

2022 Regular Session

HOUSE BILL NO. 838

BY REPRESENTATIVE GAROFALO

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

1 AN ACT

2 To enact Chapter 43-C of Title 17 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 17:4037.1 through 4037.8, 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-C of Title 17 of the Louisiana Revised Statutes of 1950,
14 comprised of R.S. 17:4037.1 through 4037.8, is hereby enacted to read as follows:

15 CHAPTER 43-C. EDUCATION SAVINGS ACCOUNT PROGRAM

16 §4037.1. Definitions

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

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) "Department" means the state Department of Education.

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

9 (5) "Participating school" means a nonpublic elementary or secondary school
10 participating in the program pursuant to the requirements of this Chapter.

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

14 (7) "Program" means the program created by this Chapter.

15 (8) "Qualified education expenses" means any of the following:

16 (a) Tuition, fees, and textbooks required for either in-person or virtual
17 instruction by a participating school or service provider.

18 (b) Instructional or tutoring services.

19 (c) Supplemental materials required by a course of study for a particular
20 content area.

21 (d) Fees for national norm-referenced examinations, Advanced Placement
22 examinations or similar courses, and any examinations related to postsecondary
23 education institution admission.

24 (e) Educational services for students with disabilities from a licensed or
25 accredited practitioner or provider.

26 (f) Fees for account management by vendors or providers approved by the
27 department.

28 (9) "Resident school system" means the public school system in which the
29 student would be enrolled based on his residence.

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

3 (11) "State board" means the State Board of Elementary and Secondary
4 Education.

5 §4037.2. Program creation and administration; powers and duties of the State Board
6 of Elementary and Secondary Education and state Department of Education;
7 rules

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

12 (1) Determination of the eligibility of students, participating schools, and
13 service providers, ensuring maximum participation by schools and providers.

14 (2) Audits of the program and accounts.

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

18 (4) The authority of the department to contract with a vendor or provider for
19 the administration of the program or parts of the program.

20 §4037.3. Account funds

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

25 B. The department shall develop a system for parents to direct account funds
26 to participating schools and service providers by electronic funds transfer, automated
27 clearing house transfer, or another system. The department may contract with a
28 vendor or provider to manage the payment 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 fifty percent of the total
3 funds deposited into the account for the current school year, shall be retained in the
4 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 do 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 E. No participating school or service provider shall share funds paid from an
13 account with a parent or student in any manner, including but not limited to a refund
14 or rebate.

15 §4037.4. Student eligibility; initial and continuing

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

19 (1) The student's parent submits an application for an account to the
20 department in accordance with program timelines.

21 (2) The student's parent signs an agreement promising all of the following:

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

24 (b) Not to enroll the student in a public school while participating in the
25 program.

26 (c) To use account funds only for qualified education expenses of the
27 participating student.

28 (d) To comply with all program requirements.

1 B.(1) The signed agreement pursuant to Paragraph (A)(2) of this Section
2 satisfies the compulsory school attendance requirements of R.S. 17:221.

3 (2) A participating student is eligible to continue to participate in the
4 program until he enrolls in a public school, he receives a high school diploma or its
5 equivalent, or his account is closed.

6 C. A participating student shall not participate in any of the following
7 concurrently with this program: the Course Choice Program, the Student
8 Scholarships for Educational Excellence Program, the School Choice Program for
9 Certain Students with Exceptionalities, or the Tuition Donation Credit Program.

10 §4037.5. Schools and service providers; eligibility; participation

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

13 (1) It has been approved, provisionally approved, or probationally approved
14 by the state board pursuant to R.S. 17:11.

15 (2) It is in compliance with the criteria set forth in Brumfield, et al. v. Dodd,
16 et al., 425 F. Supp. 528 (E.D. La. 1977).

17 (3) It meets any other eligibility criteria set by the state board in program
18 rules.

19 B. The state board shall provide eligibility criteria for service providers in
20 program rules.

21 C. To be eligible to participate in the program, a school or service provider
22 shall apply to the department to participate in the program and, if determined to be
23 eligible, accept account funds for providing services covered as qualified education
24 expenses.

25 §4037.6. Student with exceptionalities

26 A. If a participating student enrolled in a participating school would have
27 been entitled to receive special education services in the resident school system, his
28 parent shall acknowledge in writing, as part of the program enrollment process, that

1 the parent agrees to accept only such services as are available to all students enrolled
2 in the participating school.

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

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

12 (2) Information regarding the services a participating school can provide and
13 the services the resident school system can provide to children with special needs
14 who are enrolled in a participating school shall be made available by the department
15 to parents prior to the enrollment process.

16 D. The department shall determine whether a participating school has a
17 demonstrated capacity to offer special education services. A participating school
18 that desires to offer special education services shall inform the department of the
19 types of student exceptionalities as defined in R.S. 17:1942 that the school is able to
20 serve. The department may authorize the school to provide such services only if the
21 school has existed and provided educational services to students with exceptionalities
22 as defined in R.S. 17:1942, excluding students deemed to be gifted or talented, for
23 at least two years prior to participation in the program, and such provision of services
24 is pursuant to an established program in place at the school that includes instruction
25 by teachers holding appropriate certification in special education or other appropriate
26 education or training as defined by the department and that is in accordance with a
27 student's Individual Education Plan.

1 §4037.7. Testing

2 A. The department shall develop a process for the annual administration of
3 either of the following to participating students:

4 (1) Any examination required pursuant to the school and district
5 accountability system at the prescribed grade levels.

6 (2) A nationally norm-referenced test or a statewide assessment.

7 B. The department shall develop a process for the collection and aggregate
8 reporting of results and shall ensure that the results of such assessments are provided
9 to parents of participating students.

10 §4037.8. Reports

11 Not later than April thirtieth of each year, the department shall submit a
12 written report to the House Committee on Education, the Senate Committee on
13 Education, and the Joint Legislative Committee on the Budget regarding the
14 implementation of the program. The report, at a minimum, shall include the
15 following information:

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

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

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

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

22 (5) The percentage of funds used for each type of qualified education
23 expense.

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

26 (7) The results of a parental satisfaction survey.

27 Section 2. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 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 838 Original

2022 Regular Session

Garofalo

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 and to refer cases of misuse of account funds to the attorney general for investigation.
 - (b) Contract with a vendor or provider 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 made available for the program, an amount equal to the state's average 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, 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 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 do 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) The student's parent submits a timely application.
- (2) 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.

Eligibility; schools and service providers

Proposed law provides that a school shall meet all of the following criteria to be eligible to participate: be approved, provisionally approved, or probationally approved by BESE; comply with criteria set forth in federal nondiscrimination requirements; 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 the department to develop a process for the annual administration of either of the following assessments to participating students:

- (1) Any examinations required pursuant to the school and district accountability system at the prescribed grade level.

(2) A nationally norm-referenced test or statewide assessment.

Also requires the department to develop a process for the collection and aggregate reporting of results and to ensure that the results of such assessments are provided to parents of participating students.

Reporting

Proposed law requires DOE, by April 30th annually, to submit a report 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. 17:4037.1 - 4037.8)