in the account for the following school year.
- (3) The account shall be closed and the funds in the account shall be returned to the state general fund if a student is no longer eligible, if an account has been inactive for two consecutive years, or if a parent fails to comply with program requirements.
- (4) Account funds shall not constitute taxable income and shall not be claimed as a credit, deduction, exemption, or rebate.

### **Eligibility; students**

Proposed law provides that a student shall be initially eligible for an account if he is eligible to enroll in kindergarten or was enrolled in a La. public school during the previous school year and meets all of the following criteria:

- (1) He meets at least one of these criteria:
  - (a) He has a parent or legal guardian who is an active duty military service member.
  - (b) His parent or legal guardian submitted an enrollment request for a transfer pursuant to present law (R.S. 17:4035.1) during the most recent transfer request period and the request was denied.
  - (c) Pursuant to foster care placement through the Dept. of Children and Family Services, he is residing with a prospective permanent placement or has achieved permanency through adoption or permanent guardianship.
- (2) The student's parent submits an application for an ESA in accordance with program timelines.
- (3) The student's parent signs an agreement promising all of the following:
  - (a) To provide an education for the participating student in at least the subjects of English language arts, math, social studies, and science.
  - (b) Not to enroll the student in a public school while participating in the program.
  - (c) To use account funds only for qualified education expenses of the participating student.
  - (d) To comply with all program requirements.

Proposed law further provides that a participating student:

- (1) Is eligible until he enrolls in a public school, he receives a high school diploma or its equivalent, or his account is closed.

- (2) Is prohibited from participating concurrently in the ESA program and the Course Choice Program, the Student Scholarships for Educational Excellence Program, the School Choice Program for Certain Students with Exceptionalities, or the Tuition Donation Credit Program.

### **Students with exceptionalities**

Proposed law requires, if a student would have been entitled to special education services in his resident school system, his parent to acknowledge in writing that he agrees to accept only such services as are available to all students enrolled in the participating school. Requires participating schools to meet certain criteria to be eligible to offer such services.

### **Eligibility; schools and service providers**

Proposed law provides to be eligible to participate in the program, a school shall meet all of the following criteria:

- (1) Be approved, provisionally approved, or probationally approved by BESE.
- (2) Comply with criteria set forth in federal nondiscrimination requirements.
- (3) Any other criteria set by BESE.

Proposed law requires BESE to set eligibility criteria for service providers and provides that to be eligible to participate in the program, both schools and service providers shall apply to DOE and, if determined to be eligible, accept ESA funds for providing services covered as qualified education expenses.

### **Testing**

Proposed law requires:

- (1) Participating schools to ensure that participating students are administered all examinations required pursuant to present law at the prescribed grade levels and that the results of such examinations are provided to parents.
- (2) DOE to develop a process for the annual administration of a nationally norm-referenced test or a statewide assessment and the collection of results for participating students not enrolled full time in a participating school.

### **Reporting**

Proposed law requires DOE, by April 30th annually, to submit to the House and Senate education committees and the Jt. Legislative Committee on the Budget regarding program implementation.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 17:4036.1 - 4036.8)

### **Summary of Amendments Adopted by House**

The Committee Amendments Proposed by House Committee on Education to the original bill:

1. Prohibit account funds from being claimed as a credit, deduction, exemption, or rebate.

2. Revise student eligibility criteria.

The House Floor Amendments to the reengrossed bill:

1. Make technical changes.