



April 23, 2025

The Honorable Robin Weisz  
Speaker of the House  
North Dakota House of Representatives  
State Capitol  
Bismarck, ND 58505

Dear Speaker Weisz:

This is to inform you that on April 23, 2025, I vetoed HB 1540.

Sincerely,

  
Kelly Armstrong  
Governor

**VETO**

Received by:



Date:

4/23/2025

Time:

5:05 pm



April 23, 2025

The Honorable Robin Weisz  
Speaker of the House  
North Dakota House of Representatives  
State Capitol  
Bismarck, ND

Re: House Bill 1540

Dear Speaker Weisz:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1540 and return it to the House.

House Bill 1540 appropriates \$21.7 million from the general fund for a voucher program to defray tuition and other eligible costs for students attending nonpublic K-12 schools.

Our administration strongly supports expanding school choice to better meet students' individual education needs and foster competition within the K-12 system to drive innovation and improve student outcomes. House Bill 1540 falls far short of truly expanding choice as it only impacts one sector of our student population. Voucher debate aside, this legislation still needs work to address implementation issues. We get one chance to craft policy to benefit the most students and ensure implementation of the program is achievable and realistic.

During the 2023-25 interim, a group of legislators and education stakeholders engaged in a study regarding school choice. The bill drafted from that work proposed state funding for the families of all students – public, nonpublic and homeschool – to cover eligible expenses for their children's education.


Those families all pay taxes, regardless of whether their child attends a public or nonpublic school or is homeschooled, or whether the family lives in a rural or urban school district. It is essential that an Education Savings Account (ESA) program using state tax dollars be made available to all families to enhance their child's education.

In its final form, House Bill 1540 fails to deliver the school choice North Dakota needs, especially in rural areas where nonpublic school options are few and far between. Of North Dakota's 168 school districts, only 19 have nonpublic schools, with the vast majority of those schools located in the larger communities. A meaningful and effective school choice policy should empower all North Dakota families. Senate Bill 2400 is still an available vehicle to combine the best parts of both bills. We encourage thoughtful collaboration and an all-in approach to ensure all students are being supported in an ESA program.

Passing a voucher bill that caters to only a small segment of North Dakota's student population all but guarantees a voter referendum and threatens to derail the prospect of good school choice policy for years to come. We only get one bite at this apple, and House Bill 1540 bites off more than North Dakota citizens can stomach.

For the reasons stated above, House Bill 1540 is vetoed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelly Armstrong", is written over the typed name and title.

Kelly Armstrong  
Governor

**Sixty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2025**

HOUSE BILL NO. 1540

(Representatives Koppelman, Hauck, J. Johnson, Marschall, Morton, Rohr, Steiner)  
(Senators Clemens, Cory, Gerhardt, Wobbema, Boehm)

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

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

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

**Definitions.**

As used in this chapter:

1. "Administrator" means the Bank of North Dakota.
2. "Department" means the department of public instruction.
3. "Education service provider" means an individual or organization approved to provide qualified education services. The term does not include a participating school.
4. "Eligible postsecondary institution" means a community college, an accredited university, or an accredited private postsecondary institution.
5. "Eligible student" means:
  - a. An elementary or secondary student who is a resident of this state and is eligible to attend a public school; or
  - b. A student who has received a scholarship under the education savings account program until the student graduates high school or reaches twenty-one years of age, regardless of household income.
6. "Parent" means a resident of this state who is a parent, guardian, custodian, or other person with the authority to act on behalf of the eligible student.
7. "Participating school" means any nonpublic school providing education to elementary students, secondary students, or both, which charges tuition and has notified the administrator of the school's intention to participate in the education savings account program and comply with the education savings account program requirements under this chapter and related administrative rules.
8. "Private tutoring" means professional tutoring services approved by the program manager to receive payment under this chapter.
9. "Program manager" means an organization registered by the secretary of state to do business in North Dakota and designated by the Bank of North Dakota to assist in the implementation of this chapter.

**Parent agreement - Qualified expenses.**

1. A parent of an eligible student qualifies for an education savings account for the student if the parent signs an agreement with the department promising:
  - a. To provide an education for the eligible student in at least the subjects of English language arts, mathematics, social studies, and science;
  - b. Not to enroll the parent's eligible student in a public school or supervise home education under chapter 15.1-23 for the eligible student;
  - c. To use education savings account program funds solely for qualified expenses under this chapter;
  - d. To comply with the requirements outlined in this chapter and any related rules adopted by the Bank of North Dakota; and
  - e. If the participating student is a child with a disability, the parent has received information from the department and understands participation in the education savings account program qualifies as a parental placement of the parent's child under the Individuals with Disabilities Education Act [Pub. L. 108-446; 20 U.S.C. 1412(a)(10)(A)].
2. A parent participating in the education savings account program may use the funds deposited in the eligible student's account for any of the following qualifying expenses to educate the eligible student:
  - a. Tuition and fees at a participating school;
  - b. A textbook required by a participating school;
  - c. Payment for private tutoring or to another educational service provider;
  - d. Payment for purchase of curriculum;
  - e. Tuition or fees for a nonpublic online learning program;
  - f. Fees for advanced placement examinations or similar courses, and any examinations related to college or university admission;
  - g. Computer hardware, software, or other technological device that is used solely for a student's educational needs and approved by the administrator, provided hardware purchased with education savings account funds may not be resold within three years of purchase;
  - h. Reasonable fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider;
    - i. Tuition and fees at an eligible postsecondary institution; and
    - j. A textbook required for college or university courses.
3. A participating school, private tutor, eligible postsecondary institution, or other education service provider may not refund, rebate, or share a student's grant with a parent or student in any manner. Any refund must be provided to the administrator who shall deposit the funds into the appropriate student's education savings account.
4. A parent may make a payment for the cost of educational programs and services not covered by the funds in the child's account.

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

1. The administrator shall:
  - a. Beginning with the 2026-27 school year, annually deposit into each education savings account:
    - (1) Thirty-five percent of the state per-pupil payment amount distributed per student under subsection 3 of section 15.1-27-04.1, if the eligible student's household has an annual income less than or equal to two hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services.
    - (2) Twenty percent of the state per-pupil payment amount distributed per student under subsection 3 of section 15.1-27-04.1, if the eligible student's household has an annual income greater than two hundred percent but less than or equal to four hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services.
    - (3) Ten percent of the state per-pupil payment amount distributed per student under subsection 3 of section 15.1-27-04.1, if the eligible student's household has an annual income greater than four hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services.
  - b. Qualify a program manager to manage and administer education savings accounts.
  - c. Establish the role and responsibilities of a program manager.
  - d. Conduct or contract for the auditing of accounts and, at a minimum, conduct random audits of accounts on an annual basis. A program manager may conduct the audits. The administrator may determine a parent of an eligible student is ineligible for the education savings account program if the parent substantially misuses the funds in the account.
  - e. Refer cases of substantial misuse of funds to law enforcement for investigation, if evidence of fraudulent use of an account is obtained.
  - f. Make deposits into eligible students' education savings accounts on a quarterly basis.
  - g. Adopt rules and procedures under chapter 28-32 for the administration of the education savings account program, as necessary.
  - h. Upon a participating student's graduation from high school or termination of participation in the education savings account program, close the participating student's account and transfer any remaining money in the account to the general fund in the state treasury.
2. The administrator may bar a participating school or education service provider from the education savings account program if the administrator determines the participating school or education service provider has:
  - a. Routinely failed to comply with the accountability standards established under this chapter; or
  - b. Failed to provide a participating student with the educational services funded by the education savings account.
3. If the administrator bars a participating school or education provider from the education savings account program, the program manager shall notify eligible students and parents of

the decision as quickly as possible. A parent may appeal a decision of the administrator under chapter 28-32.

4. The state treasurer annually shall transfer the funds required for education savings accounts from the general fund to the Bank of North Dakota for quarterly deposit in each education savings account.
5. Funds, not to exceed twenty-five percent of the amount under subsection 1, not expended over the course of a school year may be carried forward for use in the following school year for a child who remains in the education savings account program. If a parent removes a child from the education savings account program before the end of the school year, any remaining funds from that school year must be returned to the state and be allocated to fund other accounts. A student may transfer to another nonpublic school and retain the funds in the education savings account.
6. Funds deposited in an education savings account do not constitute taxable income to the parent or the education savings account student.
7. The superintendent of public instruction may apply to a federal agency for additional funds to support this program. These funds must provide an additional benefit to each participating student's education savings account. If necessary to become eligible for the receipt of federal funds, the Bank of North Dakota, with consideration of advice provided by the superintendent of public instruction, shall adopt rules that supersede any conflicting law under this chapter.

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

1. A participating school shall:
  - a. Comply with all health and safety laws or codes that apply to nonpublic schools.
  - b. Obtain certification of approval under section 15.1-06-06.1.
  - c. Hold a valid occupancy permit if required by the school's municipality.
  - d. Certify the school complies with the nondiscrimination policies under 42 U.S.C. 1981.
  - e. Provide a parent with a receipt for all qualifying expenses at the school.
  - f. Refund any payment for which a good or service was not provided to the student due to a participating student terminating participation in the education savings account program. A tuition payment must be refunded pro rata determined by the school days remaining in the term for which the tuition was paid. A refund must be paid to the administrator who shall deposit the funds into the appropriate student's education savings account.
  - g. Ensure the eligible student takes the state assessments, or other nationally norm-referenced tests, which measure learning gains in mathematics and English language arts, and provide for value-added assessment. If a parent selects the state assessment, the department shall pay associated costs and materials.
  - h. Ensure the results of the tests are provided to the department.
2. The department, or an organization chosen by the department, shall:
  - a. Ensure compliance with all student privacy laws.
  - b. Collect all test results.

- c. Provide the test results, associated learning gains, and graduation rates to the public on the department's website after the third year of test and graduation-related data collection. The findings must be aggregated by the student's grade level, gender, family income level, number of years of participation in the education savings account program, and race. Data aggregation related to assessments may be limited to the state assessment, as determined necessary by the department.
  - d. Provide rates for high school graduation for participating students to the public on the department's website after the third year of test and test-related data collection.
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. Department may not regulate the educational program of a participating nonpublic school or education service provider that accepts funds from an education savings account;
  - b. 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.

**Program manager - Duties.**

The program manager shall:

- 1. Ensure eligible students and parents are informed annually of the schools that will be participating in the education savings account program.
- 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 program manager shall ensure the application is readily available to interested families through various sources, including the department's website.
- 3. Accept applications on a year-round basis and shall approve applications in a reasonable time frame.
- 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.
- 5. Establish a web and phone-based support system providing parents with education savings account program application support and ongoing account maintenance support.
- 6. Provide to the parent of a participating student a written explanation of the allowable uses of education savings accounts, the responsibilities of the parent, and the duties of the program manager.
- 7. Ensure the department is informed of a participating student's graduation from high school or a participating student's termination of participation in the education savings account program.
- 8. Coordinate with the administrator to develop procedures to implement the program in accordance with this chapter and related rules.
- 9. Upon request, determine whether an expense is allowable.

10. Establish a procedure for a participating school to provide data to the department as required under this chapter.
11. Administer an annual parental satisfaction survey requesting each parent of a student receiving an education savings account program grant indicate the number of years the child has participated in the education savings account program and express the parent's:
  - 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.

**School districts of residence - Duties.**

**The school district of residence:**

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

**SECTION 2. APPROPRIATION - BANK OF NORTH DAKOTA - EDUCATION SAVINGS ACCOUNT PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$21,700,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of implementing the education savings account program and funding education savings accounts beginning in the 2026-27 school year, for the biennium beginning July 1, 2025, and ending June 30, 2027.

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

*Rick Weber*  
Speaker of the House

*Michelle Strieder*  
President of the Senate

*Bruce J. Reich*  
Chief Clerk of the House

*Chandra Morgan*  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1540.

House Vote:      Yeas 49                  Nays 43                  Absent 2

Senate Vote:      Yeas 27                  Nays 20                  Absent 0

*Bruce J. Reich*  
Chief Clerk of the House

Received by the Governor at 11:30 A M. on April 23rd, 2025.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2025.

\_\_\_\_\_  
Governor

Filed in this office this 29th day of April, 2025,

at 10:12 o'clock A M.

*Michael Howe*  
Secretary of State

Honorable Michael Howe  
Secretary of State  
Bismarck, North Dakota

I certify this Act, House Bill No. 1540, together with the objections of Governor Armstrong, was returned to the House, being the body in which it originated, on April 24, 2025; that the objections of the Governor were entered upon the Journal on April 24, 2025; that the Bill was taken up for reconsideration; that the motion for reconsideration failed on April 25, 2025, at 12:50 p.m.; and the roll was called and the Bill failed to pass, with less than two-thirds of the members-elect voting in the affirmative.

Vote:	Yeas	45
	Nays	48
	Absent and not voting	1

  
\_\_\_\_\_  
Speaker of the House

  
\_\_\_\_\_  
Chief Clerk of the House