

LEGISLATIVE BILL 1256

Approved by the Governor April 13, 2006

Introduced by Brashear, 4; Baker, 44; Dw. Pedersen, 39; Raikes, 25; Schimek, 27

AN ACT relating to early childhood education; to amend sections 79-1101 and 79-1104, Reissue Revised Statutes of Nebraska, section 84-613, Revised Statutes Cumulative Supplement, 2004, and sections 79-1103 and 84-612, Revised Statutes Supplement, 2005; to create the Nebraska Early Childhood Education Endowment and funds; to provide funding for early childhood education programs; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 79-1101, Reissue Revised Statutes of Nebraska, is amended to read:

79-1101 (1) The Legislature finds and declares that: (a) Early childhood education programs can assist children in achieving their potential as citizens, workers, and human beings and can strengthen families; (b) early childhood education has been proven to be a sound public investment of funds not only in assuring productive, taxpaying workers in the economy but also in avoidance of increasingly expensive social costs for those who drop out as productive members of society; (c) the key ingredient in an effective early childhood education program is a strong family development and support component because the role of the parent is of critical importance; (d) while all children can benefit from quality, developmentally appropriate early childhood education experiences, such experiences are especially important for at-risk infants and children; (e) current early childhood education programs serve only a fraction of Nebraska's children and the quality of current programs varies widely; (f) well-designed early childhood education programs increase the likelihood that children who participate will enter school prepared to achieve high standards; (g) effective early childhood education programs require staff with knowledge about child growth, development, and learning and family systems; and (h) both public and nonpublic programs which meet recognized standards of quality can address the growth, development, and learning needs of young children.

(2) It is the intent of the Legislature and the public policy of this state to encourage schools and community-based organizations to work together to provide high-quality early childhood education programs for infants and young children which include family involvement. The purposes of sections 79-1101 to 79-1104 and sections 4 to 8 of this act are to provide state assistance to selected school districts, cooperatives of school districts, and educational service units for early childhood education, to encourage coordination between public and private service providers of early childhood education and child care programs, and to provide state support for efforts to improve training opportunities for staff in such programs.

(3) For purposes of sections 79-1101 to 79-1104, early and sections 4 to 8 of this act:

(a) Board of trustees means the Early Childhood Education Endowment Board of Trustees;

(b) Early childhood education program means any prekindergarten part-day or full-day program or in-home family support program with a stated purpose of promoting social, emotional, intellectual, language, physical, and aesthetic development and learning for children from birth to kindergarten-entrance age and family development and support;

(c) Endowment agreement means an agreement between the State Department of Education and an endowment provider entered into pursuant to section 4 of this act; and

(d) Endowment provider means an endowment that has met the criteria described in section 4 of this act and that has entered into an endowment agreement.

Sec. 2. Section 79-1103, Revised Statutes Supplement, 2005, is amended to read:

79-1103 (1)(a) The State Department of Education shall establish and administer the Early Childhood Education Grant Program. The Upon the effective date of an endowment agreement, administration of the Early Childhood Education Grant Program with respect to programs for children from birth to age three shall transfer to the board of trustees. If there is no endowment agreement in effect, the department shall request proposals in accordance with this section for all early childhood education programs from school districts,

individually or in cooperation with other school districts or educational service units, working in cooperation with existing nonpublic programs which meet the requirements of subsection (2) of section 79-1104. If there is an endowment agreement in effect, the board of trustees shall administer the Early Childhood Education Grant Program with respect to programs for children from birth to age three pursuant to section 5 of this act and the department shall continue to administer the Early Childhood Education Grant Program with respect to other prekindergarten programs pursuant to sections 79-1101 to 79-1104 and sections 4 to 8 of this act. All administrative procedures of the board of trustees, including, but not limited to, rules, grant applications, and funding mechanisms, shall harmonize with those established by the department for other prekindergarten programs.

(b) The first priority shall be for (i) continuation grants for programs that received grants in the prior school fiscal year and for which the state aid calculation pursuant to the Tax Equity and Educational Opportunities Support Act does not include early childhood education students, in an amount equal to the amount of such grant, except that if the grant was a first-year grant the amount shall be reduced by thirty-three percent, and (ii) continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, in an amount equal to the amount of the grant for the school fiscal year prior to the first school fiscal year for which early childhood education students were included in the state aid calculation for the school district's local system minus the calculated state aid amount. The calculated state aid amount shall be calculated by multiplying the cost grouping cost per student for the school district's local system cost grouping by the adjusted formula students attributed to the early childhood education programs pursuant to the Tax Equity and Educational Opportunities Support Act.

(c) The second priority shall be for new grants and expansion grants for programs that will serve at-risk children who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half of the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half of the budget for expanding the capacity of the program to serve additional children.

(d) The third priority shall be for new grants, expansion grants, and continuation grants for programs serving children younger than those who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half the budget for expanding the capacity of the program to serve additional children. Continuation grants under this priority may be given annually in an amount up to one-half the total budget of the program per year minus any continuation grants received under the first priority.

(e) Programs serving children who will be eligible to attend kindergarten the following school year shall be accounted for separately for grant purposes from programs serving younger children, but the two types of programs may be combined within the same classroom to serve multi-age children. Programs that receive grants for school fiscal years prior to school fiscal year 2005-06 to serve both children who will be eligible to attend kindergarten the following school year and younger children shall account for the two types of programs separately for grant purposes beginning with school year 2005-06 and shall be deemed to have received grants prior to school fiscal year 2005-06 for each year that grants were received for the types of programs representing the age groups of the children served.

(2) Each program proposal which is approved by the department shall include (a) a planning period, (b) an agreement to participate in periodic evaluations of the program to be specified by the department, (c) evidence that the program will be coordinated or contracted with existing programs, including those listed in subdivision (d) of this subsection and nonpublic programs which meet the requirements of subsection (2) of section 79-1104, (d) a plan to coordinate and use a combination of local, state, and federal funding sources, including, but not limited to, programs for children with disabilities below five years of age funded through the Special Education Act, the Early Intervention Act, funds available through the flexible funding provisions under the Special Education Act, the federal Head Start program, 42 U.S.C. 9831 et seq., the federal Even Start Family Literacy Program, 20 U.S.C. 6361 et seq., Title I of the federal Improving America's Schools Act of 1994, 20 U.S.C. 6301 et seq., and child care assistance through the Department of Health and Human Services, (e) a plan to use sliding fee scales and the funding sources included in subdivision (d) of this subsection to maximize the participation of economically and categorically

diverse groups and to ensure that participating children and families have access to comprehensive services, (f) the establishment of an advisory body which includes families and community members, (g) the utilization of appropriately qualified staff, (h) an appropriate child-to-staff ratio, (i) appropriate group size, (j) compliance with minimum health and safety standards, (k) appropriate facility size and equipment, (l) a strong family development and support component recognizing the central role of parents in their children's development, (m) developmentally and culturally appropriate curriculum, practices, and assessment, (n) sensitivity to the economic and logistical needs and circumstances of families in the provision of services, (o) integration of children of diverse social and economic characteristics, (p) a sound evaluation component, including at least one objective measure of child performance and progress, (q) continuity with programs in kindergarten and elementary grades, (r) instructional hours that are similar to or less than the instructional hours for kindergarten, (s) well-defined language development and early literacy emphasis, including the involvement of parents in family literacy activities, (t) a plan for ongoing professional development of staff, and (u) inclusion of children with disabilities as defined in the Special Education Act, all as specified by rules and regulations of the department in accordance with sound early childhood educational practice.

(3) The department shall make an effort to fund programs widely distributed across the state in both rural and urban areas.

(4) A report evaluating the programs shall be made to the State Board of Education and the Legislature by January 1 of each odd-numbered year. Up to five percent of the total appropriation for the Early Childhood Education Grant Program may be reserved by the department for evaluation and technical assistance for the programs.

(5) Programs may be approved for purposes of the Tax Equity and Educational Opportunities Support Act, expansion grants, and continuation grants on the submission of a continuation plan demonstrating that the program will continue to meet the requirements of subsection (2) of this section and a proposed operating budget demonstrating that the program will continue to receive resources from other sources equal to or greater than the sum of any grant received pursuant to this section for the prior school year plus any calculated state aid as calculated pursuant to subsection (1) of this section for the prior school year.

(6) The board State Board of Education may adopt and promulgate rules and regulations to implement the Early Childhood Education Grant Program, except that if there is an endowment agreement in effect, the board of trustees shall recommend any rules and regulations relating specifically to the Early Childhood Education Grant Program with respect to programs for children from birth to age three. It is the intent of the Legislature that the rules and regulations for programs for children from birth to age three be consistent to the greatest extent possible with those established for other prekindergarten programs.

Sec. 3. Section 79-1104, Reissue Revised Statutes of Nebraska, is amended to read:

79-1104 (1) Any school board in its discretion may (a) establish and financially support programs providing before-and-after-school or prekindergarten services, to which attendance shall be voluntary and which the board may deem beneficial to the education of prekindergarten or school-age children and (b) provide or financially support transportation for children to, from, or to and from programs as defined in section 71-1910. The board may charge a fee, not to exceed the actual cost, for providing such programs and services but may waive such fee on the basis of need. This section does not allow any school district to fail to meet its responsibilities under the Special Education Act.

(2) Prekindergarten programs established by school boards or educational service units shall be approved by the State Department of Education subject to regulations adopted and promulgated by the State Board of Education and may include such components as (a) the utilization of appropriately qualified staff, (b) an appropriate child-to-staff ratio, (c) appropriate group size, (d) compliance with minimum health and safety standards, (e) appropriate facility size and equipment, (f) a strong family development and support component, (g) developmentally and culturally appropriate curriculum, practices, and assessment, (h) well-defined language development and early literacy emphasis, and (i) a plan for ongoing professional development of staff, all in accordance with sound early childhood educational practice, research, and evaluation. All teachers and administrators in prekindergarten programs established pursuant to this section shall hold a valid certificate or permit issued pursuant to sections 79-806 to 79-815. The State Board of Education shall adopt and promulgate

rules and regulations for the issuance of such permits or certificates required by this section.

Sec. 4. (1) Within ninety days after the effective date of this act, the State Department of Education shall request proposals from private endowments with experience in managing public and private funds for the benefit of children and families in multiple locations in Nebraska to be the endowment provider for the Nebraska Early Childhood Education Endowment upon the terms set forth in this section.

(2) An endowment seeking to become the endowment provider for the Nebraska Early Childhood Education Endowment shall agree to:

(a) Irrevocably commit, subject to subdivision (4)(a) of this section, no less than twenty million dollars in a private endowment to be used solely as part of the Nebraska Early Childhood Education Endowment within five years after the effective date of the endowment agreement, of which no less than five million dollars shall be pledged on the effective date of the endowment agreement. A minimum of one million dollars shall be placed in the private endowment prior to December 31, 2006, and a minimum of five million dollars shall be placed in the private endowment prior to June 30, 2007;

(b) Commit all interest, earnings, and proceeds from such private endowment for deposit into the Early Childhood Education Endowment Cash Fund;

(c) Permit the board of trustees to determine the allocation of funds from the Early Childhood Education Endowment Cash Fund pursuant to section 5 of this act; and

(d) Submit to the State Department of Education an annual financial statement of the private endowment, audited by an independent auditor and complying with all applicable Internal Revenue Service requirements. The financial statement shall report details on the private endowment, including the current value of the corpus and the annual receipts to the private endowment categorized by donations and interests, together with a report listing the amount and purpose of expenditures from the private endowment.

(3) Upon selection of an endowment provider, the State Department of Education and such endowment provider shall enter into an endowment agreement pursuant to which the state and the endowment provider will agree to deposit funds as provided in subsection (4) of this section.

(4)(a) Upon the effective date of an endowment agreement, the state shall provide for the Early Childhood Education Endowment Fund, which is hereby created, in accordance with section 8 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The endowment agreement may provide that the obligations of the endowment provider will terminate if the funds allocated to the Early Childhood Education Endowment Fund pursuant to subsection (12) of section 84-612 terminate as set forth in such section and are not replaced by a minimum of forty million dollars from another source on and after July 1, 2007.

(b) All interest, earnings, and proceeds from the Early Childhood Education Endowment Fund shall be deposited in the Early Childhood Education Endowment Cash Fund, which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All interest, earnings, and proceeds from the Early Childhood Education Endowment Cash Fund shall be retained in such fund.

(c) Upon the effective date of an endowment agreement, the endowment provider shall deposit the amounts set forth in the endowment agreement into a private endowment for the sole benefit of the Early Childhood Education Endowment Fund. Money in the private endowment shall be managed by the endowment provider in accordance with sound, professional, fiduciary practices and in accordance with the endowment agreement.

(d) All interest, earnings, and proceeds from the private endowment shall be deposited into the Early Childhood Education Endowment Cash Fund no less than quarterly.

Sec. 5. (1) The Early Childhood Education Endowment Cash Fund, consisting of the interest, earnings, and proceeds from the Early Childhood Education Endowment Fund and the interest, earnings, and proceeds from the private endowment created by the endowment provider, and any additional private donations made directly thereto, shall be used exclusively to provide funds for the Early Childhood Education Grant Program for at-risk children from birth to age three as set forth in this section.

(2) Grants provided by this section shall be to school districts, cooperatives of school districts, and educational service units for early childhood education programs for at-risk children from birth to age three, as determined by the board of trustees pursuant to criteria set forth by

the board of trustees. School districts, cooperatives of school districts, and educational service units may establish agreements with other public and private entities to provide services or operate programs.

(3) Each program selected for a grant pursuant to this section may be provided a grant for up to one-half of the total budget of such program per year. Programs selected for grant awards may receive continuation grants subject to the availability of funding and the submission of a continuation plan which meets the requirements of the board of trustees.

(4) Programs shall be funded across the state and in urban and rural areas to the fullest extent possible.

(5) Each program selected for a grant pursuant to this section shall meet the requirements described in subsection (2) of section 79-1103, except that the periodic evaluations of the program are to be specified by the board of trustees and the programs need not include continuity with programs in kindergarten and elementary grades and need not include instructional hours that are similar to or less than the instructional hours for kindergarten.

(6) Up to five percent of the total amount deposited in the Early Childhood Education Endowment Cash Fund each fiscal year may be reserved by the board of trustees for evaluation and technical assistance for the Early Childhood Education Grant Program with respect to programs for at-risk children from birth to age three.

Sec. 6. To administer the Early Childhood Education Grant Program with respect to children from birth to age three, the Early Childhood Education Endowment Board of Trustees is created. For administrative support and budgetary purposes only, the board of trustees shall be within the State Department of Education.

Sec. 7. (1) The board of trustees shall include the following six members:

(a) The Commissioner of Education or his or her designee;

(b) The Director of Health and Human Services or his or her designee; and

(c) The following persons appointed by the Governor, in his or her discretion:

(i) Two persons nominated by the endowment provider;

(ii) An early childhood professional representing an urban at-risk area appointed pursuant to subsection (5) of this section; and

(iii) An early childhood professional representing a rural at-risk county appointed pursuant to subsection (6) of this section.

(2) The terms of office for members initially appointed under subsection (1) of this section shall be three years. Upon completion of the initial terms of such members, the Governor shall appoint the two members under subdivision (1)(c)(i) of this section for terms of one and two years, the member under subdivision (1)(c)(ii) of this section for a term of three years, and the member under subdivision (1)(c)(iii) of this section for a term of two years. Succeeding appointees shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(3) The board of trustees shall by majority vote annually elect a chairperson from among the members of the board of trustees.

(4) The members of the board of trustees shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

(5) The Governor shall identify an at-risk urban area consisting of not less than ten contiguous census tracts, as determined by the United States Bureau of the Census for the 2000 United States Census, within a city of the metropolitan class, which each contain a percentage of families below the poverty line of greater than twenty percent, as reported by the United States Bureau of the Census for the 2000 United States Census. The Governor shall request that a committee, consisting of (a) the member of the Legislature representing the district containing the preponderance of geographic area of such at-risk area, (b) the member of the board of county commissioners representing the district containing the preponderance of geographic area of such at-risk area, and (c) the member of the city council representing the district containing the preponderance of geographic area of such at-risk area, develop a list of not less than two and not more than four nominees for appointment to the board of trustees. Upon receipt of a list of nominees signed by at least two members of the committee, the Governor shall, in his or her discretion, appoint a member to the board of trustees from such list of nominees.

(6) The Governor shall, in his or her discretion, appoint one member to the board of trustees who resides in a county which does not contain a city

of the metropolitan class or a city of the primary class and which contains a percentage of families below the poverty line of greater than eight and one-half percent, as reported by the United States Bureau of the Census for the 2000 United States Census.

Sec. 8. (1) From the effective date of an endowment agreement until June 30, 2007, the Early Childhood Education Endowment Fund shall consist of forty million dollars of the Cash Reserve Fund. Such forty million dollars shall remain within the Cash Reserve Fund and remain a part thereof for all purposes, except that interest earned on that portion deemed to constitute the Early Childhood Education Endowment Fund shall accrue to the Early Childhood Education Endowment Cash Fund in accordance with section 84-613.

(2) On and after July 1, 2007, the Early Childhood Education Endowment Fund shall consist of any funds allocated to the Early Childhood Education Endowment Fund from funds belonging to the state for educational purposes described in Article VII, section 7, of the Constitution of Nebraska.

Sec. 9. Section 84-612, Revised Statutes Supplement, 2005, is amended to read:

84-612 (1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(3) On June 15, 2005, the State Treasurer shall transfer twenty-six million dollars from the Cash Reserve Fund to the General Fund.

(4) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer such amounts not to exceed seven million seven hundred fifty-three thousand two hundred sixty-three dollars in total from the Cash Reserve Fund to the Nebraska Capital Construction Fund between July 1, 2003, and June 30, 2007.

(5) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsection (4) of this section from the General Fund to the Cash Reserve Fund on or before June 30, 2008.

(6) In addition to receiving transfers from other funds, the Cash Reserve Fund shall receive federal funds received by the State of Nebraska for undesignated general government purposes, federal revenue sharing, or general fiscal relief of the state.

(7) On July 29, 2005, the State Treasurer shall transfer one hundred forty-five million eight hundred eleven thousand three hundred sixty-eight dollars from the Cash Reserve Fund to the Low-Level Radioactive Waste Settlement Fund.

(8) On June 15, 2007, the State Treasurer shall transfer fifteen million six hundred seventy-four thousand one hundred seven dollars from the Cash Reserve Fund to the General Fund.

(9) On June 15, 2008, the State Treasurer shall transfer seventeen million nine hundred thirty-one thousand thirty dollars from the Cash Reserve Fund to the General Fund.

(10) On June 15, 2009, the State Treasurer shall transfer four million nine hundred ninety thousand five hundred five dollars from the Cash Reserve Fund to the General Fund.

(11) On or before July 8, 2005, the State Treasurer shall transfer fifteen million dollars from the Cash Reserve Fund to the Job Training Cash Fund. This transfer shall be returned to the Cash Reserve Fund in amounts according to section 81-1201.21.

(12) From the effective date of an endowment agreement as defined in subdivision (3)(c) of section 79-1101 until June 30, 2007, forty million dollars of the Cash Reserve Fund shall be deemed to constitute the Early Childhood Education Endowment Fund. Such funds shall remain part of the Cash Reserve Fund for all purposes, except that the interest earned on such forty million dollars shall accrue as provided in section 84-613.

Sec. 10. Section 84-613, Revised Statutes Cumulative Supplement, 2004, is amended to read:

84-613 Any money in the Cash Reserve Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Until July 1, 2007, any interest earned by the fund shall accrue to the General Fund.

except for interest earned on forty million dollars if such money is deemed to constitute the Early Childhood Education Endowment Fund in accordance with subsection (12) of section 84-612. From the effective date of an endowment agreement as defined in subdivision (3)(c) of section 79-1101 until June 30, 2007, interest earned on the forty million dollars deemed to constitute the Early Childhood Education Endowment Fund shall accrue to the Early Childhood Education Endowment Cash Fund. Commencing July 1, 2007, any interest earned by the Cash Reserve Fund shall accrue to the Building Renewal Allocation Fund.

Sec. 11. Original sections 79-1101 and 79-1104, Reissue Revised Statutes of Nebraska, section 84-613, Revised Statutes Cumulative Supplement, 2004, and sections 79-1103 and 84-612, Revised Statutes Supplement, 2005, are repealed.