

BILL ANALYSIS

C.S.H.B. 1
By: Grusendorf
Public School Finance, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Since its very first Constitution, Texas has made the education of every child its primary goal. This state has not wavered from that commitment. Today, Texas is facing a crisis in providing funding for the public education system. Property taxes are too high, schools do not have the flexibility to raise additional revenue to meet the rising costs of educating our children, and our current system of finance is being challenged in our courts. It is necessary to overhaul the public education funding system to stabilize and improve the way we fund public education in Texas.

Whenever the funding of our public schools is addressed, it is important to keep our children's education at the forefront of the discussion. For this reason, it is essential to address and encourage student achievement and progress. Introducing an incentive program and focusing on other education reforms are necessary pieces to solve the larger puzzle of school finance.

The purpose of this bill is to promote educational excellence and overhaul the way by which the state funds its public schools..

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Education in SECTION 1A.01, SECTION 1A.09, SECTION 1E.01, SECTION 1F.20, SECTION 2A.02, SECTION 2A.03, SECTION 2B.01, SECTION 2B.02, SECTION 2D.07, SECTION 2D.09, and SECTION 2E.04; to the Commissioner of Higher Education in SECTION 2B.02; to the State Board of Education in 2D.02; to the Comptroller of Public Accounts in SECTION 6B.01; to the Legislative Budget Board in SECTION 1A.01; and to the Texas Lottery Commission in SECTION 9.05, SECTION 9.33, SECTION 9.41, and SECTION 9.42 of this bill.

ANALYSIS

C.S.H.B. 1 provides a sufficient level of funding to meet the state's educational goals, increases funding to every school district by at least 2 percent, replaces the "Robin Hood" system with one less reliant on recapture, establishes a uniform local property tax rate of \$1.05 per \$100 of valuation, rewards excellence in teaching and student performance, improves governance of public education, enhances accountability, abolishes the franchise tax, governs the use of video lottery terminals at limited locations in this state, and provides new revenue to achieve the state's goals.

Public School Finance

C.S.H.B. 1 establishes a foundation tier to provide a sufficient level of funding to meet the state's educational goals. Each school district is entitled to an accreditation allotment consisting of \$4,459 for each student in average daily attendance (ADA) enrolled below the ninth grade and \$5,459 for each student in ADA enrolled in the ninth grade or above. In addition to the accreditation allotment, school districts are entitled to receive special student allotments, including:

- A minimum of \$300 per student in ADA for special education, with access to additional funds for high cost special education students or students requiring intensive services;
- A minimum of \$665 per eligible student in ADA to serve students at risk of dropping out of school and to compensate for traditional underestimation of poverty in high school;

- A minimum of \$450 per student in ADA enrolled in a bilingual education or special language program; and
- A minimum of \$178 per credit hour per student in ADA in an approved career and technology education program.
- Allotments in the foundation tier shall be adjusted to account for differences in districts' resource costs based on various factors beyond their control, such as district size and sparsity, inflation, and geographic variations in the cost of hiring highly qualified teachers. The legislature may provide an additional allotment by appropriation.

School districts are entitled to receive allotments (\$250 per student in ADA for the first year and \$250 per additional student in ADA for the second year) for operational expenses associated with new instructional facilities. The Commissioner of Education (commissioner) may award grants to school districts with high transportation costs per student.

The accreditation, special student, and new instructional facility allotments constitute "tier one" allotments. Each school district's responsibility to fund tier one is determined by multiplying the taxable value of property in the school district by \$1.05 per \$100 of valuation. The bill adjusts for rapid declines in taxable value and provides other transitional aid to maintain state and local revenue to districts. The bill guarantees each district a minimum funding increase of 2 percent.

C.S.H.B. 1 establishes an enrichment tier to provide school districts the opportunity to supplement their basic programs at a level of their choosing. The enrichment tax rate may not exceed \$0.10 per \$100 of valuation. No school district may impose an enrichment tax earlier than the 2006 tax year. The maximum enrichment tax rate for that tax year is \$0.02 per \$100 of valuation, and it may be increased by no more than \$0.02 per \$100 per tax year. The bill provides a formula to guarantee an amount of state funding (guaranteed yield) for each cent of local enrichment tax effort.

The bill increases by \$500, to \$1000, the health insurance pass-through to full-time classroom teachers, librarians, nurses, and counselors, with a 90-day waiting period for new hires.

With respect to facilities, the bill prohibits districts from using the school facilities allotment to construct, acquire, or improve stadiums or other facilities predominantly used for extracurricular activities. The commissioner shall establish a "best practices" program and recognize school districts which achieve cost-effectiveness in construction and long-term maintenance of facilities.

Reforms and Incentives

C.S.H.B. 1 provides several reforms and incentives to improve academic achievements. The commissioner shall provide grants to school districts which develop local incentive programs, the primary criteria of which shall be measures of incremental growth in students' achievement. In general, these grants will be used to provide awards of at least \$2,500 to as many as 15 percent of a school district's employees. The bill establishes minimum criteria for local incentive programs.

The bill requires each school district to create a mentor program for teachers and provides stipends of \$1,500 for each teacher mentored, up to two per mentor per year. The bill requires the commissioner to develop a "premium teacher" program to provide awards of \$4,000 to classroom teachers who add value to student achievement in low-performing and certain other campuses.

The bill awards school campuses an additional \$1,000 for each student who completes the Advanced High School Program, an additional \$1000 for each at-risk student who completes the curriculum requirement, \$100 for each student who achieves "commended performance," and \$100 for each student who successfully performs on an Algebra I assessment. These awards are doubled if the individual achieving these successes is deemed at risk of dropping out of school. These funds may be used only for academic enhancement purposes; they may not be used for athletics or to replace funds already in a campus or district's budget.

C.S.H.B. 1 eliminates the exit-level TAKS tests and replaces them with end-of-course assessments. Students must satisfactorily perform on end-of-course assessments for English, history, mathematics, and science to be eligible to receive a high school diploma. The bill also allows students to meet the exit-test standard with high scores on AP or IB exams and, for mobile students who enter after the start of the 10th grade, by high scores on the SAT II or ACT exams.

By 2006, the Texas Education Agency shall develop computer-based assessments, require school districts to administer computer-based assessments to the extent practicable, and develop computer-adaptive diagnostic assessment instruments. In addition, the bill requires all students in grades 8, 10, and 12 enrolled in the recommended or advanced high school program to take nationally recognized assessments of college readiness (such as the SAT II or ACT exams). The commissioner is required to develop a system of tracking individual students' performance on these assessment instruments from year to year. The bill also creates new procedures for monitoring bilingual student performance and ensuring that bilingual students continue to progress academically.

The commissioner is required to ensure that the Public Education Information Management System (PEIMS) links student performance to other data for purposes of efficient and effective allocation of school resources. All districts will be required to use PEIMS and a new student tracking system to facilitate the electronic transfer of students' records and improve monitoring of students' progress toward graduation. In addition, all districts will be required to adhere to a uniform accounting system for required data. Districts will also be required to report noninstructional expenses in PEIMS. The commissioner and the Commissioner of Higher Education may establish up to three centers for education research.

The bill requires four-year terms for all trustees of independent school districts and requires them to be elected on the uniform election date in November. The bill eliminates the election of the vice chair and secretary by the members of the State Board of Education and instead requires the chair, with the advice and consent of the Governor, to appoint those officials.

The bill also contains a limitation that the commissioner shall adopt rules under the Education Code only if the duty requires an action to be taken by rule. The commissioner is also required to set up a system for comments on the actions the commissioner or the Texas Education Agency proposes to take in performing a duty that does not require the adoption of rules. The commissioner may also accept gifts and grants for the benefit of public education.

Taxes

C.S.H.B. 1 establishes a uniform local property tax rate of \$1.05 per \$100 of valuation. The bill limits to 5 percent the annual increase of the appraised value of qualifying residential real property and specifies the circumstances under which this limitation expires on a particular piece of property. The bill also allows a local option tax rate of \$0.10 per \$100 of valuation for local enrichment.

The bill requires the purchaser of real property to file a sales price disclosure report with the chief appraiser of the relevant appraisal district, with limited exceptions, and makes this report confidential. The unlawful disclosure of this report is a Class B misdemeanor.

The bill permits a unit of local government to sell all or part of its tax receivables (delinquent ad valorem taxes and any other charge or assessment secured by a lien on real property). Such sales may be accomplished through competitive bidding or a negotiated sale. The bill establishes requirements for notification, terms and conditions of sale, assignment, and related matters.

C.S.H.B. 1 increases the state sales tax rate to 6.75 percent from 6.25 percent. It applies the sales tax to billboard advertising service and bottled water sold in containers with a volume of three gallons or less. It deletes the sales tax exemptions for mixed beverages, newspapers, newspaper subscriptions, newspaper inserts, and magazine subscriptions. It deletes the limited sales tax exemption for Internet access fees.

The bill increases the motor vehicle sales and use tax rate to 7.75 percent from 6.25 percent, and it increases the boat and motor sales and use tax rate to 7.75 percent from 6.25 percent.

C.S.H.B. 1 imposes an admissions tax of \$1 per ticket to a professional athletic or amusement event, a permanently sited theme park, and a live performance. Events sponsored, produced, or affiliated with educational institutions and nonprofit entities are exempted. Net revenue from the admissions tax is dedicated to public education.

The bill increases the tax rate on cigarettes by 344 percent to \$70.50 from \$20.50 per thousand, making the tax \$1.41 per pack. The bill increases the tax rate on cigars by 344 percent (The rates vary depending on weight, terms of sale, and nontobacco content.). The bill increases the tax rate for smokeless and other tobacco products to 40 percent from 35.213 percent of the list price.

The bill extends collection of the Telecommunications Infrastructure Fund assessment until 2007. It permits entities which have not previously recovered the assessment from its customers to do so.

C.S.H.B. 1 repeals the franchise tax and establishes a payroll tax on employers. The tax imposed is the lesser of 1.25 percent of the wages paid to that employee during the calendar quarter or \$125 (\$500 per year) for each employee. Governmental entities and charitable organizations are exempt from this tax. Employers are prohibited from deducting the tax from employees' wages, and doing so subjects an employer to criminal (Class A misdemeanor) and civil penalties (\$500 per violation).

The bill permits the Comptroller to forfeit the right of a noncorporate entity to transact business in this state for the same reasons, and using the same procedures, as the Comptroller uses in relation to the forfeiture of corporate privileges. The bill contains provisions relating to effects of forfeiture, exceptions, notice requirements, revival, judicial process, and records of forfeiture.

Video Lottery

C.S.H.B. 1 permits the Texas Lottery Commission (TLC) to implement and operate a video lottery system and control the operation of video lottery terminals (VLTs) at racetracks which held a pari-mutuel license on May 1, 2004, conducted at least 20 live racing days in 2003, and annually conducts at least as many live racing days as it conducted during 2003. The bill allows the operation of VLTs on certain tribal lands, subject to an effective gaming agreement. The bill establishes that the state owns all lottery games, regardless of the owner of the VLTs, and provides that TLC has exclusive authority to oversee video lottery games in Texas, including the unilateral ability to disable VLTs remotely through a video lottery central system linked to all VLTs.

The state shall receive 60 percent of net income derived from VLT operation at racetracks and up to 25 percent of net income derived from VLT operation on tribal lands. Two percent of funds the state receives will be allocated to TLC to defray its expenses in administering video lottery. Of the share retained by racetracks, 13.5 percent is allocated to supplement purses and support breed registries for horses and greyhounds. Applicants for registration or licensure must pay nonrefundable fees of various amounts to TLC and fees of \$25,000 per VLT.

TLC has the authority to define hours of VLT operation, amounts players may be charged to play, prizes and credits that may be awarded, the maximum number of VLTs that may be operated at a particular facility, and numerous other aspects of VLT operations. The bill contains provisions governing the requirements for and the process of licensure or registration of VLT providers (manufacturers), video lottery retailers, video lottery managers, and facility sites; the process for renewing, suspending, or revoking a license; investigations; testing and approving VLT equipment; the basic requirements of VLT equipment; accounting, financial, and other reporting requirements; indemnification, insurance, and bonding requirements; employees of video lottery retailers and managers; hearings and due process; civil and criminal penalties for violations; confidentiality of information; and other aspects of operation and management of video lottery.

The bill contains a model gaming agreement to be executed by the Governor and the Alabama-Coushatta Indian tribe, the Kickapoo Traditional Tribe of Texas, and Ysleta del Sur Pueblo Indian tribe. The agreement stipulates the terms and conditions under which these tribes may operate VLTs on tribal lands. The bill does not prohibit a federally recognized tribe from requesting to negotiate a gaming agreement which differs from the model agreement.

The bill establishes criminal penalties for possession of gambling devices other than authorized VLT machines. The bill clarifies that a slot machine is not a device or equipment used in connection with bingo when authorized by law.

C.S.H.B. 1 authorizes TLC to begin implementing aspects of video lottery operations prior to the date a constitutional amendment establishing video lottery is submitted to the voters for approval. These activities include expending funds, developing and approving forms, accepting applications, preregistering VLT providers, testing equipment, and employing additional employees as needed to ensure the state begins receiving revenue from video lottery at the earliest possible date.

EFFECTIVE DATE

Most provisions take effect January 1, 2005, but only if the constitutional amendment proposed by H.J.R. 1, 78th Legislature, 4th Called Session, 2004, is approved by the voters. Sections 2B.05 and 10.01(b) take effect September 1, 2004. Articles 1 and 2 take effect September 1, 2005, except Section 1G.01(a) takes effect August 31, 2004, and Part C of Article 2 takes effect January 1, 2005. Part D of Article 3 takes immediate effect if this Act receives a vote of two-thirds of all members of each house or, otherwise, 91 days after the end of the 4th Called Session, except Sections 3D.01, 3D.02, and 3D.03 take effect January 1, 2005. Article 7 takes effect on the date the previously mentioned constitutional amendment becomes effective. Sections 9.41 and 9.42 takes immediate effect if this Act receives a vote of two-thirds of all members of each house or, otherwise, 91 days after the end of the 4th Called Session.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute replaces the original's changes to the existing school finance formula and enrichment tax rate with an entirely new series of allotments and formulas. The substitute adds language to set a uniform local property tax rate of \$1.05 per \$100 of valuation. The substitute allows a local option tax rate of \$0.10 per \$100 of valuation.

The substitute expands the original's provisions relating to educator excellence, adds the premium teacher program and mentoring programs, adds the student incentives program, deletes the original's incentive program for principals, and deletes language in the original relating to a state evaluation system. The substitute expands provisions relating to end-of-course testing, adds provisions relating to computer-based assessments, and adds provisions relating to PEIMS and tracking systems. The substitute adds the accountability and governance provisions, as well as provisions relating to enrichment, facilities funding, construction and maintenance best practices, and uses of funds. The substitute adds the provision increasing the health insurance pass-through by \$500.

The substitute limits appraisal increases to 5 percent annually, not 3 percent as in the original. The substitute adds provisions authorizing the sale of tax receivables and requiring the filing of a sales price disclosure.

The substitute adds provisions relating to sales tax exemptions, sales tax rate, motor vehicle sales and use tax rate, boat and motor sales and use tax rate, cigar and tobacco tax rates, admissions tax, payroll tax, and TIF extension. The substitute adds the repeal of the franchise tax. The substitute expands on the original's cigarette tax proposal and otherwise deletes the original's tax proposals.

The substitute expands the original's provisions relating to video lottery, provides that TLC has exclusive authority to control video lottery, specifies TLC's authority and responsibility for operational aspects of the video lottery, increases the state's share to 60 percent from 50 percent as in the original, adds the model gaming agreement, and establishes criminal penalties for possession of gambling devices other than authorized VLT machines.

The substitute makes numerous other technical and conforming changes.