

## **BILL ANALYSIS**

C.S.S.B. 1343  
By: Jackson  
Higher Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Proprietary schools were regulated by the Texas Education Agency (TEA) until an Act of the 74th Legislature, 1995, moved that responsibility to the Texas Workforce Commission (TWC). When TEA regulated those schools, it assessed administrative penalties against unlicensed schools as a tool to force the submission of licensure applications. When a school appealed a penalty, the appeal hearing was held at TEA at a low cost.

The responsibility for an appeals hearing sought by a proprietary school now lies with the State Office of Administrative Hearings (SOAH), and TWC finds that those hearings are cost-prohibitive compared to an in-house hearing at TWC. As a result, TWC does not use this enforcement tool to regulate proprietary schools.

As proposed, S.B. 1343 amends the provisions governing TWC's regulation of proprietary schools to allow the appeals process to be handled by TWC's special hearings department; maintains the right of a proprietary school to judicial review under the substantial evidence rule; requires a petition for judicial review to be filed in Travis County, thus providing for lower costs for contested administrative penalties; and provides TWC the ability to seek attorney's fees and court costs in enforcing its orders.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

#### **ARTICLE 1. SUBSTANTIVE CHANGES REGARDING CAREER SCHOOLS AND COLLEGES**

**SECTION 1.01.** Amends Section 132.001, Education Code, by amending subdivisions (1) - (8), (10), and (12) and adding subdivision (13) as follows:

- (1) Changes 'proprietary school' to 'career school or college.' Changes 'correspondence' to 'distance education.'
- (2) Makes conforming changes.
- (3) Makes conforming changes.
- (4) Makes conforming changes.
- (5) Makes conforming changes.
- (6) Makes conforming changes.
- (7) Makes conforming changes.
- (8) Makes non-substantive change.
- (10) Makes conforming changes.
- (12) Makes non-substantive change.

(13) Defines distance education as a formal education process in which the student and instructor are separated by a physical distance and a variety of communication technologies may be used to deliver synchronous or asynchronous instruction to the student.

SECTION 1.02. Amends Chapter 132, Education Code, by adding Section 132.0015 specifying that any references to proprietary schools in the Education Code or other law actually refer to career schools and colleges.

SECTION 1.03. Amends Section 132.002 by amending subsections (a) and (d) and adding subsections (e), (f), and (g) as follows:

(a) Allows certain schools to be exempted from the provisions relating to career schools and colleges.

(d) Provides that schools are exempt from regulation under these provisions under certain circumstances.

(e) Provides that after a school is declared exempt the commission may inspect the school or institution or require the owner of the school or institution to provide any information the commission considers necessary for the commission to ensure the school or institution's continued compliance with the requirements of the exemption.

(f) Provides that a school listed in subsection (a) may seek a certificate of approval under subchapter C (Authorized Operation of Proprietary Schools.)

(g) Provides that institutions of higher education exempt from these provisions prior to September 1, 2003 will remain exempt.

SECTION 1.04. Amends Section 132.051(b), Education Code. Makes conforming changes and provides that any note, other instrument of indebtedness, or contract relating to payment for educational services obtained from a career school or college that does not hold a certificate of approval issued under this chapter is unenforceable in any action brought on the note, instrument, or contract.

SECTION 1.05. Amends Section 132.055, Education Code. Makes conforming changes and provides that a career school or college may not adopt a name used by an existing school or college unless approved by the THECB.

SECTION 1.06. Amends Section 132.061, Education Code. Makes conforming changes including changing references from 'proprietary school' to 'career school or college,' 'resident course' to 'resident courses and synchronous distance education course,' and 'correspondence course' to 'asynchronous distance education course.'

SECTION 1.07. Amends Sections 132.152 (c)-(i) Education Code.

(c) Makes non-substantive changes.

(d) Specifies procedures if a hearing results in a finding that a violation has occurred. If a violation is has occurred the commission shall provide written notice of the findings established at the hearing including the amount of the penalty. The commission shall enter an order requiring payment of the penalty.

(e) Requires the person to submit payment within 30 days of receipt of the order for deposit in an escrow account or file a sworn affidavit stating the person in financially unable to pay the amount of the penalty.

(f) Makes the judicial review the same process as an appeal to deny a certificate of approval under

Section 132.102.

(g) Provides that if the court review does not sustain the occurrence of a violation or finds that the amount of the penalty should be reduced, the commission must remit the appropriate payment to the person charged with the violation within 30 days of the court's final judgement.

(h) Provides that if the court review does sustain the occurrence of a violation, the court shall order the person to pay the amount of the penalty and may award to the commission the attorney's fees and court costs incurred by the commission in defending the action. The commission shall remit the amount of the penalty to the comptroller for deposit in general revenue accounts.

(i) Makes non-substantive changes.

SECTION 1.08. Amends Section 132.2415, Education Code to create the Tuition Trust Account

(a) Changes the name of the Texas Workforce Commission depository bonds guarantee trust account to career school or college tuition trust account. This account is designated to receive all amounts related to the protection of career school or college tuition. The balance is not to exceed \$1 million.

(b) Allows the commission to collect an annual fee from career schools or colleges for the trust account. The total amount collected annually is set by the commission necessary to pay liabilities of the trust account during the year. The annual fee is not to exceed 2% of gross tuition and fees charged by career schools or colleges for the year.

(c) Designates that excess money in the trust at the end of the year be transferred to tuition trust account.

(d) Specifies that from the tuition trust account the commission shall attempt refund tuition and fees to each students of a closed career school or college. The commission may refund less than the full amount of tuition and fees if they consider the following factors whether there is enough money in the trust fund, the cost and number of claims against the trust resulting from closure of the school, the average claim paid in the past, and the availability of other schools where the student could complete training.

SECTION 1.09. Amends 132.242 (a)-(d) and (f), (g), Education Code making conforming changes.

(e) Allows refunds for closed career school or college to be payed from the career school and college tuition trust account in an amount not to exceed \$150,000.

SECTION 1.10. Repeals Section 132.152 (j)-(m) and 132.060 and 132.241, Education Code.

SECTION 1.11. Changes made by this article to Section 132.051, Education Code apply only to a note or other instrument issued, or a contract entered into, on or after the effective date of this Act.

SECTION 1.12. Changes made by this article to Section 132.055, Education Code apply only to an application for a certificate of approval filed with the Texas Workforce Commission on or after the effective date of this Act.

SECTION 1.13. Changes made by this article to Section 132.061(b), Education Code apply only to the refund policy of a career school or college to which a certificate of approval is granted or renewed by the Texas Workforce Commission on or after the effective date of this Act.

SECTION 1.14. Changes made by this article to Section 132.152, Education Code apply only to an alleged violation of Section 132.151 that occurs on or after the effective data of this Act.

SECTION 1.15. Transfers any money remaining in the tuition protection fund under 132.241, Education Code on or after the effective date of this article to the career school or college tuition trust account established under Section 132.2415

## ARTICLE 2. CONFORMING AMENDMENTS REGARDING CAREER SCHOOLS AND COLLEGES

SECTIONS 2.01 - 2.30. These sections make conforming changes to reflect the change in language from 'proprietary schools' to 'career schools and colleges', a shift to gender-neutral language, and other conforming changes.

### Article 3. Effective Date

Section 3.01 Effective date: September 1, 2003.

### **EFFECTIVE DATE**

This Act takes effect September 1, 2003

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute changes references to "correspondence" to "distance education". The substitute changes all references of Proprietary schools to Career schools and Colleges. The substitute provides that proprietary schools that do not hold a certificate of approval or exemption issued under this chapter will find any notes, other instruments of indebtedness, or contract relating to payment for educational services unenforceable. The substitute outlines the refund policy for students who participate in synchronous (measured periods of instruction) and asynchronous (self-paced) distance education courses. The substitute returns the appeal process to agency hearing officers and places it in Special Hearings. The effect of the current process has been to eliminate the administrative penalties because of the costs to the agency in dollars and staff time. The substitute replaces "Tuition Protection Fund" with "Trust Account" language, and increases the account balance amount from \$250K to \$1 million. The TPF was changed to a Trust account to free the use of the funds, so that it would not be considered a cost to the State by the Comptroller's office when funds are used.