

BILL ANALYSIS

Senate Research Center
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S.B. 2
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Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2 addresses funding needs of independent school districts and public charter schools in Texas and establishes a tax credit scholarship and educational expense assistance program.

The bill creates a "Financial Hardship Transition Program" to assist districts facing funding shortfalls due to the expiration of the Additional State Aid for Tax Reduction (ASATR) program. The program, designed to ensure districts facing substantial financial hardship without ASATR funds, considers local tax effort.

S.B. 2 also contains facilities funding for public charter schools at \$60 million per year beginning in fiscal year (FY) 2019. The bill includes an additional \$60 million per year in funding for the Existing Debt Allotment (EDA) in facilities assistance for independent school districts. This additional funding begins in FY 2019.

The bill also creates a tax credit scholarship and educational expense assistance program designed to benefit Texas students with disabilities, including those protected under the Individuals with Disabilities Education Act (IDEA) and students covered under Section 504 of the 1973 Rehabilitation Act.

Under S.B. 2, credits against premium tax collected by the state could be earned for contributions made to a non-profit education assistance organization. The organization, selected by the comptroller, awards scholarships for qualifying students to attend accredited private schools. Additionally, assistance of up to \$500 per year is available to qualifying students who remain in public schools for educational expenses including instructional materials, tutoring, and transportation to another public school. The program is capped at \$75 million per year and would begin with the 2018-2019 academic year.

As proposed, S.B. 2 amends current law relating to public school finance, including the establishment of a tax credit scholarship and educational expense assistance program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2 (Section 42.458, Education Code) this bill.

Rulemaking authority is expressly granted to the Texas comptroller of public accounts in SECTION 4 (Sections 230.002 and 230.102, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.106, Education Code, effective September 1, 2018, by adding Subsection (d), as follows:

(d) Provides that, in addition to other amounts provided by this section (State Funding), a charter holder is entitled to receive, for the open-enrollment charter school (charter school), funding per student in average daily attendance (ADA) in an amount equal to the guaranteed level of state and local funds per student per cent of tax effort under Section 46.032(a) multiplied by the lesser of:

(1) the state average interest and sinking fund tax rate imposed by school districts (districts) for the current year; or

(2) a rate that would result in a total amount to which charter schools are entitled under this subsection for the current year equal to \$60 million.

SECTION 2. Amends Chapter 42, Education Code, by adding Subchapter H, as follows:

SUBCHAPTER H. FINANCIAL HARDSHIP TRANSITION PROGRAM

Sec. 42.451. FINANCIAL HARDSHIP GRANTS. (a) Authorizes the commissioner of education (commissioner), from amounts appropriated for this subchapter, to administer a grant program that provides grants to districts to defray financial hardships resulting from changes made to Chapter 41 (Equalized Wealth Level) and this chapter (Foundation School Program) that apply after the 2016-2017 school year.

(b) Requires the commissioner to award grants under this subchapter to districts as provided by Section 42.452 (Committee Meetings).

(c) Provides that, except as provided by Subsection (d), funding provided to a district under this subchapter is in addition to all other funding provided under Chapter 41 and this chapter.

(d) Provides that a district is not eligible for funding under this subchapter for a school year if the district receives for that school year an adjustment of the district's taxable value of property under Section 42.2521 (Adjustment for Rapid Decline in Taxable Value of Property). Authorizes a district to decline an adjustment under Section 42.2521 to maintain eligibility for funding under this subchapter.

(e) Authorizes the commissioner to obtain additional information as needed from a district or other state or local agency to make determinations in awarding grants under this subchapter.

Sec. 42.452. AWARD OF GRANTS; AMOUNT. (a) Requires the commissioner to award grants to districts based on a certain formula. Sets forth the formula.

(b) Prohibits a district's hardship grant awarded under this subchapter for a school year from exceeding the lesser of a certain amount.

(c) Requires the commissioner, for purposes of calculating the formula under Subsection (a), to make certain adjustments.

(d) Requires the commissioner, if funds remain available under this subchapter for a school year after determining initial grant amounts under Subsection (a), as adjusted to reflect the limits imposed by Subsection (b), to reapply the formula as necessary to award all available funds.

Sec. 42.453. ELIGIBILITY OF OPEN-ENROLLMENT CHARTER SCHOOL. Provides that a charter school is eligible for a grant under this subchapter in the same manner as a district.

Sec. 42.454. REGIONAL EDUCATION SERVICE CENTERS AND COUNTY DEPARTMENTS OF EDUCATION NOT ELIGIBLE. Provides that a regional education service center or a county department of education is not eligible for a grant under this subchapter.

Sec. 42.455. CERTAIN SCHOOL DISTRICTS NOT ELIGIBLE. Provides that a district is not eligible for a grant under this subchapter if for the 2015-2016 school year the

district's expenditures per student in ADA, excluding bond debt service payments, capital outlays, and facilities acquisition and construction costs, exceeded an amount that is equal to 110 percent of the state average amount for that school year of expenditures per student in ADA, excluding bond debt service payments, capital outlays, and facilities acquisition and construction costs, as those amounts are determined by the commissioner.

Sec. 42.456. FUNDING LIMIT. Prohibits the amount of grants awarded by the commissioner under this subchapter from exceeding \$100 million for the 2017-2018 school year or \$50 million for the 2018-2019 school year.

Sec. 42.457. NO ADJUSTMENT BASED ON REVISED DATA. Prohibits the commissioner from adjusting the amount of a district's grant under this subchapter based on revisions to the district's data received after a grant has been awarded.

Sec. 42.458. RULES. Authorizes the commissioner to adopt rules as necessary to administer this subchapter.

Sec. 42.459. DETERMINATION FINAL. Provides that a determination by the commissioner under this subchapter is final and prohibits it from being appealed.

Sec. 42.460. EXPIRATION. Provides that this subchapter expires September 1, 2019.

SECTION 3. Amends Section 46.032(a), Education Code, effective September 1, 2018, as follows:

(a) Provides that the amount of state support, subject only to the maximum amount under Section 46.034 (Limits on Assistance), is determined by a certain formula. Sets forth the amended formula.

SECTION 4. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 230, as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO CERTAIN EDUCATIONAL ASSISTANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. Defines "educational assistance organization," "state premium tax liability," and "student with a disability."

Sec. 230.002. RULES; PROCEDURES. (a) Requires the Texas comptroller of public accounts (comptroller) to adopt rules and procedures to implement, administer, and enforce this chapter.

(b) Provides that a rule adopted under Subsection (a) is binding on an organization that applies for certification as an educational assistance organization (EAO), an entity that applies for a credit, and a state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce this chapter.

SUBCHAPTER B. SCHOLARSHIP AND EDUCATIONAL EXPENSE ASSISTANCE PROGRAM

Sec. 230.051. CERTIFICATION OF EDUCATIONAL ASSISTANCE ORGANIZATION. (a) Authorizes an organization to apply to the comptroller for certification as a certified EAO during an application period provided by the comptroller.

(b) Requires the organization, to be eligible for certification, to meet certain requirements and prohibits the organization from taking certain actions.

(c) Requires the comptroller to certify one organization as the primary certified EAO and one organization as the secondary certified EAO. Requires the comptroller to select the organizations to certify as the primary and secondary certified EAOs from among the organizations that apply under Subsection (a) and meet the requirements of Subsection (b). Provides that the comptroller has broad discretion in selecting the primary and secondary certified EAOs.

(d) Requires the comptroller to notify all organizations that apply under Subsection (a) of the comptroller's selections under Subsection (c).

(e) Requires the comptroller to attempt to maintain one primary and one secondary certified EAO at all times. Requires the comptroller to provide an application period under Subsection (a) as soon as practicable after the comptroller learns there is, or is likely to be, a vacancy for the primary or secondary certified EAO.

(f) Provides that the comptroller's selections under Subsection (c) are final and are not appealable.

Sec. 230.0511. PERFORMANCE OF CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATION POWERS AND DUTIES. (a) Requires the organization certified as the primary certified EAO, except as provided by Subsection (b), to perform the powers and duties assigned to the certified EAO under this chapter.

(b) Requires the organization certified as the secondary certified EAO to perform the powers and duties assigned to the certified EAO if:

(1) the organization certified as the primary certified EAO has its certification revoked; or

(2) the comptroller otherwise determines the organization certified as the primary EAO is unable to perform the powers and duties assigned to the certified EAO.

(c) Provides that a reference in this chapter or other law to the certified EAO means the organization performing the powers and duties of the certified EAO under Subsection (a) or (b).

Sec. 230.0512. ALLOCATION OF MONEY DESIGNATED FOR SCHOLARSHIPS OR EDUCATIONAL EXPENSE ASSISTANCE. Requires the certified EAO, of the amount required to be allocated as provided by Section 230.051(b)(1)(D) (relating to requiring an organization to allocate at least 90 percent of its annual revenue from certain contributions for certain student scholarships and assistance for educational expenses), to use:

(1) at least 80 percent to award scholarships as described by Section 230.055(a); and

(2) not more than 20 percent to award educational expense assistance as described by Section 230.055(b).

Sec. 230.052. NONPUBLIC SCHOOL REQUIREMENTS. Prohibits the certified EAO from awarding scholarships to or paying educational expenses for eligible students enrolled in a nonpublic school unless the nonpublic school executes a notarized affidavit, with supporting documents, concerning the school's qualification for scholarships and educational expense assistance for eligible students who receive assistance from the certified EAO, including certain evidence.

Sec. 230.053. ELIGIBILITY OF STUDENTS FOR SCHOLARSHIPS; INCLUSION IN CALCULATION OF EQUALIZED WEALTH LEVEL. (a) Provides that a student is eligible to apply for a scholarship from the certified EAO if the student:

(1) is a student with a disability;

(2) is eligible to attend a public school under Section 25.001 (Admission), Education Code;

(3) was enrolled in a public school in this state during the entire preceding academic year; and

(4) will attend a nonpublic school in this state during the entire academic year for which the scholarship is awarded.

(b) Authorizes a student who establishes eligibility under this section to apply for a scholarship from the certified EAO for each academic year until the student:

(1) graduates from high school;

(2) is no longer eligible to attend a public school under Section 25.001, Education Code; or

(3) enrolls in a public school, including a charter school.

(c) Requires the comptroller, notwithstanding Subsection (b), to establish guidelines for, in the least disruptive manner possible:

(1) a student who has previously received a scholarship to enroll in a public school, including a charter school; and

(2) a student who previously received a scholarship and subsequently enrolled in a public school, including a charter school, to reestablish eligibility for a scholarship.

(d) Requires the certified EAO to award scholarships to eligible students who apply in accordance with this chapter to the extent money is available for that purpose.

(e) Provides that, for the first year a student receives a scholarship to attend a nonpublic school, the student is included in the weighted average daily attendance of the district the student would otherwise attend for purposes of determining the district's equalized wealth level under Chapter 41, Education Code.

Sec. 230.0531. ELIGIBILITY OF STUDENTS FOR EDUCATIONAL EXPENSE ASSISTANCE. (a) Provides that a student is eligible to apply for educational expense assistance from the certified EAO for an academic year if the student:

(1) is a student with a disability; and

(2) will attend a public school in this state during the entire academic year for which the educational expense assistance is awarded.

(b) Authorizes a student who establishes eligibility under this section to apply for educational expense assistance from the certified EAO for each academic year the student attends a public school in this state.

(c) Requires the certified EAO to award educational expense assistance to eligible students who apply in accordance with this chapter to the extent money is available for that purpose.

Sec. 230.0532. NOTICE TO CERTAIN PARENTS. Requires a district to provide written notice of the availability of assistance to the parent of a student who is eligible to apply for a scholarship to attend a nonpublic school under Section 230.053. Requires that the notice inform the parent that a nonpublic school is not subject to laws regarding the provision of education services in the same manner as a public school, and a student with a disability attending a nonpublic school is prohibited from receiving the services a student with a disability attending a public school is entitled to receive under federal and state law. Requires that the notice provide certain information regarding rights to which a student with a disability is entitled under federal and state law if the student attends a public school.

Sec. 230.054. CREDIT FOR CONTRIBUTIONS. (a) Authorizes an entity to apply for a credit only for money contributed to the certified EAO and designated for scholarships or educational expense assistance for eligible students.

(b) Prohibits an entity from applying for a credit for a contribution made to the certified EAO if:

(1) the entity requires that the contribution benefit a particular person or school; or

(2) the contribution is designated to provide a scholarship or educational expense assistance for an entity employee or for a spouse or dependent of an entity employee.

(c) Requires an entity to notify the certified EAO in writing when the entity makes a contribution if the entity is authorized to apply for a tax credit for the contribution. Prohibits an entity from applying for a credit for the contribution unless the entity provides the notification at the time the contribution is made. Requires the certified EAO to indicate on the receipt provided under Section 230.051(b)(1)(F) (relating to requiring an organization to agree to give each donor a receipt for money contributed to the organization that includes certain information) that the entity made the notification under this subsection.

Sec. 230.055. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL EXPENSE ASSISTANCE. (a) Prohibits the maximum scholarship amount the certified EAO may award to a student for an academic year using certain money from exceeding the lesser of \$10,000 and the full tuition amount for the nonpublic school the student attends.

(b) Prohibits the maximum educational expense assistance the certified EAO may award to a student using certain money from exceeding \$500 for the 2019 state fiscal year, increased by five percent each subsequent year.

Sec. 230.056. REVOCATION. (a) Requires the comptroller to revoke a certification provided under Section 230.051 if the comptroller finds that a certified EAO is no longer eligible under Section 230.051 or intentionally and substantially violates this chapter.

(b) Provides that the comptroller has broad discretion in determining whether to revoke a certification under Subsection (a).

(c) Requires the comptroller to notify a certified EAO in writing of the comptroller's decision to revoke the EAO's certification. Requires the comptroller, if the comptroller revokes an EAO's certification, to include in the notice of revocation the reasons for the revocation.

(d) Authorizes an EAO, if the comptroller revokes a certified EAO's certification under Subsection (a), to request in writing a reconsideration of the revocation not

later than the 10th day after the date of the notice under Subsection (c) or the revocation is final.

(e) Authorizes an organization that requests a reconsideration under Subsection (d) to submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the organization's request for reconsideration.

(f) Provides that the comptroller's reconsideration of a revocation under this section is not a contested case under Chapter 2001 (Administrative Procedure), Government Code. Provides that the comptroller's decision on a request for reconsideration of a revocation is final and is not appealable.

(g) Provides that this section does not create a cause of action to contest a decision of the comptroller to revoke a certified EAO's certification under this chapter.

(h) Provides that revocation of a certification under this section does not affect the validity of a tax credit relating to a contribution made before the date of revocation.

Sec. 230.057. REPORT OF NET SAVINGS TO PUBLIC EDUCATION. (a) Defines "net savings."

(b) Requires the comptroller, not later than December 31 of each even-numbered year, to determine the amount of net savings for the previous state fiscal biennium and make available to the public a report of that amount of savings.

SUBCHAPTER C. CREDIT

Sec. 230.101. CREDIT. Authorizes an entity to apply for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter. Requires the comptroller to award credits as provided by Section 230.103.

Sec. 230.102. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a) Provides that, subject to Subsections (b) and (c), the amount of an entity's credit is equal to the lesser of the amount of the qualifying contributions made to the certified EAO or 50 percent of the entity's state premium tax liability.

(b) Prohibits the total amount of tax credits that may be awarded under this chapter for a state fiscal year from exceeding \$75 million.

(c) Requires the comptroller, by rule, to prescribe procedures by which the comptroller may allocate credits under this chapter. Requires that the procedures provide that credits are first allocated to entities that were granted preliminary approval for a credit under Section 230.1025 in the amount that was preliminarily approved. Requires that the procedures provide that any remaining credits are allocated on a first-come, first-served basis, based on the date the contribution was initially made.

(d) Authorizes the comptroller to require an entity to notify the comptroller of the amount the entity intends or expects to apply for under this chapter before the beginning of a state fiscal year or at any other time required by the comptroller.

Sec. 230.1025. PRELIMINARY APPROVAL FOR CREDIT. (a) Authorizes an entity, before making a contribution to the certified EAO, to apply to the comptroller for preliminary approval of a credit under this chapter for the contribution.

(b) Requires an entity to apply for preliminary approval of a credit on a form provided by the comptroller that includes the amount the entity expects to contribute and any other information required by the comptroller.

(c) Requires the comptroller to grant preliminary approval for credits under this chapter on a first-come, first-served basis, based on the date the application for preliminary approval is received by the comptroller.

(d) Requires the comptroller to grant preliminary approval for a credit under this chapter if the total amount of credits preliminarily approved under this chapter does not exceed the amount provided by Section 230.102(b).

(e) Provides that a credit for which the comptroller grants preliminary approval remains subject to the limitation under Section 230.102(a) and any other limitations prescribed by this chapter.

Sec. 230.103. APPLICATION FOR CREDIT. (a) Requires an entity to apply for a credit under this chapter on or with the tax return for the taxable year and submit with the application each receipt issued under Section 230.051(b)(1)(F) that includes the information required by Section 230.054(c).

(b) Requires the comptroller to adopt a form for the application for the credit and requires an entity to use this form in applying for the credit.

(c) Authorizes the comptroller to award a credit to an entity that applies for the credit under Subsection (a) if the entity is eligible for the credit and the credit is available under Section 230.102(b). Provides that the comptroller has broad discretion in determining whether to grant or deny an application for a credit.

(d) Requires the comptroller to notify an entity in writing of the comptroller's decision to grant or deny the application under Subsection (a). Requires the comptroller, if the comptroller denies an entity's application, to include in the notice of denial the reasons for the comptroller's decision.

(e) Authorizes an entity, if the comptroller denies the entity's application under Subsection (a), to request in writing a reconsideration of the application not later than the 10th day after the date of the notice under Subsection (d). Provides that, if the entity does not request a reconsideration of the application on or before that date, the comptroller's decision is final.

(f) Authorizes an entity that requests a reconsideration under Subsection (e) to submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the entity's request for reconsideration.

(g) Provides that the comptroller's reconsideration of an application under this section is not a contested case under Chapter 2001, Government Code. Provides that the comptroller's decision on a request for reconsideration of an application is final and is not appealable.

(h) Provides that this section does not create a cause of action to contest a decision of the comptroller to deny an application for a credit under this chapter.

Sec. 230.104. ASSIGNMENT PROHIBITED; EXCEPTION. Prohibits an entity from conveying, assigning, or transferring the credit allowed under this chapter to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

Sec. 230.105. NOTICE OF AVAILABILITY OF CREDIT. Requires the comptroller to provide notice of the availability of the credit under this chapter on the comptroller's

Internet website, in the instructions for insurance premium tax report forms, and in any notice sent to an entity concerning the requirement to file an insurance premium tax report.

SECTION 5. (a) Authorizes the constitutionality and other validity under the state or federal constitution of all or any part of Chapter 230, Insurance Code, as added by this Act, to be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, except that this section does not authorize an award of attorney's fees against this state and Section 37.009 (Costs), Civil Practice and Remedies Code, does not apply to an action filed under this section. Provides that this section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller.

(b) Provides that an appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining that all or any part of Chapter 230, Insurance Code, as added by this Act, is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) Authorizes an interlocutory appeal, if the judgment or order is interlocutory, to be taken from the judgment or order and provides that it is an accelerated appeal.

(d) Authorizes a district court in Travis County to grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Chapter 230, Insurance Code, as added by this Act.

(e) Provides that there is a direct appeal to the Texas Supreme Court (supreme court) from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Chapter 230, Insurance Code, as added by this Act.

(f) Provides that the direct appeal is an accelerated appeal.

(g) Provides that this section exercises the authority granted by Section 3-b (Appeal from Order Granting or Denying Injunction), Article V (Judicial Department), Texas Constitution.

(h) Provides that the filing of a direct appeal under this section will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction granted in accordance with this section pending final determination by the supreme court, unless the supreme court makes specific findings that the applicant seeking such injunctive relief has pleaded and proved that:

(1) the applicant has a probable right to the relief it seeks on final hearing; and

(2) the applicant will suffer a probable injury that is imminent and irreparable, and that the applicant has no other adequate legal remedy.

(i) Provides that an appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 6. Authorizes an entity to apply for a credit under Chapter 230, Insurance Code, as added by this Act, only for an expenditure made on or after September 1, 2018.

SECTION 7. Requires the comptroller to make the initial determination of net savings and report regarding that savings as required by Section 230.057, Insurance Code, as added by this Act, not later than December 31, 2020, based on the state fiscal biennium ending August 31, 2019.

SECTION 8. Provides that Chapter 230, Insurance Code, as added by this Act, applies only to a report originally due on or after September 1, 2018.

SECTION 9. (a) Provides that the amount of \$270,000,000 of the unencumbered appropriations from the general revenue fund for the state fiscal biennium ending August 31, 2019, made by S.B. 1, Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act), to the Health and Human Services Commission (HHSC) is transferred to the Texas Education Agency (TEA) to be used by TEA during that state fiscal biennium as follows:

(1) \$150,000,000 is allocated to fund financial hardship grants under Subchapter H, Chapter 42, Education Code, as added by this Act;

(2) \$60,000,000 is allocated to fund payments to charter schools under Section 12.106(d), Education Code, as added by this Act; and

(3) \$60,000,000 is allocated for the existing debt allotment under Section 46.032, Education Code, as amended by this Act.

(b) Requires HHSC to identify the strategies and objectives out of which the transfer under Subsection (a) of this section is to be made.

SECTION 10. (a) Effective date, except as otherwise provided by this Act: upon passage or December 1, 2017.

(b) Effective date, Chapter 230, Insurance Code, as added by this Act: September 1, 2018.