

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 669

BY EDUCATION COMMITTEE

AN ACT

RELATING TO EDUCATION; AMENDING CHAPTER 10, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1029, IDAHO CODE, TO ESTABLISH THE HOPE AND OPPORTUNITY SCHOLARSHIP PROGRAM, TO DEFINE TERMS, TO ESTABLISH CERTAIN PROCEDURES REGARDING THE HOPE AND OPPORTUNITY SCHOLARSHIP PROGRAM, TO PROVIDE APPLICATION PROCESS REQUIREMENTS, TO PROVIDE FOR CERTAIN AUTHORITY AND RESPONSIBILITIES OF THE STATE DEPARTMENT OF EDUCATION, TO PROVIDE FOR FUNDING, TO ESTABLISH A PARENT REVIEW COMMISSION, TO PROVIDE FOR RESPONSIBILITIES AND PRIVILEGES OF CERTAIN PROVIDERS, TO PROVIDE DUTIES FOR CERTAIN SCHOOLS AND SCHOOL DISTRICTS, AND TO PROVIDE FOR CERTAIN LEGAL PROCEEDINGS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 10, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-1029, Idaho Code, and to read as follows:

33-1029. HOPE AND OPPORTUNITY SCHOLARSHIP PROGRAM. (1) This section shall be known and may be cited as the "hope and opportunity scholarship program." The scholarship created in this section shall be known as the hope and opportunity scholarship and shall be administered by the state department of education according to the provisions of this section.

(2) Definitions. As used in this section:

(a) "Curriculum" means a complete course of study for a particular content area or grade level.

(b) "Department" means the state department of education or an organization that the state department of education has contracted with to carry out any or all portions of the hope and opportunity scholarship program pursuant to subsection (5) (b) of this section.

(c) "Education service provider" means a person or organization that receives payments from a hope and opportunity scholarship to provide educational goods and services to scholarship students.

(d) "Eligible student" means a child who:

(i) Is a resident of the state of Idaho;

(ii) Has a household income level less than or equal to two hundred fifty percent (250%) of the income necessary to qualify for the Richard B. Russell national school lunch act, 42 U.S.C. 1751 et seq.; and

(iii) Is:

1. Enrolled full-time and attending a public elementary or secondary school program in this state for at least forty-five (45) calendar days during an instructional term at the time of application or was enrolled full-time in a public el-

- 1            elementary or secondary school program in this state for the  
2            entire instructional term the previous year;
- 3            2. The sibling of a student participating in the hope and op-  
4            portunity scholarship program;
- 5            3. A child with a disability as defined in section 33-1001,  
6            Idaho Code; or
- 7            4. Eligible at the time of application to enroll in a kinder-  
8            garten or first grade program in the state of Idaho.
- 9            (e) "Home schooling" means:
- 10            (i) A child is instructed by or at the direction of the child's  
11            parent or guardian, as provided in section 33-202, Idaho Code, and  
12            is not otherwise enrolled in or receiving state K-12 funding from  
13            any public school, public charter school, or the state of Idaho;  
14            and
- 15            (ii) The child's parent makes all decisions concerning curricu-  
16            lum, hours of instruction, and education activities without any  
17            input from the state of Idaho education system.
- 18            (f) "Parent" means a biological or adoptive parent, legal guardian,  
19            custodian, or other person with legal authority to act on behalf of an  
20            eligible student or scholarship student.
- 21            (g) "Scholarship account" or "account" means moneys allocated by the  
22            department to the parent of a scholarship student to pay for qualifying  
23            educational expenses, as described in subsection (3)(a) of this sec-  
24            tion, incurred in educating the student pursuant to the requirements  
25            and conditions of this section.
- 26            (h) "Student" means an eligible student who is participating in the  
27            hope and opportunity scholarship program.
- 28            (3) Elements of the hope and opportunity scholarship. The total  
29            amount the department shall deposit into a student's scholarship account,  
30            in semiannual installments, shall be eighty percent (80%) of the most cur-  
31            rent available statewide average general maintenance and operations fund  
32            expenditures per full-term average daily attendance as calculated by the  
33            department.
- 34            (a) Parents of a student shall agree to use the moneys deposited in  
35            their student's account only for the following qualifying expenses to  
36            educate the student:
- 37            (i) Tuition and fees at a private school;
- 38            (ii) Tuition and fees for nonpublic online learning programs;
- 39            (iii) Tutoring services provided by an individual or a tutoring  
40            facility;
- 41            (iv) Services contracted for and provided by a local education  
42            entity, including but not limited to individual classes and ex-  
43            tracurricular activities and programs;
- 44            (v) Textbooks, curriculum, or other instructional materials,  
45            including but not limited to any supplemental materials or associ-  
46            ated online instruction required by either a curriculum or an edu-  
47            cation service provider;
- 48            (vi) Computer hardware or other technological devices that are  
49            primarily used to help meet a student's educational needs. Pur-

1 chase of technological devices from a scholarship account shall  
2 not exceed one thousand dollars (\$1,000) per student per year;

3 (vii) Educational software and applications;

4 (viii) School uniforms;

5 (ix) Fees for nationally standardized assessments, advanced  
6 placement examinations, examinations related to college or uni-  
7 versity admission, and tuition and fees for preparatory courses  
8 for the exams;

9 (x) Tuition and fees for summer education programs and special-  
10 ized after-school education programs, but not after-school child-  
11 care;

12 (xi) Educational services and therapies, including but not lim-  
13 ited to occupational, behavioral, physical, speech-language, and  
14 audiology therapies;

15 (xii) Fees for transportation paid to a fee-for-service trans-  
16 portation provider for the student to travel to and from an educa-  
17 tion service provider; and

18 (xiii) Any other educational expense approved by the department.

19 (b) Scholarship moneys shall not be refunded, rebated, or shared with  
20 a parent or student in any manner. Any refund or rebate for goods or  
21 services purchased with scholarship funds shall be credited directly to  
22 the student's account.

23 (c) Parents may make payments for the costs of educational goods and  
24 services not covered by the moneys in their student's account. However,  
25 personal deposits into an account are not permitted. Moneys must be  
26 used in accordance with paragraph (a) of this subsection and may not be  
27 used for home schooling a student.

28 (d) An account shall remain in force and any unused moneys shall roll  
29 over from quarter to quarter and from year to year until the parent  
30 withdraws the student from the scholarship program or until the student  
31 graduates from high school, unless the account is closed because of a  
32 substantial misuse of funds.

33 (e) Nothing in this section shall be construed to require a student to  
34 be enrolled full-time or part-time in a private school or nonpublic on-  
35 line school.

36 (4) Application. A parent may apply to the department to establish an  
37 account for an eligible student. The department shall accept and approve ap-  
38 plications year-round and shall establish procedures for approving applica-  
39 tions in an expeditious manner.

40 (a) The department shall create a standard form that parents can submit  
41 to establish their student's eligibility for the scholarship and shall  
42 ensure that the application is publicly available and may be submitted  
43 through various sources, including the internet.

44 (b) The department shall approve an application for a scholarship ac-  
45 count if:

46 (i) The parent submits an application for an account in accor-  
47 dance with any application procedures established by the depart-  
48 ment;

49 (ii) The student on whose behalf the parent is applying is an eli-  
50 gible student;

- 1 (iii) Moneys are available for the account; and  
2 (iv) The parent signs an agreement with the department promising:  
3 1. To provide an education for the eligible student in at  
4 least the subjects of reading, language, mathematics, sci-  
5 ence, and social studies;  
6 2. Not to enroll the eligible student as a full-time stu-  
7 dent in a public school while participating in the scholar-  
8 ship program;  
9 3. To use the moneys in the account only for qualifying ex-  
10 penses to educate the eligible student as set forth in sub-  
11 section (3) (a) of this section; and  
12 4. To comply with the rules and requirements of the scholar-  
13 ship program.

14 (c) The signed agreement between the parent and the department shall  
15 satisfy the compulsory school attendance requirements of section  
16 33-202, Idaho Code.

17 (d) The department shall annually renew an eligible student's account  
18 if funds are available.

19 (e) Upon notice to the department, a student may choose to stop receiv-  
20 ing scholarship funding and enroll full-time in a public school.

21 (i) Enrolling as a full-time student in a public school shall re-  
22 sult in the immediate suspension of payment of additional moneys  
23 into the student's account. However, for accounts that have been  
24 open for at least one (1) full school year, the account shall re-  
25 main open and active for the parent to make qualifying expendi-  
26 tures to educate the student from moneys remaining in the account.  
27 When no moneys remain in the student's account, the department may  
28 close the account.

29 (ii) If an eligible student decides to return to the scholarship  
30 program, payments into the student's existing account may resume  
31 if the account is still open and active. A new account may be es-  
32 tablished if the student's account was closed.

33 (iii) The department may adopt rules and policies to provide the  
34 least disruptive process for students who desire to stop receiving  
35 payments and enroll full-time in a public school.

36 (5) Authority and responsibilities of the department. In addition to  
37 the department's duties, obligations, and authority otherwise provided in  
38 this section, the department shall have the following duties, obligations,  
39 and authority:

40 (a) The department shall maintain an updated list of education service  
41 providers and shall ensure that the list is publicly available on the  
42 department's website.

43 (b) The department may contract with private organizations to adminis-  
44 ter the scholarship program and specific functions of the program. This  
45 includes but is not limited to contracting with private financial man-  
46 agement firms to manage scholarship accounts.

47 (c) The department shall provide parents with a written explanation of  
48 the allowable uses of account moneys, the responsibilities of parents,  
49 the duties of the department, and the role of any private financial man-  
50 agement firms or other private organizations that the department may

1 contract with to administer the scholarship program or any aspect of the  
2 program.

3 (d) The department shall ensure that parents of students with disabil-  
4 ities receive notice that participation in the scholarship program is  
5 a parental placement under the individuals with disabilities education  
6 act (IDEA), 20 U.S.C. 1412, along with an explanation of the rights that  
7 parentally placed students possess under IDEA and any applicable state  
8 laws and rules.

9 (e) The department may withhold from deposits or deduct from an account  
10 an amount to cover the costs of administering a scholarship, up to a  
11 maximum of five percent (5%) annually in the first two (2) years of the  
12 scholarship and up to a maximum of three percent (3%) annually there-  
13 after.

14 (f) The department shall implement a commercially viable, cost-effec-  
15 tive, and parent-friendly system for payment of services from schol-  
16 arship accounts to education service providers by electronic or online  
17 funds transfer.

18 (i) The department shall not adopt a system that relies exclu-  
19 sively on requiring parents to be reimbursed for out-of-pocket  
20 expenses, but rather shall provide maximum flexibility to parents  
21 by facilitating direct payments to education service providers,  
22 as well as requests for pre-approval of and reimbursements for  
23 qualifying expenses, including expenses pursuant to subsection  
24 (3) (a) (xiii) of this section.

25 (ii) The department shall contract with private institutions to  
26 develop the payment system.

27 (g) The department shall also seek to implement a commercially viable,  
28 cost-effective, and parent-friendly system for parents to publicly  
29 rate, review, and share information about education service providers,  
30 ideally as part of the same system that facilitates the electronic or  
31 online funds transfers to create a one-stop-shop for parents and stu-  
32 dents.

33 (h) If an education service provider requires partial payment of tu-  
34 ition or fees prior to the start of the academic year to reserve space  
35 for a student admitted to the education service provider, such partial  
36 payment may be paid by the department prior to the start of the school  
37 year in which the account is established and deducted in an equitable  
38 manner from subsequent semiannual deposits to ensure adequate moneys  
39 remain available throughout the school year, but if a student decides  
40 not to use the education service provider, the partial reservation  
41 payment must be returned to the department by the education service  
42 provider and credited to the student's account.

43 (i) The department shall continue making deposits into a student's ac-  
44 count until:

45 (i) The department determines that the student is no longer an  
46 eligible student;

47 (ii) The department determines that there was substantial misuse  
48 of the moneys in the account;

49 (iii) The parent or student withdraws from the scholarship pro-  
50 gram;

- 1 (iv) The student enrolls full-time in a public school; or  
2 (v) The student graduates from high school.
- 3 (j) The department shall have the authority to conduct or contract for  
4 the auditing of individual accounts and shall at a minimum conduct ran-  
5 dom audits of accounts on an annual basis.
- 6 (k) The department shall have the authority to disqualify any parent  
7 or student from the scholarship program in the event of intentional and  
8 substantial misuse of account moneys.
- 9 (i) The department shall create procedures to ensure that a fair  
10 process exists to determine whether an intentional and substan-  
11 tial misuse of account moneys has occurred. If a student is free  
12 from personal misconduct, that student shall be eligible for an  
13 account in the future if placed with a new guardian or other person  
14 with the legal authority to act on behalf of the student.
- 15 (ii) The department shall have the authority to refer suspected  
16 cases of intentional and substantial misuse of account moneys to  
17 the attorney general for investigation if evidence of fraudulent  
18 use of moneys is obtained.
- 19 (iii) A parent or student may appeal the department's decision to  
20 disqualify a parent or student from the scholarship program.
- 21 (l) The department may bar an education service provider from accepting  
22 payments from scholarship accounts if the department determines that  
23 the education service provider has:
- 24 (i) Intentionally and substantially misrepresented information  
25 or failed to refund any overpayments in a timely manner; or  
26 (ii) Routinely failed to provide students with promised educa-  
27 tional goods or services.
- 28 (m) The department shall create procedures to ensure that a fair  
29 process exists to determine whether an education service provider may  
30 be barred from receiving payments from scholarship accounts.
- 31 (i) If the department bars an education service provider from re-  
32 ceiving payments from scholarship accounts, it shall notify par-  
33 ents and students of its decision as quickly as possible.
- 34 (ii) Education service providers may appeal the department's de-  
35 cision to bar them from receiving payments from scholarship ac-  
36 counts.
- 37 (n) The department may accept gifts and grants from any source to cover  
38 administrative costs, to inform the public about the scholarship, or to  
39 fund additional accounts.
- 40 (o) The department may adopt rules, policies, or procedures that are  
41 not inconsistent with this section and that are necessary for the admin-  
42 istration of this section. This may include rules, policies, or proce-  
43 dures:
- 44 (i) Establishing or contracting for the establishment of an on-  
45 line anonymous fraud reporting service;  
46 (ii) Establishing an anonymous telephone hotline for fraud re-  
47 porting;  
48 (iii) Requiring a surety bond for education service providers  
49 receiving more than one hundred thousand dollars (\$100,000) from  
50 scholarship accounts; and

1 (iv) Refunding payments from education service providers back to  
2 accounts.

3 (p) Any rules, policies, or procedures adopted by the department should  
4 avoid excessive bureaucracy and overly prescriptive mandates and in-  
5 stead focus on easing parental involvement and encouraging educational  
6 service providers to provide parents and students with a broad array of  
7 educational options.

8 (6) Funding. There is hereby created in the state treasury a special  
9 revenue fund to be known as the hope and opportunity scholarship trust fund.  
10 The fund shall be administered by the state treasurer and shall consist of  
11 moneys transferred by the state controller in accordance with this section.  
12 Provided, however, that no moneys from the public school permanent endowment  
13 fund shall be deposited to the trust fund.

14 (a) On or prior to the submission of the department's budget request  
15 each year, the department shall notify the legislature of the total num-  
16 ber of eligible applications received by the department for the purpose  
17 of facilitating the necessary transfer of moneys pursuant to this sec-  
18 tion.

19 (b) Expenditures from the hope and opportunity scholarship trust fund  
20 shall be limited to the purposes set forth in subsection (3) (a) of this  
21 section; provided that an amount not to exceed five percent (5%) of the  
22 trust fund shall be transferred annually to the scholarship expense  
23 fund established in paragraph (g) of this subsection to cover the annual  
24 administrative costs of the scholarship. If the number of accounts  
25 increases significantly after any fiscal year, the state controller  
26 or department may request an appropriation by the legislature to the  
27 scholarship expense fund in an amount equal to the administrative costs  
28 associated with the increase in accounts.

29 (c) The first deposit of moneys into an eligible recipient account  
30 shall be subject to the execution of the parental agreement required by  
31 subsection (4) of this section. Upon execution of the required parental  
32 agreement, and subject to the provisions of subsection (5) of this sec-  
33 tion, fifty percent (50%) of the total annually required deposit shall  
34 be made no later than August 15 of every year into an eligible recipi-  
35 ent's account, and fifty percent (50%) of the total annually required  
36 deposit shall be made no later than January 15 of every year. Any moneys  
37 remaining in an account at the end of the fiscal year may be carried over  
38 to the next fiscal year upon successful renewal of the account.

39 (d) Funds deposited in a student's account do not constitute taxable  
40 income to the parent or the student.

41 (e) The state controller shall continue to make deposits into an eligi-  
42 ble recipient's account in accordance with the provisions of this sec-  
43 tion unless any of the following conditions have occurred:

44 (i) A parent of an eligible recipient fails to renew an account or  
45 withdraws the student from the scholarship program;

46 (ii) The department determines that a student is no longer eligi-  
47 ble for an account;

48 (iii) The department suspends or revokes participation in the  
49 scholarship program for failure to comply with the requirements of  
50 this section;

1 (iv) The student successfully completes a secondary education  
2 program; or

3 (v) The student reaches nineteen (19) years of age.

4 (f) If any of the conditions in paragraph (e) of this subsection oc-  
5 cur, the department shall notify the parent that the eligible recipi-  
6 ent's account will be closed in forty-five (45) calendar days. If a par-  
7 ent fails to adequately address the condition or conditions upon which  
8 closure is based or does not respond within thirty (30) calendar days of  
9 receipt of notice, the department shall close the account and any re-  
10 maining moneys shall be returned to the state.

11 (g) There is hereby created in the state treasury a special revenue fund  
12 designated and known as the hope and opportunity scholarship expense  
13 fund. The fund shall consist of moneys received pursuant to paragraphs  
14 (a) and (b) of this subsection, any governmental or private grants, and  
15 any state general fund appropriations for the scholarship program. All  
16 expenses incurred by the state treasurer or the department in develop-  
17 ing and administering the scholarship shall be payable from the expense  
18 fund.

19 (7) Parent review commission. There is hereby created the parent  
20 review commission to assist the department in determining whether ques-  
21 tionable expenditures meet the requirements to be considered qualifying  
22 expenses described in subsection (3)(a) of this section and to provide  
23 recommendations to the department about how to implement, administer, and  
24 improve the scholarship program.

25 (a) The parent review commission shall consist of seven (7) members who  
26 are parents of scholarship students and represent no fewer than four (4)  
27 counties in the state. The members shall be appointed by the superin-  
28 tendent of public instruction and shall serve at the superintendent's  
29 pleasure for terms of one (1) calendar year, subject to reappointment.  
30 The superintendent of public instruction or the superintendent's de-  
31 signee shall serve as the nonvoting chair of the commission.

32 (b) The department may request the commission to meet, in person or vir-  
33 tually, to determine whether an expenditure of account funds is or was a  
34 qualifying expense to educate a scholarship student pursuant to subsec-  
35 tion (3)(a) of this section. If the department requests the commission  
36 to determine the validity of an expenditure, the commission may by a ma-  
37 jority vote recommend to the department that the questionable expendi-  
38 ture be denied or approved.

39 (c) The department may also request the commission to meet, in person  
40 or virtually, to review appeals of education service provider denials  
41 pursuant to subsection (5)(m)(ii) of this section and to provide a  
42 recommendation to the department as to whether an education service  
43 provider should be allowed to receive, or continue receiving, payments  
44 from scholarship accounts.

45 (8) Requirements for education service providers. The department may  
46 approve education service providers on its own initiative, at the request  
47 of parents, or following application to the department from prospective ed-  
48 ucation service providers. A prospective education service provider that  
49 wishes to receive payments from scholarship accounts shall:



1 (a) Submit an application to the department that it wishes to receive  
2 payments from scholarship accounts; and

3 (b) Agree not to refund, rebate, or share account moneys with parents or  
4 scholarship students in any manner, except that moneys may be remitted  
5 or refunded to an account in accordance with procedures established by  
6 the department.

7 (9) Independence of education service providers. Nothing in the provi-  
8 sions of this section shall be deemed to limit the independence or autonomy  
9 of an education service provider or to make the actions of an education ser-  
10 vice provider the actions of the state government.

11 (a) Education service providers shall be given maximum freedom to pro-  
12 vide for the educational needs of scholarship students without govern-  
13 mental control.

14 (b) Nothing in this section shall be construed to expand the regulatory  
15 authority of the state, its officers, or any school district to impose  
16 any additional regulation of education service providers beyond those  
17 necessary to enforce the requirements of the scholarship program.

18 (c) An education service provider that accepts payment from an account  
19 pursuant to this section is not an agent of the state or federal govern-  
20 ment.

21 (d) An education service provider shall not be required to alter its  
22 creed, practices, admissions policy, or curriculum to accept payments  
23 from a scholarship account.

24 (10) Responsibilities of public schools and school districts. A pub-  
25 lic school or school district that previously enrolled a scholarship student  
26 shall provide a complete copy of the student's school records to a private  
27 school that is also an education service provider and that has enrolled the  
28 student, while complying with the family educational rights and privacy act  
29 of 1974, 20 U.S.C. 1232g.

30 (11) Legal proceedings. In any legal proceeding challenging the appli-  
31 cation of this section to an education service provider, the state bears the  
32 burden of establishing that the law is necessary and does not impose any un-  
33 due burden on the education service provider.

34 (a) No liability shall arise on the part of the department or the state  
35 or of any public school or school district based on the award of or use of  
36 a scholarship account pursuant to this section.

37 (b) If any part of this section is challenged in a state court for vi-  
38 olating either the state or federal constitution, parents of eligible  
39 students and parents of students shall be permitted to intervene as of  
40 right in such lawsuit for the purposes of defending the scholarship pro-  
41 gram's constitutionality. However, for the purposes of judicial admin-  
42 istration, a court may require that all parents file a joint brief, as  
43 long as they are not required to join any brief filed on behalf of any  
44 named state defendant.

45 (c) If any provision of this section, or the application thereof to any  
46 person or circumstance, is held invalid, such invalidity shall not af-  
47 fect other provisions or applications of this section that can be given  
48 effect without the invalid provision or application, and to this end the  
49 provisions of this section are declared to be severable.

1           SECTION 2. This act shall be in full force and effect on and after July  
2    1, 2023.