

CHAPTER 242

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 02-1246

BY REPRESENTATIVE(S) King, Lawrence, Romanoff, Boyd, Daniel, Lee, Weddig, and Williams S.;
also SENATOR(S) Windels.

AN ACT**CONCERNING THE CREATION OF THE ELIGIBLE FACILITIES EDUCATION TASK FORCE, AND MAKING
AN APPROPRIATION THEREFOR.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds that, although children may be placed in eligible facilities for various reasons, the state board of education may approve such facilities, which makes these facilities eligible to receive per pupil operating revenue to provide a public education to these children regardless of the basis for such placement.

(2) The general assembly further finds that, while these facilities are required to hire licensed special education teachers to serve the disabled children within these facilities, a great number of teachers in these facilities have emergency authorization; furthermore, the current system of reimbursing these facilities potentially places the facilities at a competitive disadvantage in hiring licensed special education teachers, rendering the facilities potentially unable to recruit and retain qualified teachers due to the lack of salaries and retirement benefits comparable to the salaries and benefits received by teachers in public schools and due to a lack of educational administrative support.

(3) The general assembly also finds that the current funding system creates financial incentives and disincentives for special education identification which hinder appropriate special education procedures and decrease options for placement of general education students.

(4) The general assembly further finds that the conflicting goals of the agencies involved in placing children may produce barriers to a child receiving both the educational and placement services the child needs.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(5) Furthermore, the general assembly finds that it is often difficult to track the credits and transcripts of these children because of the number of times a child's placement may change, which may create barriers to these children obtaining diplomas.

(6) In addition, the general assembly finds that the incidence of multiple placements within a school year make it difficult to fairly apportion the cost of educational services for these children.

(7) The general assembly, therefore, hereby declares that the placement of these children, coupled with the educational issues described herein, requires the members of the general assembly and other interested persons to analyze these issues and formulate solutions to enable children who are placed in eligible facilities to receive comparable educational services to those educational services received by children in public schools.

SECTION 2. Part 1 of article 2 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-2-123. Eligible facilities education task force - creation - membership - duties - repeal. (1) THERE IS HEREBY CREATED THE ELIGIBLE FACILITIES EDUCATION TASK FORCE FOR THE CONTINUING EXAMINATION OF STUDENT PLACEMENTS IN ELIGIBLE FACILITIES BY PUBLIC AGENCIES AND THE DEVELOPMENT OF A FUNDING MECHANISM AND ADMINISTRATIVE STRUCTURE THAT ASSURES THE PROVISION OF EDUCATIONAL SERVICES THAT ARE COMPARABLE TO THOSE EDUCATIONAL SERVICES RECEIVED BY CHILDREN IN PUBLIC SCHOOLS AND THAT ASSURES THE APPROPRIATE PLACEMENT OF THESE CHILDREN. THE TASK FORCE SHALL CONSIST OF THE FOLLOWING MEMBERS:

(a) TWO MEMBERS OF THE HOUSE OF REPRESENTATIVES WHO SHALL BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND WHO SHALL NOT BE FROM THE SAME POLITICAL PARTY;

(b) TWO MEMBERS OF THE SENATE WHO SHALL NOT BE FROM THE SAME POLITICAL PARTY. THE PRESIDENT OF THE SENATE SHALL APPOINT ONE MEMBER TO THE TASK FORCE AND THE MINORITY LEADER OF THE SENATE SHALL APPOINT ONE MEMBER TO THE TASK FORCE.

(c) TWO REPRESENTATIVES OF THE JUVENILE COURT SYSTEM APPOINTED BY THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT;

(d) THE FOLLOWING REPRESENTATIVES APPOINTED BY THE COMMISSIONER OF EDUCATION:

(I) ONE REPRESENTATIVE FROM EACH OF THE DEPARTMENT OF EDUCATION'S SPECIAL EDUCATION, SCHOOL FINANCE, AND FISCAL MANAGEMENT UNITS;

(II) ONE REPRESENTATIVE EACH OF AN URBAN AND A RURAL SCHOOL DISTRICT WITH EXPERTISE IN SCHOOL FINANCE OR SPECIAL EDUCATION;

(III) ONE REPRESENTATIVE OF BOARDS OF COOPERATIVE SERVICES;

(IV) TWO REPRESENTATIVES OF RESIDENTIAL TREATMENT FACILITIES THAT REPRESENT THE DIFFERENT SIZES AND TYPES OF FACILITIES IN COLORADO;

(e) THE FOLLOWING REPRESENTATIVES APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES:

(I) ONE REPRESENTATIVE FROM EACH OF THE DEPARTMENT OF HUMAN SERVICES' MENTAL HEALTH, CHILD CARE, CHILD WELFARE SERVICES, AND YOUTH CORRECTIONS DIVISIONS;

(II) TWO REPRESENTATIVES OF COUNTIES AND COUNTY DEPARTMENTS OF SOCIAL SERVICES;

(III) ONE REPRESENTATIVE OF A COMMUNITY MENTAL HEALTH CENTER;

(f) A REPRESENTATIVE OF THE GOVERNOR'S OFFICE APPOINTED BY THE GOVERNOR;

(g) A MEMBER OF THE STATE BOARD OF EDUCATION OR A BOARD MEMBER'S REPRESENTATIVE APPOINTED BY THE STATE BOARD OF EDUCATION.

(2) THE TASK FORCE SHALL STUDY, AT A MINIMUM, THE FOLLOWING ISSUES:

(a) FUNDING OF ELIGIBLE FACILITIES, TAKING INTO CONSIDERATION RISK FACTORS PERTAINING TO THE STUDENTS BEING SERVED, ECONOMIES OF SCALE, AND THE PAYMENT OF THE ADDITIONAL COST OF PROVIDING SERVICES TO STUDENTS WITH DISABILITIES;

(b) THE ADMINISTRATION AND LOGISTICS OF PLACING A CHILD IN AN ELIGIBLE FACILITY WHEN MORE THAN ONE AGENCY IS INVOLVED;

(c) THE DIFFICULTIES OF TRACKING A CHILD'S SCHOOL CREDITS AND TRANSCRIPTS, ASSIGNING CREDITS, AND ENABLING CHILDREN WHO ARE PLACED IN ELIGIBLE FACILITIES TO OBTAIN A DIPLOMA;

(d) ACCESSING APPROPRIATE EDUCATION SERVICES AND PLACEMENT FOR CHILDREN TO BE PLACED IN ELIGIBLE FACILITIES, AND THE COORDINATION AMONG FACILITIES AND PUBLIC AGENCIES IN PROVIDING THOSE SERVICES;

(e) WAYS TO PROVIDE STABILITY FOR CHILDREN PLACED IN ELIGIBLE FACILITIES, ADDRESSING FACTORS SUCH AS MULTIPLE PLACEMENTS AND THE BARRIERS TO PROVIDING CONTINUITY IN THE CHILDREN'S EDUCATION;

(f) TEACHER RECRUITMENT AND RETENTION IN ELIGIBLE FACILITIES; AND

(g) ANY OTHER ISSUES CONCERNING CHILDREN WHO ARE PLACED IN ELIGIBLE FACILITIES RECEIVING EDUCATIONAL SERVICES THAT ARISE DURING THE COURSE OF THE TASK FORCE STUDY.

(3) THE TASK FORCE SHALL SUBMIT A WRITTEN REPORT ON ITS FINDINGS AND

RECOMMENDATIONS ON OR BEFORE OCTOBER 1, 2002, AND EACH OCTOBER 1 THEREAFTER, TO THE EDUCATION COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES, AND THE HEALTH, ENVIRONMENT, CHILDREN AND FAMILIES COMMITTEE OF THE SENATE.

(4) (a) THE LEGISLATIVE MEMBERS OF THE COMMITTEE SHALL BE COMPENSATED AS PROVIDED IN SECTION 2-2-307, C.R.S., FOR ATTENDANCE AT MEETINGS OF THE TASK FORCE.

(b) UNLESS OTHERWISE COMPENSATED, ALL MEMBERS OF THE TASK FORCE MAY RECEIVE REIMBURSEMENT FOR TRAVEL AND EXPENSES INCURRED WHILE ATTENDING MEETINGS OF THE TASK FORCE.

(5) THE STAFF OF THE DEPARTMENT OF EDUCATION SHALL BE MADE AVAILABLE TO ASSIST THE TASK FORCE IN CARRYING OUT ITS DUTIES UNDER THIS SECTION. STAFF ASSISTANCE, THE ASSISTANCE OF A FACILITATOR, AND COSTS ASSOCIATED WITH THE TASK FORCE SHALL BE FUNDED FROM AVAILABLE MONEYS WITHIN THE SPECIAL EDUCATION UNIT IN THE DEPARTMENT OF EDUCATION.

(6) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "ELIGIBLE FACILITIES" MEANS FACILITIES THAT OFFER SCHOOL PROGRAMS THAT HAVE BEEN APPROVED BY THE STATE BOARD OF EDUCATION AND THAT ARE PROVIDED IN FACILITIES THAT INCLUDE, BUT ARE NOT LIMITED TO, COMMUNITY CENTERED BOARDS, RESIDENTIAL CHILD CARE FACILITIES, DAY TREATMENT CENTERS, RESIDENTIAL TREATMENT CENTERS, SECURE RESIDENTIAL TREATMENT CENTERS, GROUP HOMES, AND HOSPITALS.

(7) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2004.

~~**SECTION 3. Appropriation.** (1) (a) In addition to any other appropriation, there is hereby appropriated, to the legislative department of the state of Colorado, for the fiscal year beginning July 1, 2002, the sum of ten thousand dollars (\$10,000); or so much thereof as may be necessary, for the purpose of compensating legislative members, pursuant to section 2-2-307, Colorado Revised Statutes, who serve on the eligible facilities education task force created in section 22-2-123, Colorado Revised Statutes. Said sum shall be from the general fund.~~

~~(b) It is the intent of the General Assembly that the appropriation made in paragraph (a) of this subsection (1) remain available until January 1, 2004.~~

~~(2) It is the intent of the General Assembly that the general fund appropriation in subsection (1) of this section shall be derived from savings generated from the implementation of the provisions of House Bill 02-1226, as enacted during the Second Regular Session of the Sixty-third General Assembly.~~

(Governor lined through this section. See the editor's note and the Governor's letter following this act.)

SECTION 4. Effective date. (1) This act shall take effect July 1, 2002; except that section 22-2-123 (4) (a), Colorado Revised Statutes, contained in Section 2 of

this act, and Section 3 of this act shall only take effect if:

(a) The final fiscal estimate for House Bill 02-1226, as reflected in the appropriations clause for said act, shows a net general fund savings that is equal to or greater than the final general fund fiscal estimate for this act, as reflected in section 3 of this act; and

(b) House Bill 02-1226 is enacted at the Second Regular Session of the Sixty-third General Assembly and becomes law.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved in part and disapproved in part: May 31, 2002

Editor's note: The following is a reprinting of the Governor's message filed with House Bill 02-1246 when he approved the bill in part and vetoed it in part on May 31, 2002. Markings were made on the bill by the Governor purporting to veto section 3 of the bill, the appropriation clause. Since this bill is not an appropriations bill, questions have been raised as to the validity of such a veto. However, the Colorado Supreme Court has held that purported vetoes are entitled to a presumption of validity. In view of this holding, the purported veto is reflected in the version of the bill printed above. See *Colorado General Assembly v. Lamm*, 704 P.2d 1371 (Colo. 1985) and *Romer v. Colorado General Assembly*, 810 P.2d 215 (Colo. 1991).

May 31, 2002

The Honorable Colorado House of Representatives
Sixty-Third General Assembly
Second Regular Session
Denver, CO 80203

Ladies and Gentlemen:

I am filing with the Secretary of State House Bill 02-1246, "Concerning the Creation of the Eligible Facilities Education Task Force, and Making an Appropriation Therefor."

Approved in part and disapproved in part on May 31, 2002, at 9:28 a.m.

Pursuant to Article IV, Section 12 of the Colorado Constitution, I am exercising my authority to disapprove of any distinct item or items of any bill making appropriations of money. I vetoed Section 3 of this bill, in its entirety, and this letter sets forth my reasons for doing so.

House Bill 02-1246 creates the Eligible Facilities Education Task Force and sets forth the membership and the requirements of the study to be conducted by the task force. Section 3 appropriates no more than ten thousand dollars from the general fund for the fiscal year beginning July 1, 2002, to compensate legislative members who serve on the task force.

Section 3 provides up to ten thousand dollars compensation for only the four members of the General Assembly who sit on this task force, while non-legislative members are not provided any compensation. Given the current pressing need to reduce general fund expenditures, I encourage the General Assembly to find ways to fund its members' activities within its current budget constraints. In addition, the task force positions are voluntary, and therefore voluntary service on this task force will not force a financial burden on any legislative member.

Accordingly, I have vetoed Section 3 of this bill.

Sincerely,

Bill Owens