

BILL ANALYSIS

C.S.H.B. 3646
By: Hochberg
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, school district state funding is based largely on a formula related to revenue in 2005-06 or 2006-07.

The purpose of C.S.H.B 3646 is to return, to the extent possible, to a formula-driven public school finance system that improves equity, reduces recapture, provides increases in educator salaries and addresses unintended consequences of H.B.1 passed during the 79th Legislature, 3rd Called Session.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the commissioner of education in Section 11 of this bill.

ANALYSIS

C.S.H.B. 3646 amends Section 7.024 by adding language to reflect a direct appropriation to the investment capitol fund and by striking the reference to a transfer of funds from the compensatory education allotment.

C.S.H.B. 3646 amends Section 7.062 by amending the definition of "wealth per student" to mean a school district's taxable value of property for the current tax year as currently determined under Subchapter M, Chapter 403, Government Code and by striking the reference to Adjustment for Rapid Decline in Taxable Value of Property.

C.S.H.B. 3646 amends Chapter 12, Education Code, by adding language that directs a wage increase for classroom teachers, full-time speech pathologists, full-time librarians, full-time counselors, and full-time school nurses at open-enrollment charter schools. The amount of the increase is based on the greater of \$80 per month or the maximum uniform amount that, when combined with any resulting increases in contributions to the Teacher Retirement System and Social Security, would represent 50% of the gain in revenue for the school that results from certain changes in funding made by the substitute. Payments made as a result of this requirement are in addition to wages the employee is otherwise entitled to receive.

C.S.H.B. 3646 amends Chapter 21, Education Code, by adding language that directs a wage increase for classroom teachers, full-time speech pathologists, full-time librarians, full-time counselors, and full-time school nurses at school districts. The amount of the increase is based on the greater of \$80 per month or the maximum uniform amount that, when combined with any resulting increases in contributions to the Teacher Retirement System and Social Security, would represent 50% of the gain in revenue for the school that results from certain changes in funding made by the substitute. Payments made as a result of this requirement are in addition to wages the employee is otherwise entitled to receive. The substitute updates other year references. Full-time speech pathologists are specifically added to the language of the section that was updated, and to the language allowing the commissioner to adopt rules regarding credentials that must be held to receive the increase. The substitute amends existing language to conforming statute to reflect reference to 42.2516.

The substitute amends Section 21.415(a) by deleting the reference to Subchapter N, Chapter 21.

C.S.H.B. 3646 amends Section 21.703 by removing the formula and replacing it with an amount determined by the General Appropriations Act, deletes a funding requirement for a program under Subchapter N, removes resulting references to "remaining" money, changes the distribution of the money to being based on weighted average daily attendance rather than average daily attendance, and removes a reference to expired subsection (b).

The substitute amends Section 21.704 by stipulating that a local awards plan must provide for teachers and principals eligible to receive awards under the plan to be notified of the specific criteria and any formulas on which the awards will be based before the beginning of the period on which the awards will be based. The substitute amends Section 21.705 to change from 60 percent to 30 percent the amount of grant funds awarded to the district to directly award to classroom teachers who effectively improve student achievement as determined by meaningful, objective measures. The substitute directs that the remaining funds must only be used to recruit and retain teachers and principals for campuses serving a disproportionately high number of economically disadvantaged students or students of limited English proficiency, recruit and retain teachers certified under Subchapter B in mathematics, science, special education, bilingual education, or English as a second language; by providing teacher induction and mentoring support; providing teacher induction and mentoring support; and to provide funding for previously developed incentive programs. The substitute strikes the current list of requirements for the grants.

C.S.H.B 3646 amends Section 21.706 to delete references that include the program in Subchapter N, so that the language refers only to the program described in this subchapter. The substitute also amends Section 21.707 to limit rules adopted by the commissioner so that they may not establish additional criteria for local awards plans other than those established by this subchapter, except as necessary to provide financial accountability for the grants.

C.S.H.B 3646 amends the Special Education Programs of the Education Code by adding Section 29.018, creating a new special education grant to certain school districts. The substitute requires the commissioner of education to make grants available to school districts for which the special education allotment provided under the Foundation School Program and federal funds are insufficient to pay for services provided to students with disabilities. The substitute defines grant eligibility on the basis of the sufficiency of funds received by a district for the provision of special education services to both an individual student as well as to all of the students with disabilities in the district. The substitute requires each school district that applies for the special education grant to submit a report to the commissioner comparing state and federal funds received by the district with costs incurred by the district in the provision of services to students with disabilities. The substitute stipulates that costs associated with the training of personnel to provide services to students with disabilities may be included in a district's costs when applying for the grant. The substitute also requires that recipients of the grant comply with federal law requiring that students with disabilities be educated in the least restrictive environment appropriate for the student's needs.

C.S.H.B. 3646 amends Optional Extended Year Program Section by moving and conforming existing language from Chapter 42, which requires the commissioner to give priority to applications for extended year programs to districts with high concentrations of educationally disadvantaged students.

C.S.H.B. 3646 amends Optional Flexible School Day Program by removing the 9-12th grade limitation for student enrollment in flexible school day programs. The substitute also expands eligibility for participation in flexible school day programs to students who would otherwise be denied credit for a course due to a failure to meet minimum attendance requirements under the requirements for minimum attendance for class credit Section 25.092. C.S.H.B. 3646 stipulates that courses designed for students who have not met minimum attendance requirements will not be subject to the same minimum instructional hour and length of day requirements as other flex day courses. Under C.S.H.B. 3646, a student who would otherwise be denied credit for a course due to a failure to meet minimum attendance requirements under Section 25.092, may enroll in courses during the regular school year or the summer. The commissioner may, however, limit funding for such a student to the number of days necessary for the student to earn course credit.

C.S.H.B. 3646 amends the Life Skills Program for Student Parents by moving and conforming existing language from Chapter 42, which directs the commissioner, when distributing these funds, to give preference to a school district that received funds for a Life Skills Program for Student Parents for the preceding school year and then to districts that have the highest concentration of students who are pregnant or who are parents. The program is required only in school districts in which the program is financed by funds appropriated for this purpose and any other funds distributed by the commissioner for the program. To receive funds for this program, a school district must apply to the commissioner.

C.S.H.B. 3646 amends the Intensive Technology-based Academic Intervention Pilot Program, the Intensive Summer Program, the Dropout Prevention Strategies, and the Technology-based Supplemental Instruction Pilot Program by adding the reference to Section 42.160 and by striking the reference to 42.2516 (b)(3). The substitute also amends the Dropout Prevention Strategies by deleting the reference Section 39.114.

C.S.H.B. 3646 amends Chapter 33 by moving and conforming existing language from Chapter 42 regarding certified counselors. The language requires a counseling program established under this subchapter only in school districts in which the program is financed by funds for this purpose or other funds distributed by the commissioner. In distributing these funds, preference shall be given to a school district that received funds for the preceding school year, and then to districts that have the highest concentration of students at risk of dropping out of school. The section requires a school district to apply to the commissioner to receive funds for a counseling program. For each school year that a school district receives funds under this subchapter the district shall allocate an amount of local funds for school guidance and counseling programs that is equal to or greater than the amount of local funds that the school district allocated for that purpose during the preceding school year. The substitute conforms existing language to reflect the deletion of the reference of Section 42.152.

C.S.H.B. 3646 amends Section 39.024 to reflect a direct appropriation to the agency for the purposes of this section. The substitute also amends Section 39.031 to reflect that the method of funding for the cost of preparing, administering, or grading the assessment instruments for the assessment of academic skills and the cost of releasing the question and answer keys shall come from amounts appropriated to the agency. The substitute deletes references to funding under Section 42.152 and Section 42.253.

C.S.H.B. 3646 amends the heading to Section 39.114 by adding the words "Use of" High School Allotment. The substitute also amends the allotment by adding the reference to the High School Allotment under 42.160 and strikes the reference to Additional State Aid for Tax Reduction.

C.S.H.B. 3646 amends Subchapter A, Chapter 41, by adding the definition of effective tax rate as assigned by Section 42.010. The substitute also adds a new section to specify that references in this chapter to the taxable value of property in a district, as determined under Subchapter M, Chapter 403, Government Code, refers to the value for the current year unless otherwise specified. C.S.H.B. 3646 amends Equalized Wealth Level to set the "recapture" levels for districts at the wealth per student that generates the amount of maintenance and operations (M&O) tax revenue per weighted student as:

- 1.) that described by Section 42.101(b), for the portion of the district's M&O tax effort that is equal to or less than an effective tax rate of the lesser of \$1.00, or six cents less than the district's effective M&O rate, or
- 2.) that described by Section 42.302, for the portion of the district's M&O tax rate, other than the last six cents of that rate, that exceeds the rate in (1).

C.S.H.B. 3646 amends Section 41.093 (b-1) by adding the reference to Section 42.302(g) and striking 42.302(a-1)(2), and applies the yield specified in this section to the last six cents of a district's effective M&O tax rate rather than the first six cents adopted above the district's compressed rate. The substitute also amends Section 41.099(a) by striking the reference to Section 41.002(e).

C.S.H.B. 3646 amends Subchapter A, Chapter 42 by adding a new section to specify that references in this chapter to the taxable value of property in a district, as determined under Subchapter M, Chapter 403, Government Code, refers to the value for the current year unless

otherwise specified. The substitute adds an additional section to define "effective tax rate", which is the rate determined by dividing the total amount of taxes collected by the district for the applicable school year less any amounts paid into a tax increment fund by the quotient of the district's taxable value, divided by 100.

C.S.H.B. 3646 amends Section 42.101 to change the basic allotment to the amount, per cent of tax effort, available for a district with a taxable value equal to the statewide average of taxable value of property per weighted students multiplied by .000173 (or a higher value as specified in the General Appropriations Act), multiplied by the lesser of the difference between the number of cents in the district's effective M&O tax rate and 6, or 100. The substitute also amends Section 42.106 by clarifying that the tax rate used in the formula for the adjustment for districts not offering all grade levels is the maximum tax rate permitted under Section 45.003(d), rather than 1.50 (each of which is then divided by 100). The substitute strikes the reference to the preceding tax year.

C.S.H.B. 3646 amends Section 42, Education Code, by moving and conforming language defining the High School Allotment from part of a district's target revenue hold harmless to an element of the funding formula, and clarifying that district's funded under Chapter 41 are also eligible for this allotment.

C.S.H.B. 3646 amends Section 42.2516 by clarifying the state compression percentage of 66.67 percent. The substitute strikes current provisions requiring the commissioner to determine the state compression percentage. The substitute bases the target revenue hold harmless on the district's 2008-2009 revenue per student in weighted average daily attendance, for that part of the district's M&O tax rate that comprises its "compressed" rate. The substitute updates references to the greater of the district's revenue in one of two different school years to that for 2008-2009, since the revenue in 2008-2009 was based on the greater of those two years. The substitute also deletes obsolete references to other components of the target revenue hold harmless which are automatically included in the 2008-2009 revenue figure, and updates other year references. The substitute adds a conforming reference for the high school allotment. The substitute defines a minimum gain of \$100 per student in weighted average daily attendance and describes the calculation to determine that gain. The substitute bases the target revenue hold harmless and minimum gain provision on the weighted average daily attendance calculated as the chapter existed on January 1, 2009.

C.S.H.B. 3646 amends Section 42.252 to set the tax rate that is used to calculate the local share at the lesser of \$1 or the rate that is six cents less than the district's effective M&O rate. It also removes a reference to the preceding tax year when using the district's property value to determine the local share. The formula for determining the local fund share is made subject to Section 42.302(g). The substitute also amends Section 42.2522 by striking the reference to Adjustment for Rapid Decline in Taxable Value of Property.

The substitute amends Section 42.260 amending the definition "participating charter school" to mean an open-enrollment charter school that participates in the uniform group coverage program established under Chapter 1579, Insurance Code and deletes the reference to Additional State Aid for School Employee Benefits. The substitute also amends Section 42.261(a) by striking the reference to Section 42.2521.

C.S.H.B. 3646 amends Section 42.302 to specify that the guaranteed amount of state and local funds for tax effort over that required for the district's local fund assignment is subject to Subsection(g). The substitute defines the guaranteed level as \$31.95, or an amount described by Subsection (g) or (g-1), as applicable, or a greater amount for any year provided by appropriation. The substitute strikes a reference to Subsection (a-1).

The substitute amends the definition of weighted average daily attendance (WADA) calculation to not include the high school allotment under Section 42.160 and removes the reference to the adjustment under Section 42.102. The substitute amends the district enrichment tax rate and the local revenue by striking references to Adjustment for Rapid Decline in Taxable Value of Property for the purposes of determining the district's taxable value of property. The substitute states that the limitation on the district enrichment tax rate under Section 42.303 does not apply to the last six cents of the district's effective maintenance and operations tax effort.

C.S.H.B. 3646 further amends Section 42.302 by excluding the revenue from the last six cents of the district's effective M&O tax rate from the M&O rate used to compute the district's enrichment tax rate. The substitute adds new subsections to this section to describe the yield on the last six cents of the district's effective M&O tax rate. For the 2009-2010 school year, the yield for each cent is set as the amount of district tax revenue per weighted student per cent of tax effort available to the Austin Independent School District. Beginning with the 2010-2011 school year, the yield is set at the Austin Independent School District amount, or the amount used for the previous school year, whichever is higher.

C.S.H.B. 3646 amends Section 42.303 to set the limitation on enrichment tax rate at 17 cents per \$100 of valuation. The substitute strikes language by which the limitation is the amount by which the maximum rate permitted under Section 45.003, exceeds the rate of \$0.86, or a greater amount for any year provided by appropriation.

C.S.H.B. 3646 amends Section 45.0031 to provide for an alternate methodology for school districts to demonstrate the ability to pay debt service on all current and proposed bond issuances at an Interest and Sinking tax rate of \$0.50 per \$100 of valuation in order for the Office of the Attorney General to provide approval of a new bond issuance (the 50-cent test). The substitute would allow a district to demonstrate that it meets the requirements of the 50-cent test based on pro forma debt service projections amortized over the maximum term permitted by law (currently 40 years). The substitute would permit a school district to issue bonds in any manner that would provide a 10 percent savings in debt service as compared to the pro forma debt service projections.

C.S.H.B. 3646 amends Section 46.003(a) to specify that the tax year used for determining the yield is the current tax year and amends Section 46.006 (g) to specify that the tax year used for determining the wealth per student is the current tax year. The substitute conforms existing language by deleting references to the Adjustment for Rapid Decline in Taxable Value of Property.

C.S.H.B. 3646 amends Section 46.032 by specifying that the tax year used for determining state support in the Existing Debt Allotment is the current tax year; amends Section 46.033 to change the basis for eligibility of bonds under the Existing Debt Allotment from the 2006-2007 school year to the final year of the preceding state fiscal biennium; and amends Section 46.034 (c) to change references in a payment limitation under the Existing Debt Allotment from the 2006-2007 school year to the final year of the preceding state fiscal biennium. The substitute conforms existing language by deleting references to the Adjustment for Rapid Decline in Taxable Value of Property.

C.S.H.B. 3646 amends Section 403.302 (j), Government Code, to change the reference from the Additional State Aid for Homestead Exemption to Chapter 42, Education Code.

C.S.H.B. 3646 amends Section 822.201, Government Code, to conform existing language by deleting the reference to Subchapter N, Chapter 21. The substitute amends Sections 825.405 (a) and (b), Government Code, to change the way the district's portion of the state's contribution to a Teachers Retirement System member's account is calculated for certain members. Members who would have been entitled to the minimum salary under former Section 16.056, as that section existed on January 1, 1995, would be calculated in the same manner as those on the current minimum salary schedule, rather than by calculating the contribution based on the former statutory minimum.

C.S.H.B. 3646 amends Section 1579.251(a) and Section 1581.053(b), Insurance Code, amends to existing language by deleting the reference to Additional State Aid for School Employee Benefits Section, Education Code.

REPEALERS

C.S.H.B. 3646 amends the Education code by repealing the following sections: Subchapter N, Chapter 21; Section 21.704 (b); Section 39.024 (e); Section 41.002, Subsections (b), (e), (f), and (g); Section 42.103 (e); Section 42.152 (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (u);

Section 42.2511, Section 42.2512, Section 42.2513, and Section 42.2514; Section 42.2516 (h); Section 42.2521; and Section 42.302 (a-1).

The substitute amends the Government code by repealing the following sections: Sections 825.405(h) and (i).

The substitute amends the Insurance Code by repealing Subchapter C, Chapter 1581.

The substitute amends the Education Code by repealing Section 2, Chapter 1191 (H.B. 828), Acts of the 80th Legislature, Regular Session, 2007, which amended Section 42.302, Subsection (a-1),.

C.S.H.B. 3646 states that this act prevails over any nonsubstantive revisions act passed during the 81st Legislature Regular Session.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3646 modifies the original by amending Section 7.024 by adding language to reflect a direct appropriation to the investment capital fund and by striking the reference to a transfer of funds from the compensatory education allotment.

C.S.H.B. 3646 modifies the original by amending Section 7.062 by amending the definition of "wealth per student" to mean a school district's taxable value of property for the current tax year as currently determined under Subchapter M, Chapter 403, Government Code and by striking the reference to Adjustment for Rapid Decline in Taxable Value of Property.

C.S.H.B 3646 modifies the original by amending Section 21.415(a) by deleting the reference to Subchapter N, Chapter 21.

C.S.H.B. 3646 modifies the original by amending Subchapter O, Chapter 21, by identifying the annual amount as determined by appropriation, among other fiscal and programmatic changes.

C.S.H.B. 3646 modifies the original by amending the Intensive Technology-based Academic Intervention Pilot Program, the Intensive Summer Program, the Dropout Prevention Strategies, and the Technology-based Supplemental Instruction Pilot Program by adding the reference to 42.160 and strikes the reference to 42.2516 (b)(3). The substitute also amends the Dropout Prevention Strategies by deleting the reference Section 39.114

C.S.H.B. 3646 modifies the original by amending Section 39.024 to reflect a direct appropriation to the agency for the purposes of this section.

C.S.H.B. 3646 differs from the original by amending the heading to the High School Allotment under Section 39.114 by adding the words "Use of" High School Allotment. The substitute also amends the allotment by adding the reference to the High School Allotment under Section 42.160 and by striking the reference to Additional State Aid for Tax Reduction.

C.S.H.B. 3646 differs from the original by amending Chapter 41 by adding the definition of "effective tax rate" as assigned by Section 42.010. The substitute also adds a new section to specify that references in this chapter to the taxable value of property in a district refers to the value for the current year unless otherwise specified.

C.S.H.B. 3646 modifies the original by Section 41.093(b-1) by adding the reference to Section 42.302(g) and striking Section 42.302(a-1)(2), and applies the yield specified in this section to the last six cents of a district's effective M&O tax rate rather than the first six cents adopted above the district's compressed rate and by amending Section 41.099(a) by striking the reference to Section 41.002(e).

C.S.H.B. 3646 modifies the original by amending Subchapter A, Chapter 42 by adding a section to specify that references in this chapter to the taxable value of property in a district, refers to the

value for the current year unless otherwise specified. The substitute adds an additional section to define "effective tax rate".

C.S.H.B. 3646 differs from the original by amending Section 42.106 by clarifying the tax rate used in the formula for the adjustment.

C.S.H.B. 3646 differs from the original by amending Section 42.160 by clarifying that districts funded under Chapter 41 are also eligible for this allotment.

C.S.H.B. 3646 differs from the original by amending Section 42.2522(c) by striking the reference to Adjustment for Rapid Decline in Taxable Value of Property. The substitute differs from the original by amending Section 42.260 to amend the definition of "participating charter school" to mean an open-enrollment charter school that participates in the uniform group coverage program established under Chapter 1579, Insurance Code and deletes the reference to Additional State Aid for School Employee Benefits. C.S.H.B. 3646 amends Section 42.261(a) by striking the reference to Section 42.2521.

C.S.H.B. 3646 differs from the original by adding an alternate methodology for school districts to demonstrate the ability to pay debt service on all current and proposed bond issuances in order for the Office of the Attorney General to provide approval of a new bond issuance (the 50-cent test).

C.S.H.B. 3646 differs from the original by amending Section 46.003(a) to specify that the tax year used for determining the yield is the current tax year and Section 46.006 (g) to specify that the tax year used for determining the wealth per student is the current tax year.

C.S.H.B. 3646 differs from the original by amending Section 46.032 by specifying that the tax year used for determining state support in the Existing Debt Allotment is the current tax year; to change the basis for eligibility of bonds under the Existing Debt Allotment from the 2006-2007 school year to the final year of the preceding state fiscal biennium; to change references in a payment limitation under the Existing Debt Allotment from the 2006-2007 school year to the final year of the preceding state fiscal biennium. The substitute conforms existing language by deleting references to the Adjustment for Rapid Decline in Taxable Value of Property.

C.S.H.B. 3646 differs from the original by amending Section 403.302 (j), Government Code, to change the reference from the Additional State Aid for Homestead Exemption to Chapter 42, Education Code.

C.S.H.B. 3646 differs from the original by amending Section 822.201(b), Government Code, by deleting the reference to Subchapter N, Chapter 21. The substitute amends Sections 825.405(a) and (b), Government Code, to change the way the district's portion of the state's contribution to a Teachers Retirement System member's account is calculated for certain members.

C.S.H.B. 3646 differs from the original by amending Section 1579.251(a) and Section 1581.053(b), Insurance Code, by deleting the reference to Additional State Aid for School Employee Benefits Section, Education Code.

C.S.H.B. 3646 differs from the original by not amending the Cost of Education Adjustment to reflect that the adjustment is 93 percent of the cost of education index adjustment adopted by the foundation school fund budget committee and contained in Chapter 203, Title 19, Texas Administrative Code, as that chapter existed on March 26, 1997.

The substitute makes numerous conforming and technical changes regarding the bill's provisions as described above.

REPEALERS

C.S.H.B. 3646 differs from the original by repealing the following sections of the Education Code: Subchapter N, Chapter 21; Section 21.704 (b); Section 39.024 (e); Section 41.002, Subsections (b); Section 42.2512; Section 42.2521; and Section 42.302 (a-1).

The substitute differs from the original by amending the Government code to repeal the following sections: Sections 825.405(h) and (i).

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The substitute amends the Insurance Code by repealing Subchapter C, Chapter 1581.
The substitute amends the Education Code by repealing Section 2, Chapter 1191 (H.B. 828),
Acts of the 80th Legislature, Regular Session, 2007, which amended Section 42.302, Subsection
(a-1).