

IN THE SENATE

SENATE BILL NO. 1038

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A
2 NEW CHAPTER 66, TITLE 33, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR THE
3 FUNDING OF EDUCATION SAVINGS ACCOUNTS, TO PROVIDE FOR ADMINISTRATION
4 OF EDUCATION SAVINGS ACCOUNTS, TO PROHIBIT STATE CONTROL OVER NONPUBLIC
5 SCHOOLS, AND TO PROVIDE FOR A PARENT OVERSIGHT COMMITTEE; AND DECLARING
6 AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
10 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
11 ter 66, Title 33, Idaho Code, and to read as follows:

12 CHAPTER 66

13 FREEDOM IN EDUCATION SAVINGS ACCOUNTS

14 33-6601. DEFINITIONS. For purposes of this chapter:

15 (1) "Curriculum" means a course of study for content areas or grade lev-
16 els, including any supplemental materials required or recommended for the
17 curriculum, approved by the department.

18 (2) "Department" means the department of education.

19 (3) "Eligible postsecondary institution" means a community college or
20 university under the jurisdiction of the Idaho board of regents or an accred-
21 ited private postsecondary institution.

22 (4) "Parent" means a resident of this state who is the parent, steppar-
23 ent, or legal guardian of a qualified student.

24 (5) "Qualified school" means a nongovernmental primary or secondary
25 school that is located in this state.

26 (6) "Qualified student" means a resident of this state who is eligible
27 to enroll in a public school in this state in any of the following:

28 (a) A kindergarten program; or

29 (b) Any grade 1 through 12.

30 (7) "Treasurer" means the office of the state treasurer.

31 33-6602. FUNDING. (1) Freedom in education savings accounts are
32 hereby established to provide options for the education of students in this
33 state.

34 (2) To enroll a qualified student for a freedom in education savings ac-
35 count, the parent of the qualified student must sign an agreement to do all of
36 the following:

37 (a) To use a portion of the freedom in education savings account mon-
38 eys allocated annually to provide an education for the qualified stu-
39 dent in at least the subjects of reading, grammar, mathematics, social
40 studies, and science, unless the freedom in education savings account

1 is allocated moneys according to a transfer schedule other than quar-
2 terly transfers pursuant to this section;

3 (b) To not enroll the qualified student in a school district or charter
4 school and to release the school district from all obligations to edu-
5 cate the qualified student. This paragraph does not:

6 (i) Require a qualified student to withdraw from a school dis-
7 trict or charter school before enrolling in the freedom in educa-
8 tion savings account as long as the qualified student withdraws
9 from the school district or charter school before receiving any
10 moneys in the qualified student's freedom in education savings ac-
11 count; or

12 (ii) Prevent a qualified student from applying in advance for a
13 freedom in education savings account to be funded beginning the
14 following school year; and

15 (c) To use moneys deposited in the qualified student's freedom in edu-
16 cation savings account for only the following expenses of the qualified
17 student:

18 (i) Tuition or fees at a qualified school;

19 (ii) Textbooks required by a qualified school;

20 (iii) Educational therapies from a licensed or accredited practi-
21 tioner or provider;

22 (iv) Tuition for vocational and life skills education approved by
23 the department;

24 (v) Associated goods and services that include educational and
25 psychological evaluations, assistive technology rentals, and
26 braille translation goods and services approved by the depart-
27 ment;

28 (vi) Tutoring or teaching services provided by an individual or
29 facility;

30 (vii) Curricula and supplementary materials;

31 (viii) Tuition or fees for a nonpublic online learning program;

32 (ix) Fees for a nationally standardized norm-referenced achieve-
33 ment test, an advanced placement examination, or any exams related
34 to college or university admission;

35 (x) Tuition or fees at an eligible postsecondary institution;

36 (xi) Textbooks required by an eligible postsecondary institu-
37 tion;

38 (xii) Fees to manage the freedom in education savings account;

39 (xiii) Services provided by a public school, including individual
40 classes and extracurricular programs;

41 (xiv) Uniforms purchased from or through a qualified school;

42 (xv) Public transportation services in this state between the
43 qualified student's residence and a qualified school in which the
44 qualified student is enrolled; and

45 (xvi) Computer hardware and technological devices primarily used
46 for an educational purpose. For the purposes of this subpara-
47 graph, "computer hardware and technological devices":

48 1. Includes calculators, personal computers, laptops,
49 tablet devices, microscopes, telescopes, and print-
50 ers; and

1 2. Does not include entertainment and other primarily
2 noneducational devices, including televisions, tele-
3 phones, video game consoles and accessories, and home
4 theater and audio equipment.

5 (3) After a parent has signed the agreement, the department shall
6 transfer from the moneys that would otherwise be allocated to a recipient's
7 prior school district, or if the child is currently eligible to attend a
8 kindergarten program or any grade 1 through 12, the moneys that the de-
9 partment determines would otherwise be allocated to a recipient's expected
10 school district of attendance, to the treasurer for deposit into a freedom
11 in education savings account an amount that is equivalent to eighty percent
12 (80%) of the most current available statewide average general maintenance
13 and operations fund expenditures per full-term average daily attendance as
14 calculated by the department.

15 (4) The department of education freedom in education savings account
16 fund is hereby established, consisting only of moneys appropriated by the
17 legislature. The department shall administer the fund. Moneys in the fund
18 are subject to legislative appropriation and shall be used for the depart-
19 ment's costs in administering freedom in education savings accounts under
20 this chapter. If the number of freedom in education savings accounts signif-
21 icantly increases after fiscal year 2024, the department may request an in-
22 crease in the amount appropriated to the fund in any subsequent fiscal year
23 in the budget estimate submitted. The department shall list moneys in the
24 fund as a separate line item in its budget estimate.

25 (5) The state treasurer freedom in education savings accounts fund is
26 hereby established, consisting only of moneys appropriated by the legisla-
27 ture. The state treasurer shall administer the fund. Moneys in the fund
28 shall be used for the state treasurer's costs in administering the freedom
29 in education savings accounts under this chapter. If the number of free-
30 dom in education savings accounts significantly increases after fiscal year
31 2024, the state treasurer may request an increase in the amount appropriated
32 to the fund in any subsequent fiscal year in the budget estimate submitted.
33 The state treasurer shall list moneys in the fund as a separate line item in
34 its budget estimate.

35 (6) A parent must renew the qualified student's freedom in education
36 savings account on an annual basis.

37 (7) A student who has previously qualified for a freedom in education
38 savings account remains eligible to apply for renewal until the student fin-
39 ishes high school.

40 (8) If a parent does not renew the qualified student's freedom in educa-
41 tion savings account for a period of three (3) academic years, the department
42 shall notify the parent that the qualified student's account will be closed
43 in sixty (60) calendar days. The notification must be sent through certi-
44 fied mail, email, and telephone, if applicable. The parent has sixty (60)
45 calendar days to renew the qualified student's freedom in education savings
46 account. If the parent chooses not to renew or does not respond in sixty
47 (60) calendar days, the department shall close the account, and any remain-
48 ing moneys shall be returned to the state.

49 (9) A signed agreement under this section satisfies compulsory school
50 attendance requirements pursuant to section 33-202, Idaho Code.

1 (10) A qualified school or a provider of services pursuant to this sec-
2 tion may not share, refund, or rebate any freedom in education savings ac-
3 count moneys with the parent or qualified student in any manner.

4 (11) On the qualified student's graduation from a postsecondary insti-
5 tution or after any period of four (4) consecutive years after high school
6 graduation in which the student is not enrolled in an eligible postsecondary
7 institution, but not before this time as long as the account holder continues
8 using a portion of account moneys for eligible expenses each year and is in
9 good standing, the qualified student's freedom in education savings account
10 shall be closed, and any remaining moneys shall be returned to the state.

11 (12) Moneys received pursuant to this section do not constitute taxable
12 income to the parent of the qualified student.

13 33-6603. ADMINISTRATION. (1) The treasurer may contract with private
14 management firms to manage freedom in education savings accounts.

15 (2) The department shall conduct or contract for annual audits of free-
16 dom in education savings accounts to ensure compliance with section 33-6602,
17 Idaho Code. The department shall also conduct or contract for random, quar-
18 terly, and annual audits of freedom in education savings accounts as needed
19 to ensure compliance.

20 (3) The department may remove any parent or qualified student from el-
21 igibility for a freedom in education savings account if the parent or qual-
22 ified student fails to comply with the terms of the agreement or applicable
23 laws, rules, or orders or knowingly misuses moneys or knowingly fails to com-
24 ply with the terms of the agreement with intent to defraud. The department
25 shall notify the treasurer to suspend the account of a parent or qualified
26 student and shall notify the parent or qualified student in writing that the
27 account has been suspended and that no further transactions will be allowed
28 or disbursements made. The notification shall specify the reason for the
29 suspension and state that the parent or qualified student has fifteen (15)
30 business days to respond and take corrective action. If the parent or qual-
31 ified student refuses or fails to contact the department, furnish any infor-
32 mation, or make any report that may be required for reinstatement within the
33 fifteen (15) day period, the department may remove the parent or qualified
34 student from the program pursuant to this subsection.

35 (4) A parent may appeal to the department any administrative decision
36 the department makes pursuant to this section, including determinations of
37 allowable expenses, removal from the program, or enrollment eligibility.
38 When the department notifies the parent of an administrative decision under
39 this section, the department shall notify the parent in writing that the
40 parent may appeal any administrative decision under this section and the
41 process by which the parent may appeal. The department shall establish an
42 appeals process, and the department shall post this information on the de-
43 partment's website in the same location as the policy handbook.

44 (5) A parent may represent himself or designate a representative, in-
45 cluding but not limited to an attorney, before any appeals hearing held pur-
46 suant to this section. Any such designated representative who is not an at-
47 torney admitted to practice may not charge for any services rendered in con-
48 nection with such a hearing. The fact that a representative participated in
49 the hearing or assisted the parent is not grounds for reversing any adminis-

1 trative decision or order if the evidence supporting the decision or order is
2 substantial, reliable, and probative.

3 (6) The department may refer cases of substantial misuse of moneys to
4 the attorney general for the purpose of collection or for the purpose of a
5 criminal investigation if the department obtains evidence of fraudulent use
6 of an account.

7 (7) The department shall make quarterly transfers of the amount calcu-
8 lated pursuant to section 33-6602, Idaho Code, to the treasurer for deposit
9 in the freedom in education savings account of each qualified student, ex-
10 cept the department may make transfers according to another transfer sched-
11 ule if the department determines a transfer schedule other than quarterly
12 transfers is necessary to operate the freedom in education savings account.

13 (8) The department may withhold from deposits or deduct from an account
14 an amount to cover the costs of administering a freedom in education sav-
15 ings account, up to three percent (3%) annually in the first two (2) years of
16 the freedom in education savings account and up to two percent (2%) annually
17 thereafter.

18 (9) The department shall implement a commercially viable, cost-effec-
19 tive, and user-friendly system for payment of services from freedom in ed-
20 ucation savings account providers for qualified expenses by electronic or
21 online funds transfer. The department shall contract with private institu-
22 tions to develop the payment system.

23 (10) The department shall accept applications between July 1 and June 30
24 for each school year. The department shall enroll and issue an award letter
25 to eligible applicants within thirty (30) days after receipt of a completed
26 application and all required documentation. On or before January 1 of each
27 year, the department shall furnish to the joint finance-appropriations com-
28 mittee an estimate of the amount required to fund freedom in education sav-
29 ings accounts for the following fiscal year. The department shall include
30 in its budget request for the following fiscal year the amount estimated for
31 each qualified student.

32 (11) The department may adopt rules and policies necessary to adminis-
33 ter freedom in education savings accounts, including rules and policies for:

34 (a) Establishing an appeals process;

35 (b) Conducting or contracting for examinations of the use of account
36 moneys;

37 (c) Conducting or contracting for random, quarterly, and annual re-
38 views of accounts;

39 (d) Establishing or contracting for the establishment of an online
40 anonymous fraud reporting service;

41 (e) Establishing an anonymous telephone hotline for fraud reporting;
42 and

43 (f) Requiring a surety bond or insurance for account holders.

44 (12) On or before July 1 of each year, the department shall develop an
45 applicant and participant handbook that includes information relating to
46 policies and processes of freedom in education savings accounts. The policy
47 handbook shall comply with the rules adopted by the department pursuant to
48 this section. The department shall post the handbook on its website.

49 (13) Except for cases in which the attorney general determines that a
50 parent or account holder has committed fraud, any expenditure from a free-

1 dom in education savings account for a purchase that is deemed ineligible and
 2 that is subsequently repaid by the parent or account holder shall be credited
 3 back to the freedom in education savings account balance within thirty (30)
 4 days after the receipt of payment.

5 (14) If, in response to an appeal of an administrative decision made by
 6 the department, the department issues a stay of a freedom in education sav-
 7 ings account suspension pursuant to rules adopted by the department, the de-
 8 partment may not withhold funding or contract renewal for the account holder
 9 on account of the appealed administrative decision during the stay.

10 33-6604. STATE CONTROL OVER NONPUBLIC SCHOOLS. (1) This chapter does
 11 not permit any government agency to exercise control or supervision over any
 12 nonpublic school or homeschooling.

13 (2) A qualified school that accepts a payment from a parent pursuant to
 14 this chapter is not an agent of the state or federal government.

15 (3) A qualified school shall not be required to alter its creed, prac-
 16 tices, admissions policy, or curriculum in order to accept students whose
 17 parents pay tuition or fees from a freedom in education savings account pur-
 18 suant to this chapter in order to participate as a qualified school.

19 (4) In any legal proceeding challenging the application of this chapter
 20 to a qualified school, the state bears the burden of establishing that the
 21 law is necessary and does not impose any undue burden on qualified schools.

22 33-6605. PARENT OVERSIGHT COMMITTEE. (1) The freedom in education
 23 savings accounts parent oversight committee is hereby established, con-
 24 sisting of six (6) members who are parents of qualified students who receive
 25 freedom in education savings account moneys under this chapter. The members
 26 shall be appointed as follows:

27 (a) One (1) member who is appointed by the senate president pro tempore;

28 (b) One (1) member who is appointed by the speaker of the house of repre-
 29 sentatives;

30 (c) One (1) member who is appointed by the minority leader of the sen-
 31 ate;

32 (d) One (1) member who is appointed by the minority leader of the house
 33 of representatives; and

34 (e) Two (2) members who are appointed by the governor.

35 (2) At a minimum, the members appointed shall be parents of qualified
 36 students who both:

37 (a) Meet the criteria specified in section 33-6601(6), Idaho Code; and

38 (b) Use moneys deposited in the qualified student's freedom in edu-
 39 cation savings account for expenses as prescribed in section 33-6602,
 40 Idaho Code.

41 (3) The members of the committee shall annually elect a chairperson
 42 from among its members.

43 (4) The committee shall meet at least once each calendar quarter. A ma-
 44 jority of the membership constitutes a quorum for the transaction of busi-
 45 ness.

46 (5) The committee shall collaborate and interact with the department,
 47 the attorney general and, as appropriate, the state controller to review all
 48 of the following:

- 1 (a) The implementation of policies and procedures relating to the free-
2 dom in education savings account program under this chapter and the pro-
3 gram's effectiveness;
- 4 (b) The concerns of parents of qualified students who receive freedom
5 in education savings account moneys under this chapter; and
- 6 (c) The work on complaints associated with administering the freedom in
7 education savings account program.
- 8 (6) A parent may not serve on the committee if any of the following ap-
9 plies:
- 10 (a) The parent is an employee of or the relative of an employee of the
11 department;
- 12 (b) The parent receives moneys or compensation from or is otherwise as-
13 sociated in any manner with a lobbyist organization, a school choice ad-
14 vocacy group, or a private financial management firm that manages free-
15 dom in education savings accounts pursuant to section 33-6603, Idaho
16 Code; or
- 17 (c) The parent provides goods or services to qualified students that
18 are purchased pursuant to section 33-6602, Idaho Code.

19 SECTION 2. An emergency existing therefor, which emergency is hereby
20 declared to exist, this act shall be in full force and effect on and after
21 July 1, 2023.