

By: Grusendorf, Wilson, Krusee, Lewis

H.B. No. 2465

Substitute the following for H.B. No. 2465:

By: Madden

C.S.H.B. No. 2465

A BILL TO BE ENTITLED

AN ACT

relating to an education freedom pilot program for certain children in certain school districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 29, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. EDUCATION FREEDOM PROGRAM

Sec. 29.351. DEFINITIONS. In this subchapter:

(1) "Eligible district" means a school district in which, during the 2001-2002 school year:

(A) a majority of the students were educationally disadvantaged; and

(B) the enrollment was greater than 40,000.

(2) "Parent" includes a guardian or custodian.

(3) "Private school" means a nongovernmental educational establishment that exists for the general education of elementary and secondary students. The term does not include a school that provides education in a home setting by the parent or that limits enrollment to relatives of the school's staff.

(4) "Program" means the education freedom program described by this subchapter.

Sec. 29.352. PROGRAM. (a) An eligible child under Section 29.353 or 29.363, as applicable, may, at the option of the child's parent:

1           (1) attend any public school in the child's district of  
2 residence under Subchapter G;

3           (2) subject to the limitations of Section 29.203,  
4 attend a public school in another district under Subchapter G; or

5           (3) use a scholarship as provided by Section 29.354 to  
6 pay the costs of attending a private school.

7           (b) Section 42.157 does not apply to a child who attends a  
8 public school in another district under Subsection (a)(2).

9           Sec. 29.353. ELIGIBLE CHILD. (a) A child is eligible to  
10 participate in the program if the child:

11           (1) resides in an eligible district;

12           (2) attended a public school for the majority of the  
13 preceding semester; and

14           (3) resides in a household that had, in the household's  
15 most recently filed federal income tax return, an annual household  
16 income not exceeding 200 percent of the qualifying income for a  
17 reduced price lunch under the national school lunch program  
18 established under 42 U.S.C. Section 1751 et seq. and its subsequent  
19 amendments.

20           (b) A child who establishes eligibility under Subsection  
21 (a) is entitled to continue participating until the earlier of the  
22 date on which the child graduates from high school or the child's  
23 21st birthday.

24           Sec. 29.354. FINANCING; SCHOLARSHIP. (a) For purposes of  
25 this section, an eligible child who attends a private school under  
26 this subchapter is considered in determining the average daily  
27 attendance under Section 42.005 of the district in which the child

1 resides at the time the child first becomes eligible for  
2 participation in the program.

3 (b) Except as provided by Subsection (c), a child's  
4 scholarship is an amount equal to the average funding per child for  
5 maintenance and operations, during the preceding school year in the  
6 district in which the child resides at the time the child first  
7 becomes eligible for participation in the program, from all sources  
8 other than:

9 (1) the available school fund;

10 (2) federal funds;

11 (3) funds for special education programs under  
12 Subchapter A; and

13 (4) funding to which the district is entitled under  
14 Subsection (f)(1)(B).

15 (c) The amount of the scholarship of a child who is eligible  
16 under Section 29.003(b) for special education services includes  
17 funding to which the school district is entitled under Section  
18 42.151 for the child.

19 (d) The comptroller shall adopt rules regarding the  
20 calculation and distribution of payments for both public and  
21 private schools.

22 (e) On application by the parent of an eligible child, the  
23 comptroller shall issue a scholarship certificate to the parent.  
24 The parent shall promptly endorse and present the certificate to  
25 the private school chosen by the parent.

26 (f) The private school the child attends must endorse and  
27 present the child's scholarship certificate to the comptroller to

1 receive payment. On presentation of the certificate, the  
2 comptroller shall distribute:

3 (1) to the district in which the child resides at the  
4 time the child first becomes eligible for participation in the  
5 program:

6 (A) the available school fund share attributable  
7 to the child, notwithstanding Section 43.001; and

8 (B) 10 percent of the amount of the scholarship;  
9 and

10 (2) to the private school the lesser of:

11 (A) 90 percent of the amount of the scholarship;  
12 or

13 (B) the school's average annual cost per student.

14 (g) For costs of administering the program, the comptroller  
15 may retain a portion of the scholarship from the share of the  
16 district in which a child resides at the time the child first  
17 becomes eligible for participation in the program.

18 (h) The comptroller shall direct the distribution of funds  
19 to the private school the child attends on a monthly pro rata basis  
20 after education services have been provided. The comptroller may  
21 require that the private school submit evidence of the child's  
22 attendance at the private school before the comptroller directs  
23 funds to the private school. The payment shall be made not later  
24 than the 30th day after the date on which the comptroller receives  
25 from the private school a request for payment.

26 (i) The comptroller shall direct the distribution of funds  
27 to the district in which the child resides at the time the child

1 first becomes eligible for participation in the program on an  
2 annual basis.

3 (j) The child's scholarship is the entitlement of the child,  
4 under the supervision of the child's parent, and not that of any  
5 school. Solely as a means of administrative convenience, the  
6 comptroller shall pay the private school the child attends on  
7 presentation of the scholarship certificate by the school.

8 (k) A private school may not share a child's scholarship  
9 with or refund or rebate a child's scholarship to the parent or  
10 child in any manner.

11 Sec. 29.355. ACCREDITATION. To participate in the program,  
12 a private school must be accredited by or have filed an application  
13 for accreditation by an accrediting association recognized by the  
14 commissioner to accredit nongovernmental schools in this state.

15 Sec. 29.356. ADMISSIONS. (a) A private school chosen by an  
16 eligible child's parent under Section 29.352 may not deny admission  
17 by discriminating on the basis of the child's race, national  
18 origin, or ethnicity and must comply with the requirements of:

19 (1) 42 U.S.C. Section 2000d et seq. and its subsequent  
20 amendments with respect to nondiscrimination on the basis of race,  
21 color, or national origin; and

22 (2) Section 504, Rehabilitation Act of 1973 (29 U.S.C.  
23 Section 794) and its subsequent amendments with respect to  
24 nondiscrimination on the basis of disability.

25 (b) A private school that has more qualified scholarship  
26 applicants for attendance under this subchapter than available  
27 positions must fill the available scholarship positions by a random

1 selection process. However, to achieve continuity in education, a  
2 school may give preference among scholarship applicants to  
3 previously enrolled students and to other children residing in the  
4 same household as previously enrolled students.

5 (c) A private school that accepts a child using a  
6 scholarship is entitled to a copy of the child's complete academic  
7 transcript, including past results on assessment instruments  
8 administered under Section 39.023, from each school the child  
9 previously attended. A public school releasing an academic  
10 transcript under this subsection shall comply with any applicable  
11 provision of the Family Educational Rights and Privacy Act of 1974  
12 (20 U.S.C. Section 1232g) and its subsequent amendments.

13 (d) The comptroller is not responsible for responding to or  
14 investigating any complaint or dispute arising under this section.

15 Sec. 29.357. ACCOUNTABILITY. Each private school that  
16 accepts a scholarship under this subchapter shall annually  
17 administer in the spring either the appropriate assessment  
18 instrument required under Section 39.023 or a norm-referenced  
19 assessment instrument approved under Section 39.026 and shall make  
20 the aggregated results of the assessment instrument available to  
21 the public. Individual student results shall be made available,  
22 with appropriate safeguards for student privacy, to researchers as  
23 required under Section 29.366.

24 Sec. 29.358. PERFORMANCE STANDARDS. (a) Not later than  
25 September 1, 2005, the commissioner in conjunction with the  
26 comptroller and the Charles A. Dana Center at The University of  
27 Texas at Austin shall create a rating system under which a student

1 who attends a private school under this subchapter is rated based on  
2 the student's yearly academic progress. The student's parent must  
3 be notified of the student's rating under the system.

4 (b) If a student or group of students who attend a private  
5 school under this subchapter receives a rating of academically  
6 unacceptable for a period of one year, the school must notify the  
7 parent of the student or of each student in the group.

8 (c) If a student or group of students who attend a private  
9 school under this subchapter receives a rating of academically  
10 unacceptable for two consecutive years, the commissioner may revoke  
11 the scholarship of the student or group of students.

12 (d) The rating system applies beginning with the 2005-2006  
13 school year.

14 Sec. 29.359. TRANSPORTATION. A participating school  
15 district shall offer each child attending a private school under  
16 this subchapter transportation free of charge to and from the  
17 public school the child would otherwise attend to the extent  
18 provided under Section 42.155 for an eligible child.

19 Sec. 29.360. ADDITIONAL TUITION PROHIBITED. A parent or a  
20 child using a scholarship under this subchapter may not be required  
21 to pay tuition in addition to the child's scholarship.

22 Sec. 29.361. PRIVATE SCHOOL AUTONOMY. (a) A private school  
23 that accepts a scholarship under this subchapter is not an agent or  
24 arm of the state or federal government.

25 (b) Except as provided by this subchapter, the agency, the  
26 State Board of Education, the commissioner, the comptroller, or any  
27 other state agency may not in any way regulate the educational

1 program of a private school that accepts a scholarship under this  
2 subchapter.

3 (c) The purpose of this subchapter is to allow maximum  
4 freedom to the private sector to respond to the educational needs of  
5 the children of this state without governmental control, and this  
6 subchapter shall be liberally construed to achieve that purpose.

7 Sec. 29.362. LIMITATION ON NUMBER OF PARTICIPATING  
8 CHILDREN. Notwithstanding any other provision of this subchapter,  
9 the number of children in a school district who may participate in  
10 the program during a school year is limited to the lesser of:

11 (1) five percent of the number of eligible children;  
12 or

13 (2) the number of children for whom the total amount of  
14 scholarships in the amount determined under Section 29.354 is equal  
15 to three percent of the district's total maintenance and operations  
16 revenue for the preceding school year.

17 Sec. 29.363. ELIGIBLE CHILD AND ELIGIBLE DISTRICT BEGINNING  
18 WITH 2005-2006 SCHOOL YEAR. (a) Notwithstanding Section 29.351,  
19 beginning with the 2005-2006 school year, "eligible district"  
20 includes any school district whose board of trustees adopts a  
21 resolution to participate in the program.

22 (b) Notwithstanding Section 29.353, beginning with the  
23 2005-2006 school year, a child who resides in an eligible district  
24 as defined by Subsection (a) is eligible to participate in the  
25 program if the child attended a public school for the majority of  
26 the preceding semester.

27 (c) A child who establishes eligibility under Subsection



1 (b) is entitled to continue participating until the earlier of the  
2 date on which the child graduates from high school or the child's  
3 21st birthday.

4 Sec. 29.364. RULES. The comptroller shall adopt rules  
5 necessary only for the administration of the program. A rule  
6 adopted under this section is binding on any other state or local  
7 governmental entity as necessary in order to administer the  
8 program.

9 Sec. 29.365. SCHOOLS OF CHOICE RESOURCE CENTERS. (a) The  
10 comptroller shall select one or more independently funded nonprofit  
11 organizations to coordinate, provide staff for, and administer  
12 schools of choice resource centers in each eligible district to:

13 (1) assist parents in learning how to be better  
14 education consumers;

15 (2) provide information on education alternatives in  
16 the area; and

17 (3) assist parents, schools, and school districts in  
18 implementing and responding to the program.

19 (b) This section expires December 31, 2008.

20 Sec. 29.366. EVALUATION OF PROGRAM. (a) The comptroller in  
21 conjunction with the Charles A. Dana Center at The University of  
22 Texas at Austin shall:

23 (1) evaluate the program to assess the extent of  
24 participation by eligible children who reside in eligible  
25 districts; and

26 (2) contract with one or more qualified researchers  
27 who have previous experience evaluating school choice programs to

1 conduct a study of the program with funds other than state funds.

2 (b) The study described by Subsection (a)(2) must assess:

3 (1) each participating student's performance on annual  
4 assessment instruments before and after entering the program;

5 (2) the level of a participating student's  
6 satisfaction with the program;

7 (3) the level of parent satisfaction with the program;

8 (4) the overall impact of the program on public school  
9 students and on the districts and schools from which the  
10 participating students transferred; and

11 (5) the impact of the program on public and private  
12 school capacity, availability, and quality of service.

13 (c) The researchers who conduct the study shall apply  
14 appropriate analytical and behavioral science methodologies to  
15 ensure public confidence in the study.

16 (d) The researchers who conduct the study shall provide the  
17 legislature with a final copy of the evaluation of the program.

18 (e) The comptroller may accept grants to assist in  
19 implementing this section.

20 (f) This section expires June 1, 2010.

21 SECTION 2. Section 29.202(a), Education Code, is amended to  
22 read as follows:

23 (a) A student is eligible to receive a public education  
24 grant or to attend another public school in the district in which  
25 the student resides under this subchapter if the student is  
26 assigned to attend a public school campus:

27 (1) at which 50 percent or more of the students did not

1 perform satisfactorily on an assessment instrument administered  
2 under Section 39.023(a) or (c) in any two of the preceding three  
3 years; [~~or~~]

4 (2) that was, at any time in the preceding three years,  
5 identified as low-performing by the commissioner under Subchapter  
6 D, Chapter 39; or

7 (3) that is in a district whose students may use an  
8 education scholarship under Subchapter J, Chapter 29, and the  
9 student is an eligible child under Section 29.353 or 29.363.

10 SECTION 3. (a) The comptroller shall make the education  
11 freedom program as provided by Subchapter J, Chapter 29, Education  
12 Code, as added by this Act, available for participation not later  
13 than January 1, 2004.

14 (b) As soon as practicable the comptroller shall adopt rules  
15 necessary for the administration of the program.

16 SECTION 4. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2003.