

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

### REENGROSSED HOUSE BILL NO. 1540

Introduced by

Representatives Koppelman, Hauck, J. Johnson, Marschall, Morton, Rohr, Steiner

Senators Clemens, Cory, Gerhardt, Wobbema, Boehm

*In place of ~~the~~ amendments (25.1055.04010) adopted by the Senate, Reengrossed House Bill No. 1540 is amended by amendment (25.1055.04012) as follows:*

1 A BILL for an Act to create and enact a new chapter to title 15.1 of the North Dakota Century  
2 Code, relating to an education savings account program for students who are not enrolled in  
3 public school or a homeschool program; to provide an appropriation; and to provide an effective  
4 date.

#### 5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new chapter to title 15.1 of the North Dakota Century Code is created and  
7 enacted as follows:

#### 8 **Definitions.**

9 As used in this chapter:

- 10 1. "Administrator" means ~~an organization registered by the secretary of state to do~~  
11 ~~business in North Dakota and designated by the Bank of North Dakota to assist in the~~  
12 ~~implementation of this chapter.~~
- 13 2. "Department" means the department of public instruction.
- 14 3. "Education service provider" means an individual or organization approved to provide  
15 qualified education services. The term does not include a participating school.
- 16 4. "Eligible postsecondary institution" means a community college, an accredited  
17 university, or an accredited private postsecondary institution.
- 18 5. "Eligible student" means:
- 19 a. An elementary or secondary student who is a resident of this state and is eligible  
20 to attend a public school; or

1           b. A student who has received a scholarship under the education savings account  
2           program until the student graduates high school or reaches twenty-one years of  
3           age, regardless of household income.

4           6. "Parent" means a resident of this state who is a parent, guardian, custodian, or other  
5           person with the authority to act on behalf of the ~~child~~eligible student.

6           7. "Participating school" means any nonpublic school providing education to elementary  
7           students, secondary students, or both ~~that, which charges tuition and~~ has notified the  
8           administrator of the school's intention to participate in the education savings account  
9           program and comply with the education savings account program requirements under  
10          this chapter and related administrative rules.

11          8. "Private tutoring" means ~~qualified~~professional tutoring services approved by the  
12          program manager to receive payment under this chapter.

13          9. "Program manager" means an organization registered by the secretary of state to do  
14          business in North Dakota and designated by the Bank of North Dakota to assist in the  
15          implementation of this chapter.

16          ~~**Account deposits – Parent agreement - Qualified expenses – Enrollment.**~~

17          1. ~~Beginning with the 2026-27 school year, the Bank of North Dakota annually shall~~  
18          ~~deposit into each education savings account fifty percent of the statewide average~~  
19          ~~amount distributed per student under subsection 5 of section 15.1-27-04.1 for the~~  
20          ~~previous year.~~

21          ~~2. The department shall give priority access to the education savings account program to~~  
22          ~~the sibling of a student already enrolled in the education savings account program.~~

23          ~~3. A parent of an eligible student qualifies for a state grant to the child's~~  
24          ~~savings account ~~child~~for the student if the parent signs an agreement with the~~  
25          ~~department promising:~~

26          a. ~~To provide an education for the eligible student in at least the subjects of ~~reading,~~~~  
27          ~~grammarEnglish language arts, mathematics, social studies, and science;~~

28          b. ~~Not to enroll the parent's eligible student in a public school or supervise home~~  
29          ~~education under chapter 15.1-23 for the eligible student;~~

30          c. ~~To use education savings account program funds solely for qualified expenses~~  
31          ~~under this chapter;~~

1           d. To comply with the requirements outlined in this chapter and any related rules  
2           adopted by the Bank of North Dakota; and

3           e. If the participating student is a child with a disability, ~~to acknowledge~~ the parent  
4           has received information from the department and understands participation in  
5           the education savings account program qualifies as a parental placement of the  
6           parent's child under the Individuals with Disabilities Education Act [Pub. L.  
7           108-446; 20 U.S.C. 1412(a)(10)(A)]; ~~and~~

8           ~~f. To notify the department if the parent's student terminates participation in the~~  
9           ~~education savings account program and enrolls in a public school.~~

10        4.2. A parent participating in the education savings account program ~~shall~~ may use the  
11        funds deposited in the eligible student's account for any of the following qualifying  
12        expenses to educate the eligible student:

13        a. Tuition and fees at a participating school;

14        b. A textbook required by a participating school;

15        c. Payment for private tutoring or to another educational service provider;

16        d. Payment for purchase of curriculum;

17        e. Tuition or fees for a nonpublic online learning program;

18        f. Fees for ~~national norm-referenced examinations,~~ advanced placement  
19        examinations or similar courses, and any examinations related to college or  
20        university admission;

21        g. Computer hardware, software, or other technological device that is used solely  
22        for a student's educational needs and approved by the ~~department or a licensed-~~  
23        physician administrator, provided hardware purchased with education savings  
24        account funds may not be resold within ~~one year~~ three years of purchase;

25        h. Reasonable fees for transportation paid to a fee-for-service transportation  
26        provider for the student to travel to and from an education service provider;

27        i. Tuition and fees at an eligible postsecondary institution; and

28        j. A textbook required for college or university courses.

29        5.3. A participating school, private tutor, eligible postsecondary institution, or other  
30        education service provider may not refund, rebate, or share a student's grant with a

1           parent or ~~the~~ student in any manner. Any refund must be provided to the administrator  
2           who shall deposit the funds into the appropriate student's education savings account.

3       ~~6.4.~~ A parent may make a payment for the cost of educational programs and services not  
4           covered by the funds in the child's account.

5       ~~7.~~

6       **Bank of North Dakota - State treasurer - Duties - Transfer.**

7       1. The administrator shall:

8           a. Beginning with the 2026-27 school year, annually deposit into each education  
9           savings account:

10          (1) Thirty-five percent of the state per-pupil payment amount distributed per  
11           student under subsection 3 of section 15.1-27-04.1, if the eligible student's  
12           household has an annual income less than or equal to two hundred percent  
13           of the most recently revised poverty income guidelines published by the  
14           United States department of health and human services.

15          (2) Twenty percent of the state per-pupil payment amount distributed per  
16           student under subsection 3 of section 15.1-27-04.1, if the eligible student's  
17           household has an annual income greater than two hundred percent but less  
18           than or equal to four hundred percent of the most recently revised poverty  
19           income guidelines published by the United States department of health and  
20           human services.

21          (3) Ten percent of the state per-pupil payment amount distributed per student  
22           under subsection 3 of section 15.1-27-04.1, if the eligible student's  
23           household has an annual income greater than four hundred percent of the  
24           most recently revised poverty income guidelines published by the United  
25           States department of health and human services.

26          b. Qualify a program manager to manage and administer education savings  
27           accounts.

28          c. Establish the role and responsibilities of a program manager.

29          d. Conduct or contract for the auditing of accounts and, at a minimum, conduct  
30           random audits of accounts on an annual basis. A program manager may conduct  
31           the audits. The administrator may determine a parent of an eligible student is

- 1                   ineligible for the education savings account program if the parent substantially  
2                   misuses the funds in the account.
- 3                   e. Refer cases of substantial misuse of funds to law enforcement for investigation, if  
4                   evidence of fraudulent use of an account is obtained.
- 5                   f. Make deposits into eligible students' education savings accounts on a quarterly  
6                   basis.
- 7                   g. Adopt rules and procedures under chapter 28-32 for the administration of the  
8                   education savings account program, as necessary.
- 9                   h. Upon a participating student's graduation from high school or termination of  
10                  participation in the education savings account program, close the participating  
11                  student's account and transfer any remaining money in the account to the  
12                  general fund in the state treasury.
- 13                  2. The administrator may bar a participating school or education service provider from  
14                  the education savings account program if the administrator determines the  
15                  participating school or education service provider has:
- 16                  a. Routinely failed to comply with the accountability standards established under  
17                  this chapter; or
- 18                  b. Failed to provide a participating student with the educational services funded by  
19                  the education savings account.
- 20                  3. If the administrator bars a participating school or education provider from the  
21                  education savings account program, the program manager shall notify eligible  
22                  students and parents of the decision as quickly as possible. A parent may appeal a  
23                  decision of the administrator under chapter 28-32.
- 24                  4. The state treasurer annually shall transfer the funds required for education savings  
25                  accounts from the general fund to the Bank of North Dakota for quarterly deposit in  
26                  each education savings account.
- 27                  8.5. Funds, not to exceed twenty-five percent of the amount under subsection 1, not  
28                  expended over the course of a school year may be carried forward for use in the  
29                  following school year for a child who remains in the education savings account  
30                  program. If a parent removes a child from the education savings account program  
31                  before the end of the school year, any remaining funds from that school year must be

1           returned to the state and be allocated to fund other accounts. A student may transfer  
2           to another nonpublic school ~~or home school~~ and retain the funds in the education  
3           savings account.

4           9.6. Funds deposited in an education savings account do not constitute taxable income to  
5           the parent or the education savings account student.

6           7. The superintendent of public instruction may apply to a federal agency for additional  
7           funds to support this program. These funds must provide an additional benefit to each  
8           participating student's education savings account. If necessary to become eligible for  
9           the receipt of federal funds, the Bank of North Dakota, with consideration of advice  
10           provided by the superintendent of public instruction, shall adopt rules that supersede  
11           any conflicting law under this chapter.

12           ~~**Bank of North Dakota – Administrator – Administration.**~~

13           ~~1. The Bank of North Dakota shall:~~

14           ~~a. Qualify private financial management firms to manage and administer~~  
15           ~~education savings accounts.~~

16           ~~b. Conduct or contract for the auditing of accounts and, at a minimum, conduct~~  
17           ~~random audits of accounts on an annual basis. The Bank of North Dakota may make a~~  
18           ~~parent of an eligible student ineligible for the education savings account program if the~~  
19           ~~parent substantially misuses the funds in the account.~~

20           ~~c. Refer cases of substantial misuse of funds to law enforcement for investigation~~  
21           ~~if evidence of fraudulent use of an account is obtained.~~

22           ~~d. Make payments to eligible students' education savings accounts on a quarterly~~  
23           ~~basis.~~

24           ~~e. Adopt rules and procedures as necessary for the administration of the~~  
25           ~~education savings account program.~~

26           ~~f. Upon the student's graduation from high school, the superintendent of public~~  
27           ~~instruction shall close the student's account and transfer any remaining money in the~~  
28           ~~account to the general fund in the state treasury.~~

29           ~~2. The administrator shall provide to the parent of a participating student a written~~  
30           ~~explanation of the allowable uses of education saving accounts, the responsibilities of~~  
31           ~~the parent, and the duties of the administrator.~~

1 **Participating schools - Department - Accountability standards.**

2 ~~1. To ensure students are treated fairly and kept safe, each~~A participating ~~nonpublic-~~  
3 ~~school shall:~~

- 4 a. Comply with all health and safety laws or codes that apply to nonpublic schools;  
5 b. Obtain certification of approval under section 15.1-06-06.1;  
6 c. Hold a valid occupancy permit if required by the school's municipality;~~and.~~  
7 d. Certify the school complies with the nondiscrimination policies under [42 U.S.C.  
8 1981].

9 ~~2. To ensure funds are spent appropriately, a participating school shall:~~

10 ~~a.e.~~ Provide a parent with a receipt for all qualifying expenses at the school.

11 ~~b.~~ ~~Demonstrate the school's financial viability, if the school is to receive fifty-~~  
12 ~~thousand dollars or more during the school year, by filing with the administrator-~~  
13 ~~before the start of the school year:~~

14 ~~(1) A surety bond payable to the state in an amount equal to the aggregate-~~  
15 ~~amount of the funds from education savings accounts expected to be paid-~~  
16 ~~during the school year from students admitted at the participating school; or~~

17 ~~(2) Financial information demonstrating the school has the ability to pay an-~~  
18 ~~aggregate amount equal to the amount of the funds from education savings-~~  
19 ~~accounts expected to be paid during the school year to students admitted to-~~  
20 ~~the participating school.~~

21 ~~3. To allow parents and taxpayers to measure the achievements of the education savings-~~  
22 ~~account program:~~

23 ~~a.~~ Parents shall ensure:

24 ~~(1) The~~

25 f. Refund any payment for which a good or service was not provided to the student  
26 due to a participating student terminating participation in the education savings  
27 account program. A tuition payment must be refunded pro rata determined by the  
28 school days remaining in the term for which the tuition was paid. A refund must  
29 be paid to the administrator who shall deposit the funds into the appropriate  
30 student's education savings account.

1 g. Ensure the eligible student annually takes the state achievement  
2 testsassessments, or other nationally norm-referenced tests, or equivalent tests  
3 that, which measure learning gains in mathematics and English language arts,  
4 and provide for value-added assessment. If a parent selects the state  
5 achievement testassessment, the department shall pay associated costs and  
6 materials.

7 ~~(2) The~~

8 h. Ensure the results of the tests are provided to the department or an organization  
9 chosen by the state on an annual basis;

10 ~~(3) The student information is reported in a way that allows the department to~~  
11 ~~aggregate data by grade level, gender, family income level, and race; and~~

12 ~~(4) The department, or an organization chosen by the department, is~~  
13 ~~informed of the eligible student's graduation from high school.~~

14 ~~b.2.~~ The department, or an organization chosen by the department, shall:

15 ~~(1)a.~~ Ensure compliance with all student privacy laws.

16 ~~(2)b.~~ Collect all test results.

17 ~~(3)c.~~ Provide the test results, associated learning gains, and graduation rates to  
18 the public on the department's website after the third year of test and graduation-  
19 related data collection. The findings must be aggregated by the student's grade  
20 level, gender, family income level, number of years of participation in the  
21 education savings account program, and race. Data aggregation related to  
22 assessments may be limited to the state assessment, as determined necessary  
23 by the department.

24 ~~(4)d.~~ Provide rates for high school graduation, college attendance, and college  
25 graduation for participating students to the public on the department's website  
26 after the third year of test and test-related data collection; and

27 ~~(5)~~ Administer an annual parental satisfaction survey requesting each parent  
28 of a student receiving an education savings account program grant indicate the  
29 number of years the child has participated in the education savings account  
30 program and express the parent's:

31 ~~(a)~~ Satisfaction with the education savings account program; and

~~(b) Opinions on other topics, items, or issues that may indicate the effectiveness of the education savings account program.~~

4.3. A participating nonpublic school or other education service provider is autonomous and not an agent of the state or federal government and, except as provided under this chapter and in related rules, the:

a. ~~The department~~Department may not regulate the educational program of a participating nonpublic school or education service provider that accepts funds from an education savings account, ~~except as provided under this chapter and chapter 15.1-23;~~

b. ~~The creation~~Creation of the education savings account program does not expand the regulatory authority of the state, its officers, or a school district to impose an additional regulation of nonpublic schools or education service providers beyond the regulations necessary to enforce the requirements of the education savings account program; and

c. Participating nonpublic schools and education service providers must have the freedom to provide for the educational needs of the school's students without governmental control.

~~Department of public instruction – Administrator~~Program manager - Duties.

~~1.~~ 1. The ~~administrator~~program manager shall:

~~a.1.~~ a.1. Ensure eligible students and parents are informed annually of the schools that will be participating in the education savings account program.

~~b.2.~~ b.2. Create a standard form a parent of an eligible student may submit to establish a student's eligibility for the education savings account program. The ~~administrator~~program manager shall ensure the application is readily available to interested families through various sources, including the department's website.

~~c.3.~~ c.3. Accept applications on a year-round basis and shall approve applications in a reasonable time frame.

~~d.4.~~ d.4. Execute a multimedia marketing program targeting eligible families, especially those below the state's median household income, informing the families about the education savings account program and how to apply.

1           ~~e.5.~~   Establish a web and phone-based support system providing parents with  
2           education savings account program application support and ongoing account  
3           maintenance support.

4     ~~2.~~   ~~The department may bar a participating school or education service provider from the~~  
5     ~~education savings account program if the department determines the participating~~  
6     ~~school or education provider has:~~

7     ~~a.~~   ~~Routinely failed to comply with the accountability standards established under~~  
8     ~~this chapter; or~~

9     ~~b.~~   ~~Failed to provide the eligible student with the educational services funded by the~~  
10    ~~education savings account.~~

11    ~~3.~~   ~~If the department bars a participating school or education provider from the education~~  
12    ~~savings account program, the department shall notify eligible students and parents of~~  
13    ~~the decision as quickly as possible. A parent may appeal a decision of the department~~  
14    ~~under chapter 28-32.~~

15    ~~4.~~   ~~The department shall adopt rules and procedures as necessary for the administration~~  
16    ~~of the education savings account program.~~

17    6.    Provide to the parent of a participating student a written explanation of the allowable  
18    uses of education savings accounts, the responsibilities of the parent, and the duties  
19    of the program manager.

20    7.    Ensure the department is informed of a participating student's graduation from high  
21    school or a participating student's termination of participation in the education savings  
22    account program.

23    8.    Coordinate with the administrator to develop procedures to implement the program in  
24    accordance with this chapter and related rules.

25    9.    Upon request, determine whether an expense is allowable.

26    10.   Establish a procedure for a participating school to provide data to the department as  
27    required under this chapter.

28    11.   Administer an annual parental satisfaction survey requesting each parent of a student  
29    receiving an education savings account program grant indicate the number of years  
30    the child has participated in the education savings account program and express the  
31    parent's:

1 a. Satisfaction with the education savings account program; and

2 b. Opinions on other topics, items, or issues that may indicate the effectiveness of  
3 the education savings account program.

4 **School districts of residence - Duties.**

5 The school district of residence:

- 6 1. Shall provide a participating school or education service provider that has admitted an  
7 eligible student under this chapter with a complete copy of the student's school  
8 records, while complying with the Family Educational Rights and Privacy Act of 1974  
9 [20 U.S.C. Section 1232(g)].
- 10 2. May provide transportation for an eligible student to and from the participating school  
11 or education service provider under the same conditions as the school district of  
12 residence is required to provide transportation for other resident students to nonpublic  
13 schools. The school district of residence qualifies for state transportation aid for each  
14 student transported.

15 **SECTION 2. APPROPRIATION - BANK OF NORTH DAKOTA - EDUCATION SAVINGS**

16 **ACCOUNT PROGRAM.** There is appropriated out of any moneys in the general fund in the  
17 state treasury, not otherwise appropriated, the sum of ~~\$40,000,000~~\$21,700,000, or so much of  
18 the sum as may be necessary, to the Bank of North Dakota for the purpose of implementing the  
19 education savings account program and funding ~~the~~ education savings ~~account-~~  
20 ~~program~~accounts beginning in the school year 2026-27, for the biennium beginning July 1,  
21 2025, and ending June 30, 2027.

22 **SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1, 2026.