

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Eiland, Guillen

H.B. No. 4102

A BILL TO BE ENTITLED

AN ACT

relating to the disaster contingency fund.

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

SECTION 1. Section 418.073(c), Government Code, as added by Chapter 1250 (H.B. 2694), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(c) A state or ~~[agency,]~~ local government entity~~[,]~~ or other eligible entity that participates in disaster recovery may request and receive funding from the disaster contingency fund to pay for ~~[+~~

~~(1) extraordinary] costs incurred in recovering from [implementing preventive measures taken before or during an emergency, and~~

~~(2) costs incurred in repairing damage suffered during] a disaster for which:~~

(1) ~~[(A)]~~ the presiding officer of a municipal or county government has declared a local state of disaster for affected areas within the jurisdiction of the municipality or county; and

(2) ~~[(B)]~~ the governor has also declared a state of disaster for the affected county or counties.

SECTION 2. Section 418.073, Government Code, is amended by adding Subsections (f), (g), and (h) to read as follows:

(f) A state or local government entity or other eligible entity that receives funding from the disaster contingency fund to

1 pay for costs associated with disaster recovery and that  
2 subsequently receives reimbursement from the federal government,  
3 an insurer, or another source for those same costs shall reimburse  
4 the disaster contingency fund for the reimbursed amounts. In  
5 developing rules and procedures under Subsection (d) the governor's  
6 division of emergency management shall prescribe accounting and  
7 other procedures necessary to efficiently and effectively  
8 implement this subsection.

9 (g) Money in the disaster contingency fund may be used to  
10 pay for a disaster risk financing instrument using a parametric  
11 index based on affected population to leverage available funds and  
12 receive proceeds greater than appropriated amounts to pay for  
13 extraordinary expenses.

14 (h) Money in the disaster contingency fund may be used to  
15 provide to a local government entity that is suffering financial  
16 hardship as a result of a disaster declared under this chapter funds  
17 for the purpose of:

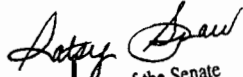
18 (1) providing local matching funds for Federal  
19 Emergency Management Agency qualifying projects; or

20 (2) preventing default on outstanding bonds or meeting  
21 other financial requirements.


22 SECTION 3. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2009.

**ADOPTED**

MAY 21 2009

  
Secretary of the Senate

FLOOR AMENDMENT NO. \_\_\_\_\_

BY:  \_\_\_\_\_

1 Amend H.B. No. 4102 in SECTION 2 of the bill by striking added  
2 Section 418.073(h), Government Code (page 1, lines 45-52, senate  
3 committee printing), and substituting the following:

4 (h) Money in the disaster contingency fund may be used to  
5 provide to a local government entity that is suffering financial  
6 hardship as a result of a disaster declared under this chapter funds  
7 for the purpose of providing local matching funds for Federal  
8 Emergency Management Agency qualifying projects.

# ADOPTED

FLOOR AMENDMENT NO. 2

MAY 21 2009

*Atay Spaw*  
Secretary of the Senate

BY: *Steven Hajim*

1 Amend H.B. 4102 (Senate committee report) by adding the  
2 following appropriately numbered SECTIONS and renumbering  
3 subsequent SECTIONS of the bill accordingly:

4 SECTION \_\_\_\_\_. Subchapter A, Chapter 42, Education Code,  
5 is amended by adding Section 42.0051 to read as follows:

6 Sec. 42.0051. AVERAGE DAILY ATTENDANCE FOR DISTRICTS IN  
7 DISASTER AREA. (a) The commissioner shall adjust the average  
8 daily attendance of a school district all or part of which is  
9 located in an area declared a disaster area by the governor  
10 under Chapter 418, Government Code, if the district experiences  
11 a decline in average daily attendance that is reasonably  
12 attributable to the impact of the disaster.

13 (b) The adjustment must be sufficient to ensure that the  
14 district receives funding comparable to the funding that the  
15 district would have received if the decline in average daily  
16 attendance reasonably attributable to the impact of the disaster  
17 had not occurred.

18 (c) The commissioner shall make the adjustment required by  
19 this section for the two-year period following the date of the  
20 governor's initial proclamation or executive order declaring the  
21 state of disaster.

22 (d) Section 42.005(b)(2) does not apply to a district that  
23 receives an adjustment under this section.

24 (e) A district that receives an adjustment under this  
25 section may not receive any additional adjustment under Section  
26 42.005(d) for the decline in average daily attendance on which  
27 the adjustment under this section is based.

28 (f) For purposes of this title, a district's adjusted  
29 average daily attendance under this section is considered to be

1 the district's average daily attendance as determined under  
2 Section 42.005.

3 SECTION \_\_\_\_\_. Subchapter E, Chapter 42, Education Code,  
4 is amended by adding Sections 42.2523 and 42.2524 to read as  
5 follows:

6 Sec. 42.2523. ADJUSTMENT FOR PROPERTY VALUE AFFECTED BY  
7 STATE OF DISASTER. (a) For purposes of Chapters 41 and 46 and  
8 this chapter, the commissioner shall adjust the taxable value of  
9 property of a school district all or part of which is located in  
10 an area declared a disaster area by the governor under Chapter  
11 418, Government Code, as necessary to ensure that the district  
12 receives funding based as soon as possible on property values as  
13 affected by the disaster.

14 (b) Any additional funding to which a school district is  
15 entitled as a result of the adjustment required by this section  
16 is in addition to the amount of funding to which the district is  
17 entitled under Section 42.2516(b).

18 (c) A decision of the commissioner under this section is  
19 final and may not be appealed.

20 Sec. 42.2524. REIMBURSEMENT FOR DISASTER REMEDIATION  
21 COSTS. (a) This section applies only to a school district all  
22 or part of which is located in an area declared a disaster area  
23 by the governor under Chapter 418, Government Code, and that  
24 incurs disaster remediation costs as a result of the disaster.

25 (b) During the two-year period following the date of the  
26 governor's initial proclamation or executive order declaring a  
27 state of disaster, a district may apply to the commissioner for  
28 reimbursement of disaster remediation costs that the district  
29 pays during that period and does not anticipate recovering  
30 through insurance proceeds, federal disaster relief payments, or  
31 another similar source of reimbursement.

1       (b-1) A district may seek reimbursement of disaster  
2 remediation costs paid by the district on or after September 1,  
3 2008. This subsection expires September 1, 2011.

4       (c) The commissioner may provide reimbursement under this  
5 section only if:

6           (1) funds are specifically appropriated for purposes  
7 of this section; or

8           (2) Foundation School Program funds are available for  
9 purposes of this section, based on a determination by the  
10 commissioner that the amount appropriated for the Foundation  
11 School Program, including the facilities component as provided  
12 by Chapter 46, exceeds the amount to which districts are  
13 entitled under this chapter and Chapter 46.

14       (d) A district seeking reimbursement under this section  
15 must provide the commissioner with adequate documentation of the  
16 costs for which the district seeks reimbursement.

17       (e) If the amount of money available for purposes of this  
18 section is not sufficient to fully reimburse each district's  
19 disaster remediation costs, the commissioner shall reduce the  
20 amount of assistance provided under this section to each  
21 district proportionately.

22       (f) Notwithstanding any other provision of law, a district  
23 that is required to purchase attendance credits under Chapter 41  
24 is eligible to receive assistance under this section in the same  
25 manner as any other district. A district may, at its  
26 discretion, receive assistance either as a payment of state aid  
27 under this chapter or as a reduction in the total amount  
28 required to be paid by the district for attendance credits under  
29 Section 41.093.

30       (g) Amounts provided to a district under this section are  
31 in addition to the amount to which the district is entitled

1 under Section 42.2516.

2 (h) The commissioner shall adopt rules necessary to  
3 implement this section, including rules defining "disaster  
4 remediation costs" for purposes of this section and specifying  
5 the type of documentation required under Subsection (d).

6 (i) Notwithstanding any other provision of this section,  
7 the commissioner may permit a district to use amounts provided  
8 to a district under this section to pay the costs of replacing a  
9 facility instead of repairing the facility. The commissioner  
10 shall ensure that a district that elects to replace a facility  
11 does not receive an amount under this section that exceeds the  
12 lesser of:

13 (1) the amount that would be provided to the district  
14 if the facility were repaired; or

15 (2) the amount necessary to replace the facility.

16 (j) This section does not require the commissioner to  
17 provide any requested reimbursement. A decision of the  
18 commissioner regarding reimbursement is final and may not be  
19 appealed.

20 SECTION \_\_\_\_\_. Section 44.0312, Education Code, is amended  
21 by adding Subsection (c) to read as follows:

22 (c) Notwithstanding any other provision of this code, in  
23 the event of a catastrophe, emergency, or natural disaster  
24 affecting a school district, the board of trustees of the  
25 district may delegate to the superintendent or designated person  
26 the authority to contract for the replacement, construction, or  
27 repair of school equipment or facilities under this subchapter  
28 if emergency replacement, construction, or repair is necessary  
29 for the health and safety of district students and staff.

30 SECTION \_\_\_\_\_. This Act does not make an appropriation.  
31 Sections 42.0051, 42.2523, and 42.2524 of the Education Code

1 take effect only if a specific appropriation for the  
2 implementation of those sections is provided in a general  
3 appropriations act of the 81st Legislature.



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 22, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB4102** by Eiland (Relating to the disaster contingency fund.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB4102, As Passed 2nd House: a negative impact of (\$103,795,510) through the biennium ending August 31, 2011.

**Additionally, due to the unknown nature of any future disaster, the section of the bill that would amend the Government Code could have an indeterminate fiscal impact to the state.**

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$97,519,330)
2011	(\$6,276,180)
2012	\$0
2013	\$0
2014	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>Foundation School Fund</i> 193	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2010	(\$97,469,330)	(\$50,000)
2011	(\$6,276,180)	\$0
2012	\$0	\$0
2013	\$0	\$0
2014	\$0	\$0

**Fiscal Analysis**

The bill would require the commissioner to adjust the average daily attendance (ADA) of a school district located within a declared disaster area, if the district experienced a decline in ADA that was reasonably attributable to the disaster. The adjustment would have to be sufficient to provide funding comparable to that the district would have received if the decline in ADA attributable to the disaster had not occurred. This adjustment would have to be made for the two-year period following the date of the initial declaration of a state of disaster.

The bill would require the commissioner to adjust the taxable value of property of a school district located within a declared disaster area as was necessary to ensure that the district received funding



based as soon as possible on property values as affected by the disaster. The bill also would provide a reimbursement of disaster remediation costs for a school district located within a declared disaster area for which the district does not anticipate reimbursement through insurance proceeds, federal disaster relief, or other sources. During the two-year period following the date of the initial declaration of a state of disaster, a district could apply to the commissioner for reimbursement of disaster remediation costs paid during that period for which the district does not anticipate reimbursement through insurance proceeds, federal disaster relief, or other sources. A district could also seek reimbursement of disaster remediation costs paid on or after September 1, 2008. The commissioner could provide reimbursement only if funds were specifically appropriated for that purpose or the commissioner determined that there were surplus appropriations for the Foundation School Program (FSP).

The bill would authorize a local board of trustees to delegate the authority to contract for replacement, construction, or repair of school equipment or facilities, if emergency replacement, construction, or repair were necessary for the health and safety of district students and staff.

The bill would allow a state or local government entity that participates in disaster preparation or disaster recovery to request and receive funding from the disaster contingency fund to pay for costs incurred by the state or local government entity in preparing for or recovering from a disaster. If state or local government entities receive reimbursement from the federal government, then the entities would be required to reimburse the disaster contingency fund by the amount received from the federal government. The bill would also require the Governor's Division of Emergency Management (GDEM) to prescribe accounting and other procedures necessary to implement the provisions of the bill. Money in the disaster contingency fund may be used to pay for a disaster risk financing instrument to leverage available funds and receive proceeds greater than appropriated amounts to pay for extraordinary expenses. Money in the fund also may be used to provide local matching funds for Federal Emergency Management Agency projects or for preventing default on outstanding bonds or meeting other financial requirements.

The bill would take effect only if a specific appropriation for the implementation of the bill were provided in the general appropriations act of the 81st Texas Legislature. If the appropriation is made, the bill would take effect immediately upon receiving a two-thirds majority vote in each house; otherwise, the bill would take effect September 1, 2009.

## **Methodology**

According to the Texas Education Agency (TEA), current estimates indicate that school districts affected by Hurricane Ike incurred approximately \$350 million in damages. TEA further assumes that, based on experiences with Hurricane Rita, approximately 20 percent, or \$70 million, of those costs would not be covered by insurance or other disaster relief assistance.

Based on the provisions of the bill, districts would qualify for property value adjustments and adjustments to average daily attendance and would also be eligible to apply for disaster remediation funds to the extent that a specific appropriation for this purpose was made or surplus funds were available in the Foundation School Program (FSP). For the purposes of this fiscal note, it is assumed that appropriations or surplus FSP funds would be available.

In estimating how much of state remediation costs would flow through the various provisions of the bill, it is assumed that the four coastal districts that TEA has identified as hardest hit by Hurricane Ike in 2008, Galveston, High Island, Bridge City, and Sabine Pass ISDs, would lose 20 percent of their pre-hurricane attendance in fiscal year 2010 and 30 percent of their tax year 2009 property values. Under the current law school finance system, the attendance decline would cause a district's wealth per weighted student (WADA), the basis for wealth equalization obligations under Chapter 41 Education Code, to increase in the same year. However, due to the use of lagged property values in the state funding system, the tax year 2009 property value decline would not lower wealth per WADA until fiscal year 2011. The cost for the property value adjustment under Section 2 of the bill for fiscal year 2010 is estimated to be \$14,916,971. In addition to these costs, the bill would provide relief to disaster-affected districts through adjustments to counts of students in average daily attendance (ADA). TEA estimates the cost for adjustments to ADA for the coastal districts identified above at \$12,552,359 for fiscal year 2010. Assuming that average daily attendance in the identified districts



would recover somewhat in fiscal year 2011, costs for the second year of the ADA adjustment provided under the bill are estimated to be approximately \$6,276,180. In addition to these costs, an estimated \$70 million in potentially eligible remediation costs would then flow through the reimbursement mechanism of the bill in fiscal year 2010.

For the purpose of this estimate, identified state costs are assumed to be limited to costs resulting from application of the bill's provisions to Galveston, High Island, Bridge City and Sabine Pass ISDs. However, the bill would render eligible for relief any school district in a designated disaster area and that incurs qualifying disaster remediation costs. In the current fiscal year, more than 570 school districts are located in a county designated by the Governor as a disaster area. Should more districts than the four assumed by the agency have incurred qualifying disaster remediation costs, experienced declining attendance or experienced property value decline, state costs due to the provisions of the bill could increase significantly.

TEA estimates that accounting for the provisions of the bill in the current Foundation School Program management and payment system would require approximately \$50,000 in software modification costs in fiscal year 2010.

Implementing the provisions of the bill that affect the Government Code would result in an indeterminate fiscal impact to the state due to the unknown nature of any future disaster.

### **Local Government Impact**

Districts might incur some administrative costs to prepare applications for funds, but the TEA does not expect these costs to be significant. School districts would receive additional revenue through adjustments and additional funding under the Foundation School Program to offset costs associated with disaster remediation for which the district does not anticipate reimbursement through insurance proceeds, federal disaster relief, or other sources. If authorized by the commissioner of education, a school district would be permitted to use the funding provided under this bill to pay the costs of replacing a facility instead of repairing a facility. In such circumstances, funding would be limited to the lesser of the amount that would be available to the district if the facility were repaired or the amount necessary to replace the facility.

**Source Agencies:** 701 Central Education Agency

**LBB Staff:** JOB, SD, KJG, JSp, JGM



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

May 14, 2009

**TO:** Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB4102** by Eiland (Relating to the disaster contingency fund.), **As Engrossed**

**Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state.**

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would allow a state or local government entity that participates in disaster preparation or disaster recovery to request and receive funding from the disaster contingency fund to pay for costs incurred by the state or local government entity in preparing for or recovering from a disaster. If state or local government entities receive reimbursement from the federal government, then the entities would be required to reimburse the disaster contingency fund by the amount received from the federal government. The bill would also require the Governor's Division of Emergency Management (GDEM) to prescribe accounting and other procedures necessary to implement the provisions of the bill. Money in the disaster contingency fund may be used to pay for a disaster risk financing instrument to leverage available funds and receive proceeds greater than appropriated amounts to pay for extraordinary expenses. Money in the fund also may be used to provide local matching funds for Federal Emergency Management Agency projects or for preventing default on outstanding bonds or meeting other financial requirements.

Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 301 Office of the Governor, 405 Department of Public Safety

**LBB Staff:** JOB, KJG, KK, MS, BTA





**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 16, 2009**

**TO:** Honorable Frank Corte Jr., Chair, House Committee on Defense & Veterans' Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB4102** by Eiland (relating to the disaster contingency fund.), **Committee Report 1st House, Substituted**

**Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state.**

**The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.**

The bill would allow a state or local government entity that participates in disaster preparation or disaster recovery to request and receive funding from the disaster contingency fund to pay for costs incurred by the state or local government entity in preparing for or recovering from a disaster. If state or local government entities receive reimbursement from the federal government then the entities would be required to reimburse the disaster contingency fund by the amount received from the federal government. The bill would also require the Governor's Division of Emergency Management (GDEM) to prescribe accounting and other procedures necessary to implement this. Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state. The bill would be effective immediately if it receives a vote of two-thirds or on September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 301 Office of the Governor, 405 Department of Public Safety

**LBB Staff:** JOB, KK, MS, BTA



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 8, 2009**

**TO:** Honorable Frank Corte Jr., Chair, House Committee on Defense & Veterans' Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB4102** by Eiland (Relating to the disaster contingency fund.), **As Introduced**

**Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state.**

**The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.**

The bill would allow a state or local government entity that participates in disaster preparation or disaster recovery to request and receive funding from the disaster contingency fund to pay for costs incurred by the state or local government entity in preparing for or recovering from a disaster. If state or local government entities receive reimbursement from the federal government then the entities would be required to reimburse the disaster contingency fund by the amount received from the federal government. The bill would also require the Governor's Division of Emergency Management (GDEM) to prescribe accounting and other procedures necessary to implement this. Due to the unknown nature of any future disaster, the bill could have an indeterminate fiscal impact to the state. The bill would be effective immediately if it receives a vote of two-thirds or on September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 301 Office of the Governor, 405 Department of Public Safety

**LBB Staff:** JOB, KK, MS, BTA

