West Virginia Senate Bill 451, Article 31. Education Savings Account Program

Executive Summary: An education savings account program such as the one introduced in West Virginia would have a devastating fiscal and academic impact. Because the program contemplates universal eligibility, the bill would authorize funding for thousands of students who currently attend private school. The bill also provides significant opportunities for fraud, waste and abuse. Academically, the bill imposes no accountability requirements, so taxpayers have no assurance that they are funding a quality education. Indeed, given the record of private school voucher program evaluations, there is good reason to believe that students using these accounts to access private schools may actually suffer academic harm. Finally, it is reasonable to project that the financial benefits of this proposal would inure disproportionately to affluent families that already enroll their children in private school. Given the number of evidence-based education initiatives that have actually been proven effective at improving student achievement, there is no valid policy reason to support this investment of public funds.

Bill Summary and Analysis

- ### Program administration

The program would be under the authority of the Treasurer rather than the Department of Education. Treasury thus would bear exclusive authority for establishing and administering rules, and monitoring and controlling the funded accounts.

- ### Funding

The bill authorizes a separate line-item appropriation to fund the program, but does not authorize the amount of that appropriation. The state Superintendent of Schools is directed to determine how the funds are to be transferred to the Treasurer, which suggests that the appropriation is intended to come from the overall education budget. The bill has not been scored to determine fiscal impact. Analyses of projected savings conducted by supporters of the initiative base their calculation only on students using the accounts to transfer from public school to a non-public option. Students already enrolled in private school or who are otherwise not included in the public school headcount represent additional costs. Furthermore, public schools do not experience savings when students leave. See fiscal analyses referenced on page 4.

- ### Student eligibility

The program is open to any elementary or secondary school student who has lived in the state for at least one year. There is no requirement that students have ever attended a public school, and there is no income eligibility limit. Accordingly, private school students from affluent families and homeschooled students would be immediately eligible to participate. Students with disabilities waive their federal civil rights under IDEA when they enter the program.

- ### Provider eligibility

An education service provider is defined as any individual or entity that receives funds to provide educational goods or services. Indeed, family members could qualify as education service providers and receive payment for homeschooling or tutoring. The bill sets no eligibility requirements for private schools wishing to participate, such as accreditation, a valid certificate of occupancy, or compliance with any health, safety, anti-discrimination or educational criteria.

- **Voucher amount and use**

The bill directs that an amount equal to 75 percent of the prior year's statewide average net state aid allotted per pupil be deposited to the account of each participating student. The pro-voucher (and SPN member) Cardinal Institute estimates state funding to be $6,292. Seventy-five percent would be $4,719. Because this includes only state funding, it is significantly less than the amount allocated to students remaining in public school, which includes local and federal funding.

Funds are to be distributed quarterly, and unused funds roll over year after year until the student turns 24, graduates from college, or otherwise leaves the program. Unused funds at that point revert to the treasurer, and are re-allocated to fund other ESAs.

Qualified expenses include the following, but may also include "any other educational expense approved by the treasurer":

  - Tuition and fees associated with a private school or a non-public online learning program
  - Tuition and fees associated with career and technical education
  - Tuition and fees associated with an institution of higher education
  - Textbooks, curriculum, instructional materials required by a provider
  - Tutoring provided by any individual or tutoring facility
  - Fees for services provided by a public school, including extracurricular programs
  - Fees to attend educational summer camps and after-school programs
  - Educational services and therapies - whether or not included in a student's IEP
  - Fees for transportation to and from any of the above providers*
  - Computer hardware or other technologies used primarily to meet educational needs*
  - Fees for standardized assessments, college admissions, as well as for test prep courses.
  - Educational software and applications
  - School uniforms

Note that accreditation, licensure, or other indicia of validity or effectiveness are not required of any provider. Family members are not excluded as eligible providers. The bill does not require that employees who will have contact with students undergo a criminal background check, simply that providers agree to submit such employees for a check. It is therefore unclear when or by whom such background checks would be administered, whether the state will monitor compliance, or the consequences. Out-of-state providers may also be authorized recipients of funds.

*****Even the pro-voucher Cardinal Institute supports limits on these expenses "so that parents cannot abuse these categories by re-selling computers or charging personal transportation to their child's account." https://www.cardinalinstitute.com/publication/west-virginia-and-education-savings-accounts/

- **Academic accountability**

Parents who agree to forego their right to a public education for their child must agree to use at least a portion of the funds to "provide an education" in reading, language, mathematics, social studies, and science. Parents need not meet any criteria regarding the quality of instruction. No assessments are required, and the program is subject to no evaluation to confirm whether funded students are in fact receiving an education.

- **Fiscal accountability**

Although the treasurer has the authority to conduct or contract for audits of individual ESAs, the bill requires only an unspecified number of random audits annually. Students may be removed from the program for *intentional* and *substantial* misuse of funds. Providers may also be removed upon a showing of *routine* failure to provide promised goods or services, *intentional* and *substantial* misrepresentation of information, or failure to refund overpayments. The standards for intent and substantial are not specified.

The bill authorizes a whistle-blowing system in which fraud can be reported anonymously online or by phone. It also authorizes creation of a Parent Review Committee to evaluate expenditures and make recommendations on implementation and administration of the program. Because only parents of ESA students may serve on this committee, however, the nature of feedback is likely to be limited and biased. The committee does not include the input of public or private school educators or administrators, or professors of education, or fiscal stewards of any variety.

The bill does not require the treasurer to collect or report on the number of students served, let alone disaggregated by race, gender, grade level, ethnicity, English language proficiency, or income, or by whether the student previously attended public school. Without such data, no evaluation of populations served, or of cost/savings is possible.

Evidence from Other States with Education Savings Account Voucher Programs

- **Who uses ESAs?**

Arizona

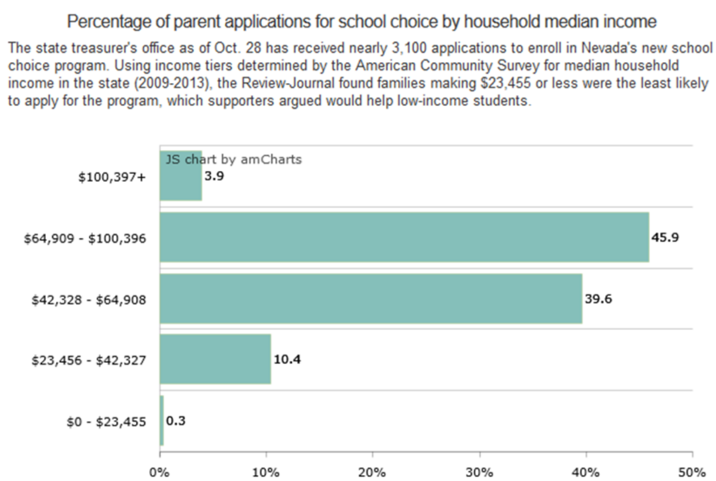
The *Arizona Republic* reported in 2016 that, "most children using the program are leaving high-performing public schools in wealthy districts." Student from low-income families were "unable to use ESAs because they cannot afford the remaining costs of private-school attendance, including transportation and their share of tuition." azcentral.com, July 7, 2016

Mississippi

Almost one-third of approved accounts were not used. Parents who did not access their accounts reported that they were either unable to locate a nonpublic school that met their child's needs, that they found a school but their child failed to gain admission, or that they were unable to afford the total costs. Only 18% of participating parents reported that their students were eligible for free or reduced price lunch. https://www.peer.ms.gov/Reports/reports/rpt628.pdf

Nevada

A 2015 report by the *Las Vegas Review-Journal* that found that half of the applicants to the Nevada program were from zip codes in which median income was among the top 40 percent of Nevada households. reviewjournal.com, October 29, 2015



- **Costs**

Mississippi During school year 2017-2018, the program disbursed approximately $2 million. Because 280 students used the program to transfer out of public schools, state funding to districts was reduced by $1.3 million, yielding a net cost to the state of $724,074. The state realized no savings because 18% of participants had not previously attended public school, and of those who did, a relatively small number left any particular school. https://www.peer.ms.gov/Reports/reports/rpt628.pdf

Nevada Fiscal impact reports prepared by the Nevada Department of Education and local school districts indicate that the state anticipated a universal education savings account would cost $34.4 million annually at the state level. Locally, districts anticipated losing more than $6,000 in state funding for each student who used the program to transfer out of the public schools, plus another $1000 in federal funding.
https://www.leg.state.nv.us/Session/78th2015/Reports/fiscalnotes.cfm?BillName=SB302

Arizona: An analysis of the state's tax credit vouchers and Education Savings Account(ESA) determined that private school vouchers cost taxpayers $10,700 per student, "or **75 percent more per student** than the $6,000 the state pays to educate a regular education public school student."

The Joint Legislative Budget Committee estimated the cost of expanding the ESA program to provide universal eligibility. If only 2.6 percent of private school students used the program to transfer to public schools, it would cost the state an additional $13.9 million by 2020. Allowing kindergarten students to get vouchers without ever enrolling in a public school would add another $10.6 million to the cost. After 2020, when a cap on growth is scheduled to expire, costs would increase yet again.http://azcapitoltimes.com/news/2017/02/15/jlbc-concludes-voucher-expansion-will-increase-costs-to-state/
https://assets.documentcloud.org/documents/3461864/ESAFiscalImpact.pdf

Indiana: Although Indiana does not authorize education savings accounts, the fiscal impact of that state's voucher program is instructive. The program generated savings of $4.1 million in FY 2012, and $4.9 million in FY2013, when eligibility was limited. As eligibility expanded however, and a greater proportion of participants were students who never attended public school, the program costs to districts increased: -$15.8 million in 2014, -$40 million in 2015, and -$53 million in 2016. http://ceep.indiana.edu/pdf/2016_Voucher_Funding_Indiana_RPB.pdf

- **Accountability**

No current education savings account program requires that participating private schools or other education service provider provide evidence of effectiveness, or employ only licensed and credentialed educators and therapists. While some programs rely on parent satisfaction surveys to evaluate program effectiveness, this in no way provides taxpayers any assurance their investment is worthwhile. Likewise, programs consistently fail to impose rigorous fiscal oversight to ensure that only eligible students participate, only qualified expenses are paid, and families or providers not in compliance are removed from the system and the state reimbursed. Some examples of the meager accountability measures that have been adopted are listed below.

Accreditation **Mississippi** requires that participating schools be accredited. However, the Department of Education does not verify compliance until after a parent submits a tuition receipt for reimbursement. In at least one case, a school falsely claimed it was accredited, and the state declined to reimburse the parent. Should its program be funded, **Nevada** would require that participating private schools must be licensed by the Nevada Department of Education and provide the curriculum required of Nevada public schools

Testing Private schools participating in the **Florida** program must annually administer either the state assessment or another norm-referenced test approved by the state department of education, but scores are reported only to parents. In **North Carolina**, schools must administer, and report to the state the results of a nationally standardized assessment, as well as graduation rates. **Tennessee** requires schools to report graduation and completion rates to the state, but tests are only required at the parents' request, and scores are not reported to the state. **Mississippi** requires the joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) to evaluate student performance and graduation rates, but does not require private schools to report this data.

Safety Providers in **Mississippi** must conduct criminal background checks on all employees, and exclude from employment any person not permitted by state law to work in a nonpublic school, or who might reasonably pose a threat to students. Providers may be excluded if they have a public record of fraud or malfeasance. Participating private schools must comply with health and safety codes applicable to nonpublic schools, including having a valid certificate of occupancy where required. However, because the program does not require nonpublic schools to apply to the program, schools may be unaware that they enroll students whose tuition is funded through the program, and are therefore unaware of these obligations. Furthermore, there is no independent verification of compliance. **North Carolina** requires participating private schools to register with the state division of non-public education, which includes a variety of health and safety requirements. Providers must conduct criminal background checks on staff members with decision-making authority. It is unclear what, if any, consequences follow, or if the state monitors for compliance.

Fiscal Oversight The absence of adequate fiscal accountability in **Arizona** has been well-documented. After years of reports that ESAs were being used to purchase non-educational products, or that qualified educational purchases were being returned for cash, additional safeguards were adopted, included a required audit of all accounts. An audit released in June 2016 revealed that over a six-month period, more than $100,000 had been misspent. The Office of the Auditor General made recommendations to further improve fiscal safeguards. https://www.azauditor.gov/reports-publications/state-agencies/education-department/report/arizona-department-education-2

Private schools in **Nevada** that enroll more than 30 students will be required to submit a financial statement. Providers that expect to receive more than $50,000 during any school year would be required to post a surety bond equal to the amount they anticipate being paid, or prove evidence they otherwise have sufficient assets to cover the amount. **North Carolina** requires participating private schools to provide documentation of their tuition and fee schedule. Schools receiving in excess of $300,000 annually must also engage a certified public accountant to conduct a financial review. **Tennessee** schools must demonstrate financial ability to reimburse the state if the need arises, and must submit upon request by the department of education an audit conducted by a certified public accountant.