

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1443  
By: Zaffirini et al.  
Higher Education  
4/27/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Many are concerned that the tuition and fees charged to students have increased dramatically since tuition deregulation.

C.S.S.B. 1443 amends current law relating to the academic costs charged to resident undergraduate students by general academic teaching institutions, to student financial assistance funded by tuition set-asides, and to certain reports regarding certain costs of those institutions.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 2 (Section 54.017, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 54, Education Code, by adding Section 54.016, as follows:

Sec. 54.016. LIMITATION ON INCREASE IN TOTAL ACADEMIC COSTS CHARGED TO RESIDENT UNDERGRADUATE STUDENTS. (a) Defines "general academic teaching institution," "core operational costs," and "total academic costs."

(b) Provides that subject to the additional limitations provided by Subsections (c) and (d), if for any state fiscal biennium the legislature appropriates to a general academic institution from undedicated general revenue an amount that is less than the amount necessary to fully fund the institution's core operational costs for the that biennium, the total academic costs charged by the institution to undergraduate students who are residents of this state for an academic year of that biennium are prohibited from exceeding the amount that, when added to the amount of undedicated general revenue appropriated to the institution for the corresponding state fiscal year for that purpose, is equal to the institution's core operational costs for that corresponding state fiscal year.

(c) Provides that this subsection applies only to a general academic teaching institution whose per student total academic costs for the academic years covered by the most recent state fiscal biennium are more than the amount of those per student costs charged by the general academic teaching institution or institutions that are at the median for those costs for those years, according to the list of institutions certified by the Legislative Budget Board (LBB) under Section 51.973(a)(2) (relating to information required to be in the report submitted by the LBB containing certain information regarding general academic teaching institutions). Provides that the limitation provided by this subsection is in addition to the limitations provided by Subsections (b) and (d) on the total academic costs that may be charged by a general academic teaching institution. Prohibits the total academic costs charged by a general academic teaching institution in an academic year to an undergraduate student who is a resident of this state from exceeding the total academic costs that the institution would have charged to a similarly situated student in the preceding academic year, as that amount is adjusted for the current academic year for inflation as provided by this subsection. Requires the LBB, not later than January 15 of each year, to publish

and certify to the governing board of each general academic teaching institution for the inflation rate to be used for purposes of this subsection for the next academic year. Provides that for the purposes of this subsection, the inflation rate is the average of the percentage increase, if any, as expressed in decimal form rounded to the nearest thousandth, in the consumer price index, as defined by Section 341.201 (Definitions of Indexes), Finance Code, for each of the three most recent preceding calendar years as compared to the consumer price index for the year preceding each of those years. Provides that if the average percentage increase for those three years is less than zero, the inflation rate to be used for purposes of this subsection for the next academic year is zero.

(d) Provides that this subsection applies only to a general academic teaching institution whose per student total academic costs for the academic years covered by the most recent state fiscal biennium are more than the amount of those per student costs charged by the general academic teaching institution or institutions that are at the median for those costs for those years according to the list of institutions certified by the LBB under Section 51.973(a)(2). Provides that the limitation provided by this subsection is in addition to the limitations provided by Subsections (b) and (c) on the total academic costs that may be charged by a general academic teaching institution. Prohibits the total academic costs charged by a general academic teaching institution in an academic year to an undergraduate student who is a resident of this state from exceeding the total academic costs that the institution would have charged to a similarly situated student in the preceding academic year by more than five percent.

(e) Authorizes the legislature in an appropriations Act, notwithstanding Section 54.0513(c), to provide for an adjustment of general revenue appropriated to a general academic teaching institution for a state fiscal year to account for an increase in the amount of total academic costs charged by the institution in that fiscal year to an individual student of the institution to whom this section applies, in excess of an amount specified in the appropriations Act, if the legislature specifies such an amount in that Act.

(e-1) Provides that this subsection applies to total academic costs charged to students for the 2009-2010 academic year by a general academic teaching institution other than an institution to which Subsection (e-3) applies. Provides that Subsections (b), (c), and (d) do not apply to those costs charged by an institution to which this subsection applies in a academic year to which this subsection applies. Prohibits the total academic costs charged by a general academic teaching institution to an undergraduate student who is a resident of this state, in an academic year to which this subsection applies, from exceeding the total academic costs that the institution would have charged to a similarly situated student in the 2008-2009 academic year by more than the greater of five percent or \$315.

(e-2) Provides that this subsection applies to total academic costs charged to students for the 2010-2011 academic year by a general academic teaching institution to which Subsection (e-3) does not apply that did not increase the rate of designated tuition charged to any student under Section 54.0513 (Designated Tuition) in the 2008-2009 academic year from the rate charged by the institution to a similarly situated student under that section in the 2007-2008 academic year. Provides that this subsection also applies to total academic costs charged to students for the 2010-2011 academic year by a general academic teaching institution that in the 2008-2009 academic year did not yet operate as an independent general academic teaching institution and at which the rate of designated tuition charged to any student under Section 54.0513 in the 2008-2009 academic year did not exceed the rate charged to a similarly situated student under that section in the 2007-2008 academic year. Provides that Subsections (b), (c), and (d) do not apply to those costs charged by an institution to which this subsection applies in a academic year to which this subsection applies. Prohibits the total academic costs charged by a general academic teaching institution to an

undergraduate student who is a resident of this state, in an academic year to which this subsection applies, from exceeding the total academic costs that the institution would have charged to a similarly situated student in the preceding academic year by more than the greater of five percent or \$315.

(e-3) Provides that this subsection applies to total academic costs charged to students for the 2009-2010 and 2010-2011 academic years by a general academic teaching institution that before April 15, 2009, established rates for total academic costs for the 2009-2010 academic year that will result in an amount of total academic costs charged for that academic year to an undergraduate student who is a resident of this state that exceeds the total academic costs that the institution would have charged to a similarly situated student in the preceding academic year by more than five percent. Provides that Subsections (b), (c), and (d) do not apply to those costs charged by an institution in an academic year to which this subsection applies. Prohibits to the total academic costs charged by a general academic teaching institution to an undergraduate student who is a resident of this state, in an academic year to which this subsection applies, from exceeding the total academic costs that the institution would have charged to a similarly situated student in the 2008-2009 academic year by more than \$630.

(e-4) Provides that this subsection and Subsections (e-1), (e-2), and (e-3) expire September 1, 2011.

(f) Provides that for purposes of this subsection, students are similarly situated if they share the same residency status, degree program, course load, course level, tuition exemption status, and other circumstances affecting the total academic costs charged to the student.

(g) Provides that this section does not ensure that the total academic costs charged to an individual student will not increase by more than the limitation described by Subsection (b) or (c) based on a change in the student's residency status, degree program, course load, course level, tuition exemption status, or other circumstance affecting the total academic costs charged to the student.

SECTION 2. Amends Subchapter A, Chapter 54, Education Code, by adding Section 54.017, as follows:

Sec. 54.017. STABILIZATION OF TOTAL ACADEMIC COSTS; STUDENT OPTION. (a) Defines "academic fees," "coordinating board," "general academic teaching institution," and "tuition."

(b) Authorizes the governing board of a general academic teaching institution to offer an eligible student the option to pay tuition and academic fees as provided by this section.

(c) Provides that this section applies only to an undergraduate who enrolls at a general academic teaching institution; after satisfying the requirement of Subdivision (1) (relating to student enrollment at a general academic teaching institution), remains continuously enrolled at a general academic teaching institution until graduate, except as provided under rules adopted under Subsection (j); at all times while the student is enrolled at the general academic teaching institution, is a resident of this state for purposes of Subchapter B or is otherwise entitled to pay tuition and fees at the rate provided for residents of this state; and elects to pay tuition and academic fees under this section.

(d) Provides that, except as provided by Subsection (h) or by rules adopted under Subsection (j), this section applies only to the amount of tuition and academic fees charged under this chapter to a student as follows: for a student enrolled in a four-year degree program, on or before the fourth anniversary of the date the student first enrolls in a general academic teaching institution; for a student enrolled in a degree program of any other length, not later than the end of the standard

completion period for that program, as established by the general academic teaching institution awarding the degree; or if the student is a transfer student, not later than the end of the period established by the general academic teaching institution for the completion of the student's degree program based on the academic credit the student receives from the transfer of courses.

(e) Prohibits a general academic teaching institution, notwithstanding any other provision of this chapter but subject to the applicability provisions of this section, from charging to a student for any course in which the student enrolls after the student's freshman year tuition at a rate that exceeds the rate in effect for that course during the student's freshman year or, for a course that was not offered during the student's freshman year, a rate that exceeds the rate in effect for an equivalent course during the student's freshman year.

(f) Provides that notwithstanding any other provision of this chapter but subject to the applicability provisions of this section, if a student transfers to a general academic teaching institution from another institution of higher education and the student has remained continuously enrolled in an institution of higher education beginning with the student's freshman year, the general academic teaching institution to which the student transfers is prohibited from charging to the student for any course in which the student enrolls after student's freshman year tuition at a rate that exceeds the rate in effect for that course at the receiving institution during the student's freshman year or, for a course that was not offered at the receiving institution during the student's freshman year, a rate that exceeds the rate in effect for an equivalent course that the receiving institution during the student's freshman year.

(g) Provides that notwithstanding any other provision of this chapter, in any semester or other academic term in which the amount of tuition that a general academic teaching institution is authorized to charge a student is limited by Subsection (e) or (f), the institution is prohibited from charging the student an academic fee in an amount that exceeds the fee that the institution would have charged the student in the student's freshman year, regardless of whether the was enrolled in that institution in the student's freshman year. Provides that for an academic fee that was not charged in the student's freshman year, after the fee is initially charged, the institution is prohibited from increasing the amount of the fee charged to the student in any subsequent semester or other term to which this subsection applies.

(h) Prohibits a general academic teaching institution, notwithstanding any other provision of this chapter, after the period described by Subsection (d), from charging a student to whom this section applies tuition for any course at a rate that exceeds the rate the institution charges for the same or a similar course to a student who enrolls as a first-time resident freshman in the same academic year; or an academic fee in an amount that exceeds the amount of the fee the institution charges a first-time resident freshman student enrolled in the same degree program and with the same course load in the same semester or other academic term.

(i) Requires THECB, in consultation with general academic teaching institutions, to adopt any rules necessary to administer this section, including rules relating to the equivalency of courses offered during a student's freshman year and courses in which the student enrolls after the student's freshman year; rules consistent with Subsection (f) that provide for determining tuition rates for students who transfer between institutions of higher education and prescribed the types of documentation a transfer student is required to submit to establish eligibility under that subsection; and rules as described by Subsection (j) to allow students to suspend their enrollment or giving students additional time to complete their degree programs.

(j) Requires THECB to adopt rules to allow a student to pay tuition at the rates provided by Subsection (e) or (f), as applicable, and to pay academic fees in the amounts provided by Subsection (g) if the student satisfies the other requirements of this section but, solely as a result of a hardship or other good cause shown, is unable to remain continuously enrolled at a general academic teaching institution of higher education as required by Subsection (c)(2) or other institution of higher education as required by Subsection (f), or to complete the student's degree program before the applicable date described by Subsection (d). Provides that for purposes of this subsection, a hardship or other good cause shown includes a showing of a severe illness or other debilitating condition that affects the student's ability to satisfy the requirement of Subsection (c)(2), (d), or (f); or the student's responsibility for the care of a sick, injured, or needy person if the provision of care affects the student's ability to satisfy the requirement of Subsection (c)(2), (d), or (f).

(k) Provides that the limitations on total academic costs that may be charged to a student provided under Sections 54.016(c) and (d) and under Section 54.016(e-1), (e-2), or (e-3), as applicable to the institution, do not apply to a student who elects to pay tuition and academic fees under this section during the period described by Subsection (d) as applicable to the student. Prohibits the amount of tuition and academic fees charged by an institution to a freshman student under this section for an academic year, beginning with the 2010-2011 academic year, from exceeding the amount of tuition and academic fees that the institution would have charged to a similarly situated student under this section in the preceding academic year by more than five percent.

(l) Provides that this section does not apply to a student who enters an institution of higher education for the first time before the 2009 fall semester. Provides that this subsection expires January 1, 2015.

SECTION 3. Amends Section 54.0513, Education Code, by amending Subsection (c) and adding Subsection (g), as follows:

(c) Provides that amounts collected by an institution of higher education under this section are institutional funds as defined by Section 51.009 (Defining and Accounting for General Income), rather than by Section 51.009 of this code, and are required to be accounted for as designated funds. Prohibits these funds from being accounted for in a general appropriations act in such a way as to reduce the general revenue appropriation to a particular institution except as provided by Section 45.016(e).

(g) Requires the governing board of each institution to which this section applies, in setting the rate or rates of tuition to be charged under this section for an academic year, to take into account any reduction in the percentage of that tuition that will be required to be set aside for student financial assistance under Subchapter B (Financial Assistance Funded from Designated Tuition), Chapter 56 (Student Financial Assistance), from the percentage required to be set aside in the preceding academic year, and are required to ensure that any increase in the rate or rates of tuition charged under this section that the governing board would otherwise have made for the academic year is reduced accordingly.

SECTION 4. Amends Section 54.0515, Education Code, by amending Subsections (e) and (f) and adding Subsections (f-1) and (f-2), as follows:

(e) Provides that it is the legislature's intent that each institution of higher education reasonably implement certain measures, rather than that each institution of higher education, as a condition to tuition deregulation under Section 54.0513, reasonably implement certain measures.

(f) Requires the Legislative Oversight Committee on Higher Education (committee) to perform certain actions, including receiving and reviewing information concerning the affordability and accessibility of higher education, rather than receiving and reviewing

information concerning the affordability and accessibility of higher education, including the impact of tuition deregulation.

(f-1) Requires the committee to oversee the LBB's development of the methodology under Section 51.973(a)(1) (relating to requirements for a report to be submitted by the LBB for consideration by the members of certain committees regarding the LBB's estimate of certain costs) used for estimating the core operational costs of general academic teaching institutions under that subdivision; and the list of general academic teaching institutions certified under Section 51.973(a)(2) used for determining the institution to which Sections 54.016(c) and (d) apply.

(f-2) Provides that it is the intent of the legislature, not later than the 2014-2015 academic year, to phase out the requirements provided by Subchapter B, Chapter 56, that a portion of tuition charged under Section 54.0513 be set aside for student financial assistance. Requires the committee to examine and make recommendations for an appropriate timetable and procedures for phasing out the set-aside requirements, including recommendations regarding replacing revenue lost as a result of the phase-out from the general revenue fund or other appropriate sources. Requires the committee, for that purpose, to solicit relevant information and recommendations from affected institutions of higher education, including information regarding the types of financial assistance that are funded from the amounts set aside, and the impact that phasing out the set-aside requirement would have on the financial assistance program of each institution.

SECTION 5. Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.973, as follows:

Sec. 51.973. BIENNIAL REPORT BY LEGISLATIVE BUDGET BOARD REGARDING CERTAIN UNIVERSITY COSTS. (a) Requires LBB, not later than September 1 of each even-numbered year, to submit to the Senate Finance Committee, the House Appropriations Committee, and the standing committee of each house with primary jurisdiction over higher education, for consideration by the members of those committees in determining the amount of general revenue appropriations to general academic teaching institutions and tuition rates at those institutions, LBB's estimate of the core operational costs for the next state fiscal biennium for each general academic teaching institution, based on a methodology that projects for each year of the next biennium changes in student enrollment for each institution and a rate of inflation, and uses data from each institution's annual financial report regarding costs for instruction, academic support, institutional support, operations and maintenance of physical plans, and student services; and for purposes of determining the general academic teaching institutions to which Sections 54.016(c) and (d) apply, a certified list of all general academic teaching institutions ranked according to the amount of total academic costs charged per student in the academic years covered by the current state fiscal biennium, including an indication of the institutions to which Sections 54.016(c) and (d) apply.

(b) Requires LBB, beginning in 2013, to submit with its estimate under Subsection (a)(1) a comparison of each institution's actual core operational costs for the preceding state fiscal biennium to LBB's previous estimate of the institution's core operational costs for the biennium.

SECTION 6. Amends Section 56.011(a), Education Code, to require the governing board of each institution of higher education to cause to be set aside not less than 15 percent, rather than 20 percent, of any amount of tuition charged to a resident undergraduate student under Section 54.0513 in excess of \$46 per semester credit hours.

SECTION 7. Repealer: Section 56.465 (Tuition Set Aside for Program), Education Code.

SECTION 8. Requires each general academic teaching institution, not later than September 1, 2010, to submit to LBB, the Senate Finance Committee, the House Appropriations Committee, and the standing committee of each house with primary jurisdiction over higher education a detailed plan for reducing the institution's operational costs by at least five percent.

SECTION 9. Requires THECB to adopt the rules required by Section 54.017, Education Code, as added by this Act, as soon as practicable after this Act takes effect. Authorizes THECB, for that purpose, to adopt the initial rules in the manner provided by law for emergency rules.

SECTION 10. (a) Provides that the changes in law made by this Act to Section 56.011(a), Education Code, apply beginning with tuition charged for the 2010-2011 academic year.

(b) Provides that the repeal by this Act of Section 56.465, Education Code, applies beginning with tuition charged for the 2010-2011 academic year.

SECTION 11. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2009.

(b) Effective date, Sections 6, 7, and 10 of this Act: August 1, 2010, but only if the 81st Legislature, in an appropriations act entered on or before that date, appropriates state revenue to the institutions of higher education to which Section 56.465, Education Code, applies for the express purposes of providing additional revenue for the Texas B-on-time loan program to replace the portion of tuition set aside for that program under Section 54.465, Education Code.