

Rep. Umberger, Carr. 2  
Rep. Kurk, Hills. 2  
Rep. Ladd, Graf. 4  
Rep. T. Wolf, Hills. 7  
March 12, 2018  
2018-1074h  
04/10

Amendment to SB 193-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT establishing education savings accounts for students.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 Statement of Purpose. The education savings account program established in RSA 194-E is to  
8 enable parents or guardians of eligible students currently enrolled in a public school the choice to  
9 apply for funds to purchase approved educational options that best serve the student.

10 2 New Chapter; Education Savings Accounts. Amend RSA by inserting after chapter 194-D the  
11 following new chapter:

12

CHAPTER 194-E

13

EDUCATION SAVINGS ACCOUNTS

14 194-E:1 Definitions. In this chapter:

15 I. "Account" means an education savings account (ESA) established for an eligible student  
16 pursuant to this chapter.

17 II. "Child with a disability" means a child with a disability as defined by 34 C.F.R. section  
18 300.8 and RSA 186-C:2.

19 III. "Commissioner" means the commissioner of the department of education.

20 IV. "Department" means the department of education.

21 V. "Eligible student" means a New Hampshire resident who:

22 (a) Is at least 6 years of age but not more than 20 years of age; and

23 (b) Has not graduated from high school or completed an alternate diploma or other high  
24 school equivalency credential; and

25 (c)(1) Has attended a New Hampshire public school or a chartered public school for a  
26 minimum of one school year immediately preceding participation in the program, excluding  
27 kindergarten; or

28 (2) Has received an education savings account in the prior year; and

29 (d)(1) Has an annual household income in the student's initial year of the program  
30 which is less than or equal to 185 percent of the federal poverty guidelines as updated annually in

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1 the Federal Register by the United States Department of Health and Human Services under the  
2 authority of 42 U.S.C. section 9902(2), provided the student's annual household income does not  
3 exceed 300 percent of such federal poverty guidelines during the student's participation in the  
4 program; or

5 (2) Is assigned to a public school that for 2 consecutive years has been unable to  
6 demonstrate that it provides the opportunity for an adequate education pursuant to RSA 193-E:3-b.

7 VI. "Nonpublic school" shall mean any public academy as defined in RSA 194:23, II, or  
8 private school in New Hampshire accredited through a department-recognized independent  
9 accreditation agency, school approved by a state education agency having an interstate compact  
10 with New Hampshire, or other school located in New Hampshire approved for school attendance  
11 pursuant to rules authorized by RSA 21-N:9, II(o) and RSA 186:11, XXIX. A nonpublic school shall:

12 (a) Comply with statutes and regulations relating to agency approvals such as health,  
13 fire safety, and sanitation;

14 (b) Be incorporated under the laws of New Hampshire or the United States; and

15 (c) Administer an annual assessment in reading and language arts, mathematics, and  
16 science. The assessment may be any standardized assessment used to measure student academic  
17 achievement, shall be aligned to the school's academic standards, and shall satisfy the requirements  
18 of RSA 193-C:6. The annual assessment results for each student who has a program account shall  
19 be submitted to the commissioner and to the scholarship organization.

20 VII. "Parent" means the biological or adoptive parent, parents, or legal guardian of a  
21 scholarship student.

22 VIII. "Parent-directed education" means instruction in science, mathematics, language,  
23 government, history, health, reading, writing, spelling, the history of the constitutions of New  
24 Hampshire and the United States and an exposure to and appreciation of art and music. Such  
25 education shall be provided by a parent for his or her own child and may include, at the discretion  
26 of the parent, any of the services and materials set forth in RSA 194-E:2, II.

27 IX. "Postsecondary program" means Running Start, e-Start, Early College, or a dual and  
28 concurrent enrollment program approved by the community college system of New Hampshire, the  
29 university system of New Hampshire, or the department.

30 X. "Program" means the education savings account program established in this chapter that  
31 will begin not earlier than the 2019-2020 school year.

32 XI. "Recognized independent accreditation agency" means an accrediting organization such  
33 as the New England Association of Schools and Colleges, National Association of Independent  
34 Schools, Independent Schools Association of Northern New England, Northern New England  
35 Conference of Seventh-day Adventists, Inc., or other accrediting agency recognized by the  
36 department that engages member schools in a comprehensive peer review accreditation process that  
37 provides assurance of quality academic standards and criteria, and measures academic

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1 improvement.

2 XII. "Resident school district" means the public school district in which the eligible student  
3 resides.

4 XIII. "Scholarship organization" means a charitable organization incorporated or qualified  
5 to do business in this state that:

6 (a) Is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal  
7 Revenue Code;

8 (b) Complies with applicable state and federal anti-discrimination and privacy laws;

9 (c) Is registered with the department of justice, director of charitable trusts; and

10 (d) Is selected by the department using an RFP or other state-adopted procurement  
11 process.

12 XIV. "Scholarship student" means a student in whose name an account has been opened.

13 XV. "Service provider" means a licensed professional who contracts with an education  
14 savings account recipient to provide educational instruction or other professional services.

15 XVI. "Treasurer" means the treasurer of the state of New Hampshire.

16 XVII. "Tutor" means an individual whose qualifications include skills, competencies, and  
17 knowledge to be demonstrated by evidence such as but not limited to college course work,  
18 documented professional experience, letters of recommendation, and professional development  
19 hours.

20 194-E:2 Program.

21 I. There is established an education savings account program, for which a parent of an  
22 eligible student shall receive an account from a scholarship organization to either enroll the student  
23 in a public or nonpublic school, or to provide the student with parent-directed education or  
24 instruction or services provided by a service provider or tutor. The commissioner shall report the  
25 program implementation date to the oversight commission established in RSA 194-E:9.

26 (a) For accounts for scholarship students enrolled in a public or nonpublic school, the  
27 parent is responsible for the student's enrollment application and agrees to meet the applicable  
28 requirements set forth in this chapter.

29 (b) For accounts for scholarship students receiving parent-directed education, the  
30 parent agrees to provide an education for the student in science, mathematics, language,  
31 government, history, health, reading, writing, spelling, the history of the constitutions of New  
32 Hampshire and the United States, and an exposure to and appreciation of art and music. The  
33 parent further agrees to meet the applicable requirements set forth in this chapter.

34 II. The parent of a scholarship student agrees to use the funds deposited in the student's  
35 account for any of the following qualifying educational expenses only:

36 (a) Tuition for course fees at any public school, nonpublic school, or for postsecondary  
37 programs.

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1           (b) Textbooks, curriculum, supplemental materials, including computer hardware and  
2 software required to support the curriculum.

3           (c) Fees for transportation to and from a service provider paid to a fee-for-service  
4 transportation provider, not to exceed \$750 per school year.

5           (d) Tuition and fees for online K-12 education accredited by a regional association of  
6 colleges and schools, or otherwise approved by the department.

7           (e) Assistive devices if a service provider, public school, or nonpublic school certifies in  
8 writing that these items are essential for the student to access the curriculum.

9           (f) Fees for a norm-referenced or criterion-referenced standardized achievement test,  
10 advanced placement test, or any department-approved assessment such as, but not limited to, the  
11 SAT or ACT.

12           (g) Educational instruction or services provided by a service provider or tutor.

13           (h) Therapies for a child with a disability.

14           III. For a child with a disability, participation in the program shall have the same effect as  
15 a parental placement of the child under 20 U.S.C. section 1412(a)(10)(A) of the Individuals with  
16 Disabilities Education Act (IDEA).

17           (a) The child's resident district shall not be liable for the cost of education, including  
18 special education and related services and the cost of a nonpublic school, if the resident district  
19 made a free appropriate public education available to the child and the parent elected to enroll the  
20 child in a public or nonpublic school, or elected to provide parent-directed instruction, funded in full  
21 or in part by an education savings account established pursuant to this chapter.

22           (b) A parent shall not establish and use funding from an education savings account to  
23 pay, in full or in part, tuition to a private school if the parent is in the process of seeking payment  
24 from the child's resident district for the cost of that private school pursuant with 34 C.F.R. section  
25 300.148.

26           (c) A school district in which the private school is located shall develop a services plan  
27 for any child who the school district has designated to receive services pursuant to 34 C.F.R.  
28 sections 300.132 through 300.137, including eligible children who have received an education  
29 savings account. The services plan, which shall be developed and implemented in accordance with  
30 34 C.F.R. sections 300.137 through 300.139 shall describe the specific special education and related  
31 services that the resident school district will make available to the parentally-placed child with a  
32 disability, including the amount and location of the services and any transportation necessary for  
33 the child to benefit from or participate in the services consistent with 34 C.F.R. section 300.139 (b).

34           (d) Pursuant to 34 C.F.R. section 300.137(a), no parentally-placed private school child  
35 with a disability has an individual right to receive some or all of the special education and related  
36 services that the child would receive if enrolled in a public school.

37           (e)(1) The school district in which the private school is located shall be responsible for

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1 conducting all child find activities for children who are enrolled in nonprofit private schools located  
2 within the school district, including the costs of finding and conducting an initial evaluation for any  
3 child who is suspected of being a child with a disability, identifying the child as a child with a  
4 disability, if appropriate; and the costs of conducting reevaluations to determine if an identified  
5 child enrolled in a private school in such school district continues to be a child with a disability.

6 (2) When a child is enrolled in a for-profit school or is receiving parent-directed  
7 instruction, the child's resident school district shall be responsible for conducting child find  
8 activities, including the cost of conducting initial evaluations and reevaluations for a child who is  
9 suspected of, or identified as, being a child with a disability.

10 IV. The parent of a scholarship student, the scholarship organization, and the department  
11 shall be provided copies of all signed agreements.

12 V. The parent of a scholarship student shall be required to annually renew the agreement  
13 to continue participation in the program. The scholarship organization shall conduct an annual  
14 program review and eligibility check for each student.

15 VI. Scholarship students may participate in co-curricular programs, as defined in RSA  
16 193:1-c, offered by the resident school district in accordance with local school board policy. A  
17 scholarship student may participate in a curricular course and the local school board may establish  
18 fees for attending these courses. The school district shall not be eligible for reimbursement for  
19 students with an education savings account.

20 VII. Students in the special school district within the department of corrections established  
21 in RSA 194:60 shall not be eligible students.

22 194-E:3 Program Accountability.

23 I. The parent shall maintain accountability and responsibility for the education of his or her  
24 scholarship student, establish measurable goals for the student at the outset of each academic year,  
25 and at least twice per year shall measure the student's academic growth.

26 II. The parent shall provide the scholarship organization with an annual educational  
27 evaluation that includes: annual assessment results from either a norm-referenced or criterion-  
28 referenced standardized achievement test, the statewide student assessment test, an evaluation  
29 completed by a certified teacher or a teacher currently teaching in a nonpublic school, who is  
30 selected by the parent, or other valid measurement tool mutually agreed upon by the parent and  
31 the commissioner.

32 III. Composite results at or above the fortieth percentile, or a growth scale value score, or  
33 equivalent measure showing learning progress in academic skills as reflected on such test shall be  
34 deemed reasonable academic proficiency or satisfactory academic learning growth.

35 IV. Upon receiving an educational evaluation for 2 consecutive years that identifies a  
36 scholarship student as not making satisfactory academic achievement or growth, the student shall  
37 no longer be eligible for the program.

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1           V. The parent shall maintain a copy of all educational evaluations for at least one year after  
2 the student has exited the program. The scholarship organization shall maintain a student's  
3 program educational records for a minimum of 3 years. If a child leaves the program, the  
4 scholarship organization shall forward all of the student's program educational records to the  
5 student's resident school district.

6           VI. An agreement shall be automatically terminated if the scholarship student no longer  
7 resides in this state or returns to his or her public school of residence. Any funds remaining in the  
8 student's account shall be returned to the state treasury for deposit in the education trust fund.

9           VII. The scholarship organization shall notify the department, the parent and the treasurer  
10 in writing of any scholarship students who are non-compliant with the program requirements of  
11 RSA 194-E:2. The department shall hold a hearing at the request of the parent. The department  
12 shall remove any scholarship student from the program if, after any required hearing, it determines  
13 the student is non-compliant with the requirements of RSA 194-E:2. Any funds remaining in the  
14 account for a student deemed non-compliant shall be sent to the state treasury for deposit in the  
15 education trust fund. Parents may appeal the department's decision to the state board of education.

16           194-E:4 Program Funding and Payment.

17           I. The scholarship organization shall notify the commissioner and the treasurer in writing  
18 of any eligible student whose parents have signed an agreement under RSA 194-E:2.

19           II. The commissioner shall calculate and the treasurer shall transfer from the education  
20 trust fund the following amounts to the scholarship organization:

21               (a) For students enrolled in a public or nonpublic school:

22                       (1) The base cost of an opportunity for an adequate education as provided in RSA  
23 198:40-a, II(a); and

24                       (2) Any differentiated aid the student is eligible for as provided in RSA 198:40-a,  
25 II(b)-(d).

26               (b) For students receiving parent directed education, the amount shall be as provided in  
27 RSA 77-G:2, I(b).

28           III. A scholarship organization shall receive up to 5 percent from amounts transferred  
29 pursuant to paragraphs II, for administrative expenses. After deducting amounts distributed to  
30 scholarship organizations pursuant to this paragraph, the remaining amounts transferred pursuant  
31 to paragraph II shall be credited to each student's education scholarship account.

32           IV. It is the responsibility of the parent or guardian to submit education expense invoices to  
33 the scholarship organization for approval and payment.

34           V. Funds received pursuant to this program shall not be included as annual household  
35 income under RSA 194-E:1, V(d)(1).

36           VI. The transfers shall be made in accordance with the distribution of adequate education  
37 grants under RSA 198:42.

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1 VII. All scholarship students' accounts shall be held in institutions qualified by the state  
2 treasurer.

3 VIII. The scholarship organization shall conduct audits of scholarship accounts, using  
4 procedures evaluated and approved by the department, to ensure compliance with this chapter.

5 IX. At the time of the eligible student's graduation from high school or completion of an  
6 alternate diploma or other high school equivalency credential, the eligible student's account shall be  
7 closed, the parents notified, and any remaining funds shall be returned to the state treasurer for  
8 deposit in the education trust fund.

9 X. The scholarship organization in consultation with the commissioner shall prohibit a  
10 participating nonpublic school or service provider from the program and notify the department if  
11 the scholarship organization establishes that the participating school or service provider has:

12 (a) On 2 or more occasions has failed to comply with the accountability standards  
13 established in this chapter; or

14 (b) Failed to provide the scholarship student with the educational services funded by  
15 the account.

16 XI. The scholarship organization shall notify the department and the commissioner shall  
17 refer cases of fraudulent misuse of funds to the attorney general for investigation and shall  
18 immediately suspend all payments from the account.

19 XII. If necessary, a nonpublic school, service provider, or tutor shall refund or rebate any  
20 program funds to the scholarship organization which shall credit such funds to the student's  
21 account.

22 XIII. Parents may make payments for any costs not covered by the funds in their  
23 scholarship students' accounts.

24 XIV. A tutor shall provide evidence of his or her qualifications to a scholarship  
25 organization. If the scholarship organization determines, based on the evidence provided, that the  
26 tutor is competent to provide the requested services, the scholarship organization shall make  
27 payment to the tutor from the eligible student's account.

28 194-E:5 Scholarship Organization; Requirements. A scholarship organization shall:

29 I. Develop and maintain agreement forms in cooperation with the department.

30 II. Provide copies of agreements signed by parents of scholarship students to the  
31 department and the treasurer.

32 III. Provide the unique pupil identifier and date of birth for each eligible student to the  
33 department, if available.

34 IV. Accept and review all applications for scholarships under this chapter.

35 (a) Applications may be accepted through May 1 for the upcoming school year.

36 (b) Accounts shall be established and districts notified no later than June 30 for the  
37 upcoming school year. In consultation with the department, notification to school districts shall

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1 include whether the scholarship student is eligible for differentiated aid under RSA 198:40-a, II(c)-  
2 (d).

3 (c)(1) Accept applications and establish accounts for eligible students at any time during  
4 the year if, upon written request from the applicant, the commissioner grants an exception, and the  
5 student would not be leaving a school or school district that has already been capped for program  
6 participation in current school year pursuant to RSA 194-E:7.

7 (2) Any applicant aggrieved by the commissioner's decision not to grant an  
8 exception pursuant to subparagraph (c)(1) may appeal in writing to the state board of education no  
9 later than 15 days following the date of the commissioner's decision.

10 V. Comply with all federal and state laws regarding student privacy.

11 VI. Review all receipts for fees and services pursuant to RSA 194-E:2, II.

12 VII. Provide an annual report to the speaker of the house of representatives, the president  
13 of the senate, the chairmen of the house education and finance committees, the chairmen of the  
14 senate education and finance committees, the governor, the joint legislative oversight commission  
15 pursuant to RSA 194-E:9, and the department, including:

16 (a) The number of scholarship students.

17 (b) A list of public schools, nonpublic schools, service providers, and tutors, including  
18 the number of scholarship students served by each school, service provider, and tutor, and the  
19 dollar amount of each type of service provided by each school, service provider, and tutor.

20 (c) The dollar amount of scholarship student account funds utilized for non-tuition  
21 services during the year.

22 (d) Subject to federal and state student privacy regulations, an analysis of student  
23 growth and achievement for scholarship students compared to peer groups.

24 (e) The school district each student left and the reason, if known.

25 (f) The number of students leaving nonpublic schools and returning to public schools  
26 and the reason, if known.

27 (g) Scholarships or other financial aid provided by public or nonpublic schools if the  
28 account did not cover the entire tuition and other related costs, if available.

29 VIII. Conduct a survey of at least 25 percent of parents of eligible students with accounts.  
30 The survey shall include, but not be limited to, the number of years the parent has been in the  
31 program, the relative satisfaction of the parent with the program, and suggestions of the parent for  
32 improvement. The survey and its results shall be included in the annual report.

33 IX. Document each recipient who is eligible to receive differentiated aid. All children  
34 eligible for special education, as defined in 34 C.F.R. section 300.8(a), shall be identified and  
35 documented separately. Once this is determined, the scholarship organization shall notify the  
36 department.

37 X. When the parent of a child with a disability submits an application for an education



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1 savings account:

2 (a) Inform the parent that, pursuant to 34 C.F.R. section 300.137(a), the child with a  
3 disability will no longer have any individual right to receive some or all of the special education and  
4 related services the child would have received if enrolled in a public school.

5 (b) Inform the parent of a child with a disability who is enrolled in a nonprofit private  
6 elementary or secondary school that the child with a disability may, but is not entitled to, receive  
7 some services through a service plan in accordance with 34 C.F.R. sections 300.132 through  
8 300.137.

9 (c) Inform the parent that the responsibility for making the decision about whether the  
10 child shall receive services, what services the child will receive, and where the services will be  
11 provided is with the school district in which the child's private school is located and not with the  
12 child's resident school district.

13 (d) Inform the parent that a child with a disability who is enrolled in a for-profit private  
14 school or who is receiving parent-directed instruction has no right to receive any special education  
15 or related services.

16 (e) Provide the parent with the most recent copy or location of an electronic version of  
17 the New Hampshire special education procedural safeguard handbook.

18 XI. Comply with the requirements and recommendations of the oversight commission  
19 established in RSA 194-E:9.

20 194-E:6 School and Service Provider Requirements.

21 I. Public schools, nonpublic schools, postsecondary institutions, service providers, and  
22 tutors shall comply with all federal and state laws regarding student privacy.

23 II. Public schools, nonpublic schools, postsecondary institutions, service providers, and  
24 tutors shall furnish receipts for eligible services pursuant to RSA 194-E:2, II to the parent and the  
25 scholarship organization.

26 III. The eligible child's resident school district shall provide a participating public school,  
27 nonpublic school, postsecondary institution, service provider, or tutor that has admitted or is  
28 providing services to an eligible student under this program with a copy of the student's school  
29 records, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
30 section 1232g, and state policies.

31 194-E:7 Education Savings Account; Assignment; Admission.

32 I.(a) In any one school year, the number of accounts assigned to students leaving a  
33 municipality shall not exceed the greater of 3 students or:

34 (1) Five percent, rounded to the next higher whole number, of a municipality's free  
35 and reduced meal program average daily membership for the prior year, in a municipality with an  
36 average daily membership in residence of 100 students or less; or

37 (2) Four percent, rounded to the next higher whole number, of a municipality's free

1 and reduced meal program average daily membership for the prior year, in a municipality with an  
2 average daily membership in residence between 101 and 300 students; or

3 (3) Three percent, rounded to the next higher whole number, of a municipality's  
4 free and reduced meal program average daily membership for the prior year, in a municipality with  
5 an average daily membership in residence of 301 or more students.

6 (b) In any one school year, the number of accounts assigned to students leaving a  
7 municipality's school district shall not exceed 5 percent of the average daily membership in  
8 residence for any single school. The number of accounts shall be rounded to the next higher whole  
9 number.

10 II. If the number of eligible students from any municipality would exceed the amounts  
11 calculated pursuant to paragraph I, the scholarship organization shall implement a lottery-based  
12 selection for admission into the program. If necessary, the lottery shall be held not later than June  
13 1 to determine selection for admission into the program for the following school year.

14 194-E:8 Base Eligibility Adjustment Grant. For each municipality in which the education tax  
15 rate generates less than the cost of an opportunity for an adequate education as calculated in RSA  
16 198:40-a, the commissioner shall determine the number of students from each such municipality  
17 who participated in the program for the first time for the entirety of the previous school year. The  
18 commissioner shall determine the municipality in which the student resided prior to participation  
19 and distribute a one-time adjustment grant of \$1,500 per student to the municipality, which shall be  
20 for the use of the municipality's school district or districts.

21 194-E:9 Oversight Commission; Report.

22 I. There is hereby established an education savings account oversight commission. The  
23 commission shall meet at least twice a year and shall monitor the implementation of this chapter,  
24 and make recommendations for any legislative changes to the program. The commission shall  
25 include 2 senators appointed by the president of the senate, 3 members of the house of  
26 representatives, including the chairperson of division II of the house finance committee and the  
27 chairperson of the education committee, appointed by the speaker of the house of representatives,  
28 the commissioner of the department of education or designee, and one member of the state board of  
29 education appointed by the chairperson of the state board of education.

30 II. The commission shall provide a report on or before November 1 of each year to the  
31 general court, including findings, recommendations, and any corrective or technical improvements  
32 that the program may require. The scholarship organization shall develop and implement a plan to  
33 be approved by the commission that addresses corrective and technical recommendations made by  
34 the oversight commission.

35 III. The commission may require additional information from the scholarship organization  
36 in order for it to fulfill its duties. The commission chairman shall inform the scholarship  
37 organization of any additional requirements.

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1           194-E:10 Severability. If any provision of this chapter or the application thereof to any person  
2 or circumstances is held invalid, such invalidity shall not affect other provisions or applications of  
3 the chapter which can be given effect without the invalid provision or application, and to this end  
4 the provisions of this chapter are declared to be severable.

5           3 Education Trust Fund. Amend the introductory paragraph in RSA 198:39, I to read as  
6 follows:

7           I. The state treasurer shall establish an education trust fund in the treasury. Moneys in  
8 such fund shall not be used for any purpose other than to distribute adequate education grants to  
9 municipalities' school districts and to approved charter schools pursuant to RSA 198:42, to provide  
10 low and moderate income homeowners property tax relief under RSA 198:56-198:61, ~~and~~ to fund  
11 kindergarten programs as may be determined by the general court, ***and to fund education***  
12 ***savings accounts as provided in RSA 194-E***. The state treasurer shall deposit into this fund  
13 immediately upon receipt:

14           4 Effective Date. This act shall take effect July 1, 2018.

2018-1074h

AMENDED ANALYSIS

This bill establishes an education savings account program for children between 6 and 20 years of age.