



March 21, 2024

The Honorable Chuck Gray, Secretary of State
Secretary of State's Office
Herschler Building East, 122 W. 25th Street, Suites 100
Cheyenne, Wyoming 82002

Re: Line-Item Veto of HB0166/House Enrolled Act No. 53 Education savings accounts-1

Dear Secretary Gray,

Over the past few years, Wyoming has expanded school choice, encouraged parental rights, and brought more transparency to our entire education system. I want to applaud the Legislature for supporting these efforts, especially parental rights and trying to enhance options for families in Wyoming.

We have worked thoughtfully within the parameters of Wyoming's remarkable Constitution, with its foresight of categorically prohibiting the "state [n]or any county, city, township, town, school district, or other political subdivision..." to "(i) Loan or give credit or make donations to or in aid of any individual, association or corporation, except for the necessary support of the poor..." Art. 16, § 6 of our Wyoming Constitution goes on then to proscribe the state from owning "capital stock" with a few exceptions, none of which, unfortunately, precisely conforms to the laudable purpose set forth in this bill.

While efforts were made during the interim and legislative session to align House Enrolled Act. No. 53 with Art. 16, § 6 of the Constitution, certain aspects fall short. I have carefully considered the value of testing the issues raised in this bill's approach in court; but the possibility of failing entirely versus succeeding partially has prompted me to exercise my authority to veto specific portions of the bill.

House Enrolled Act No. 53 establishes an education savings account program that provides funding to parents for their children's education expenses, ranging from pre-kindergarten through age 21. While the intent to support education and parent choice is commendable, my analysis revealed practical and constitutional complications within the bill's provisions.

Upon careful consideration and reflecting on the constitutionality of specific provisions, I have decided to line-item veto the parts of House Enrolled Act No. 53 in Section 1 that create Wyo. Stat. § 21-2-903(a)(ii) through (viii). I believe these provisions are in violation of Art. 16, § 6 of the Wyoming Constitution. These provisions raise substantial questions about whether the program correctly aligns with the "necessary support of the poor" constraints contemplated in Art. 16, § 6. Simply including some means testing that scales the amount of benefit does not give a program a public purpose or make it part of the "necessary support of the poor."

Furthermore, this bill fails to restrict providers solely to non-denominational or non-religious entities. While this omission poses a risk of allocating funds to sectarian and religious schools, which might potentially violate provisions in our Wyoming Constitution that explicitly prohibit the allocation of public funds to such entities (Art. 7, §§ 8 and 12), I am prepared to risk that potential as well as concerns relating to the appropriation of state funds to religious societies or institutions also explicitly prohibited by Wyoming's Constitution (Art. 1, § 19). I believe recent US Supreme Court rulings in these matters could augur persuasively to our benefit in these matters.

In essence, navigating the constitutional landscape demands careful consideration of how the program operates within the confines of these provisions. We must ensure that any allocation of State funds, whether to education providers or individual parents, aligns with the principles outlined in the Wyoming Constitution while simultaneously serving a clearly defined public interest and providing equitable returns for the State's investment. Failure to address these concerns could expose the program to legal challenges and undermine its viability and legitimacy. That would be unfortunate.

ESAs are often presented as a means to provide families with increased choice and flexibility in their children's K-12 education. There is merit to these notions, however, when it comes to the proper usage of public funds it is important to also consider the practical concerns about the complexities and challenges involved with administering these programs. Effective administration of ESA programs requires a comprehensive approach that includes financial oversight; adherence to regulations and transparency; support for participants; and strategic planning, all of which help to ensure positive educational outcomes and long-term fiscal sustainability.

Given the cyclical nature of economic fluctuations in Wyoming (boom and bust), I am particularly concerned about the potential impact on students enrolled in ESA programs when funding may need to be redirected to cover shortfalls in public schools during economic downturns. Therefore, I believe it is crucial for the State to proceed with caution and careful understanding of both the benefits and challenges associated with this personalized approach to education through ESA programs. And to reiterate, to make sure the experiment succeeds.

While this legislation may pose challenges for the K-12 public school system, it may also bring the benefits associated with increased competition. In one area I believe Wyoming will see many positive benefits from the Wyoming Education Savings Account Act, if implemented well. In particular, early childhood education stands to benefit Wyoming children, in particular those whose economic circumstances most closely align with the considerations outlined in Art. 16, § 6.

By providing families access to various educational services, including pre-kindergarten programs, the ESA program has the potential to enhance the early learning experiences of children across the state. Early childhood education forms the bedrock for future academic success and socio-emotional development. Consistent research underscores how quality early learning experiences contribute to improved school readiness, enhanced cognitive skills, and increased graduation rates. By offering financial support for pre-kindergarten programs through education savings accounts, this legislation has

the potential to expand access to high-quality early childhood education for Wyoming's children, especially those from economically disadvantaged backgrounds.

In closing, I want to emphasize the importance of thoughtful consideration and comprehensive evaluation when implementing legislative measures that impact our education system. While the intention behind House Enrolled Act No. 53 is to support education and parental choice, we must ensure that any actions taken align with the principles of individual liberty, equality, and constitutional integrity. As we navigate these challenges, it is crucial to prioritize the well-being and educational opportunities of all students. By proceeding carefully, with a clear understanding of both the benefits and challenges associated with education savings accounts, we can work towards a system that enhances parental choice while maintaining the integrity and effectiveness of our public education system. This bill represents a good first step and I look forward to the continued refinement of this effort in future legislatures and to establishing a track record of success as this bill is implemented.

I am delivering House Enrolled Act No. 53 to you with my signature and with my line-item vetos noted in Section 1.

Sincerely,



Mark Gordon
Governor

MG:lb:kh

cc: The Honorable Albert Sommers, Speaker of the House w/copy of Line item pages for HEA No. 53
The Honorable Ogden Driskill, President of the Senate w/copy of Line item pages for HEA No. 53
Chief Clerk, Wyoming House of Representatives w/copy of Line item pages for HEA No. 53
Chief Clerk, Wyoming Senate w/copy of Line item pages for HEA No. 53

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2024 BUDGET SESSION

(viii) "This act" means W.S. 21-2-901 through 21-2-909.

21-2-903. Education savings accounts; Wyoming education savings accounts expenditure account.

(a) The total amount to be deposited in an education savings account for an ESA student each year shall be determined by the student's household income compared to the federal poverty levels, using the most recent federal poverty guidelines for the student's household size and income, as follows:

~~(i) Six thousand dollars (\$6,000.00) for students whose household income is at or below one hundred fifty percent (150%) of the federal poverty level;~~

~~(ii) Four thousand eight hundred dollars (\$4,800.00) for students whose household income is at or below two hundred percent (200%) of the federal poverty level but more than one hundred fifty percent (150%) of the federal poverty level;~~

~~(iii) Three thousand six hundred dollars (\$3,600.00) for students whose household income is at or below two hundred fifty percent (250%) of the federal poverty level but more than two hundred percent (200%) of the federal poverty level;~~

~~(iv) Three thousand dollars (\$3,000.00) for students whose household income is at or below three hundred percent (300%) of the federal poverty level but more than two hundred fifty percent (250%) of the federal poverty level;~~

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2024 BUDGET SESSION

~~(v) Two thousand four hundred dollars (\$2,400.00) for students whose household income is at or below three hundred fifty percent (350%) of the federal poverty level but more than three hundred percent (300%) of the federal poverty level;~~ *Ma*

~~(vi) One thousand eight hundred dollars (\$1,800.00) for students whose household income is at or below four hundred percent (400%) of the federal poverty level but more than three hundred fifty percent (350%) of the federal poverty level;~~ *Ma*

~~(vii) One thousand two hundred dollars (\$1,200.00) for students whose household income is at or below four hundred fifty percent (450%) of the federal poverty level but more than four hundred percent (400%) of the federal poverty level;~~ *Ma*

~~(viii) Six hundred dollars (\$600.00) for students whose household income is at or below five hundred percent (500%) of the federal poverty level but more than four hundred fifty percent (450%) of the federal poverty level.~~ *Ma*

(b) Payments to ESAs under this act shall be made by the state superintendent of public instruction from the Wyoming education savings accounts expenditure account, which is hereby created. The Wyoming education savings accounts expenditure account shall consist of funds transferred to the expenditure account and other funds appropriated by the legislature to the expenditure account. All earnings from investment of the expenditure account shall be credited to the expenditure account. Any unencumbered, unobligated balance of the expenditure account at the end of each fiscal year shall not revert but