

## **BILL ANALYSIS**

C.S.S.B. 2  
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Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties suggest that students with disabilities need access to additional services that are not provided by school districts. C.S.S.B. 2 seeks to address this need by providing for an education enhancement program for certain students with disabilities.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 2 amends the Education Code to require the commissioner of education to establish and administer an education enhancement program for students with disabilities to provide funding for eligible students to obtain educational support services and other resources that supplement the student's public education, promote and improve the student's overall academic performance, and exceed the level of services that the student's committee has determined to be necessary for the student to receive a free appropriate public education.

C.S.S.B. 2 makes a student eligible to participate in the program if the student is enrolled in a public school district and was enrolled in that district during the entire preceding school year; the student has one or more specified disabilities; and, for one or more of the disabilities, an individualized education program has been developed for the student or the student is covered by certain provisions of the federal Rehabilitation Act of 1973. The specified disabilities are dyslexia, autism, speech disability, and learning disability. The bill makes a student placed in a residential facility primarily for noneducational reasons ineligible to participate in the program.

C.S.S.B. 2 sets out provisions relating to the application process for participation in the program. The bill requires the commissioner for each school year to allocate money available for the program to each district in which a student participating in the program is enrolled in amounts determined by the commissioner. The bill caps the total amount of money that may be used for the program for a school year at \$15 million and authorizes the commissioner to only use money appropriated to the foundation school program for purposes of the program established by the bill. The bill restricts the use of funds received under the program to specified services or goods provided to a program participant by an education service provider or vendor of educational products approved by the commissioner and sets out related provisions regarding qualified expenses and provisions relating to the approval and accountability of education service providers and vendors of educational products receiving money distributed under the program.

C.S.S.B. 2 establishes that a student's participation in the program does not affect the student's rights or a school district's obligations with respect to the student under the federal Individuals with Disabilities Education Act, certain provisions of the federal Rehabilitation Act of 1973, or the federal Americans with Disabilities Act of 1990 and that the provision of services or goods to a student under the program does not affect the obligations of any state agency with respect to the student. The bill requires an education service provider or vendor of educational products to comply with the specified federal laws in providing services or goods to the student under the program. The bill authorizes the commissioner to adopt rules as necessary to implement the bill's provisions regarding the program.

C.S.S.B. 2 requires the Texas Education Agency (TEA), not later than December 31, 2020, to review the performance of the program and submit to the legislature a report on TEA's conclusions. The bill requires TEA, in conducting the review, to solicit input from program participants, participating school districts, and education service providers and vendors of educational products approved by the commissioner. These provisions relating to the program review expire September 1, 2021.

C.S.S.B. 2 requires TEA to conduct a study on the special education services provided by districts to students with disabilities to determine whether those services satisfy the requirements under the federal Individuals with Disabilities Education Act, certain provisions of the federal Rehabilitation Act of 1973, and the federal Americans with Disabilities Act of 1990. The bill requires TEA, in conducting the study, to survey parents of students with disabilities enrolled in public school districts. The bill requires TEA, not later than September 1, 2018, to submit to the legislature a report on the results of the study and requires the report to include a list of services that parents feel are needed but are not currently being provided and the reasons why the listed services are not being provided. These provisions relating to the study on special education services expire September 1, 2019.

C.S.S.B. 2 requires a district to excuse a student from attending school during lunch, study hall, or an open period to attend an appointment or meeting with an education service provider or vendor of educational products to receive services or goods provided using money distributed under the program. This requirement expires August 31, 2023. The bill, until such date, includes a student whose absence is so excused among the students with certain excused absences who may not be penalized for those absences, are required to be counted as if the students attended school for purposes of calculating the average daily attendance of students in the district, and are required to be allowed a reasonable time to make up school work missed on those days.

C.S.S.B. 2, other than its provisions relating to the program review and the study on special education services, applies beginning with the 2018-2019 school year. The bill's provisions relating to the education enhancement program for students with disabilities expire August 31, 2023.

#### **EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.

#### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 2 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Effective September 1, 2018, Section 12.106, Education Code, is amended by adding Subsections (d) and (e) to read as follows:

No equivalent provision.

(d) Subject to Subsection (e), in addition to other amounts provided by this section, a charter holder is entitled to receive, for the open-enrollment charter school, funding per student in average daily attendance in an amount equal to the guaranteed level of state and local funds per student per cent of tax effort under Section 46.032(a) multiplied by the lesser of:

(1) the state average interest and sinking fund tax rate imposed by school districts for the current year; or

(2) a rate that would result in a total amount to which charter schools are entitled under this subsection for the current year equal to \$60 million.

(e) A charter holder is entitled to receive funding under Subsection (d) only if the most recent overall performance rating assigned to the open-enrollment charter school under Subchapter C, Chapter 39, reflects at least acceptable performance.

SECTION 2. Chapter 42, Education Code, is amended by adding Subchapter H to read as follows:

No equivalent provision.

SUBCHAPTER H. FINANCIAL HARDSHIP TRANSITION PROGRAM

Sec. 42.451. FINANCIAL HARDSHIP GRANTS. (a) From amounts appropriated for this subchapter, the commissioner may administer a grant program that provides grants to school districts to defray financial hardships resulting from changes made to Chapter 41 and this chapter that apply after the 2016-2017 school year.

(b) The commissioner shall award grants under this subchapter to districts as provided by Section 42.452.

(c) Except as provided by Subsection (d), funding provided to a district under this subchapter is in addition to all other funding provided under Chapter 41 and this chapter.

(d) A district is not eligible for funding under this subchapter for a school year if the district receives for that school year an adjustment of the district's taxable value of property under Section 42.2521. A district

may decline an adjustment under Section 42.2521 to maintain eligibility for funding under this subchapter.

(e) The commissioner may obtain additional information as needed from a district or other state or local agency to make determinations in awarding grants under this subchapter.

Sec. 42.452. AWARD OF GRANTS; AMOUNT. (a) The commissioner shall award grants to school districts based on the following formula:

$HG = (PL-CL) \times (TR) \times (TAHG/TEHG)$

where:

"HG" is the amount of a district's hardship grant;

"PL" is the amount of funding under previous law to which a district would be entitled under Chapter 41 and this chapter as those chapters existed on January 1, 2017, determined using current school year data for the district;

"CL" is the amount of current law funding under Chapter 41 and this chapter to which a district is entitled;

"TR" is a district's maintenance and operations tax rate, as specified by the comptroller's most recent certified report;

"TAHG" is the total funding available for grants under Section 42.456 for a school year; and

"TEHG" is the sum of the combined amounts for all districts calculated by applying the formula  $(PL-CL) \times (TR)$  for each district.

(b) A school district's hardship grant awarded under this subchapter for a school year may not exceed the lesser of:

(1) the amount equal to 10 percent of the total amount of funds available for grants under this subchapter for that school year;

or

(2) the amount by which "PL" exceeds "CL" for that district for that school year.

(c) For purposes of calculating the formula under Subsection (a), the commissioner shall:

(1) if the value of  $(PL-CL)$  for a school district results in a negative number, use zero for the value of  $(PL-CL)$ ;

(2) if a school district's maintenance and operations tax rate ("TR") is greater than \$1, use \$1 for the value of "TR";

(3) use a maintenance and operations tax rate ("TR") of \$1 for each open-enrollment

charter school, each special-purpose school district established under Subchapter H, Chapter 11, and the South Texas Independent School District; and

(4) if (TAHG/TEHG) equals a value greater than one, use a value of one for (TAHG/TEHG).

(d) If funds remain available under this subchapter for a school year after determining initial grant amounts under Subsection (a), as adjusted to reflect the limits imposed by Subsection (b), the commissioner shall reapply the formula as necessary to award all available funds.

(e) If the commissioner reapplies the formula in accordance with Subsection (d), a school district that was ineligible under Section 42.455 for a grant during the initial application of the formula for that school year is eligible to receive a grant as a result of the formula reapplication.

Sec. 42.453. ELIGIBILITY OF OPEN-ENROLLMENT CHARTER SCHOOL. An open-enrollment charter school is eligible for a grant under this subchapter in the same manner as a school district.

Sec. 42.454. REGIONAL EDUCATION SERVICE CENTERS AND COUNTY DEPARTMENTS OF EDUCATION NOT ELIGIBLE. A regional education service center or a county department of education is not eligible for a grant under this subchapter.

Sec. 42.455. CERTAIN SCHOOL DISTRICTS NOT ELIGIBLE. Except as provided by Section 42.452(e), a school district is not eligible for a grant under this subchapter if for the 2015-2016 school year the district's expenditures per student in weighted average daily attendance, excluding bond debt service payments, capital outlays, and facilities acquisition and construction costs, exceeded an amount that is equal to 120 percent of the state average amount for that school year of expenditures per student in weighted average daily attendance, excluding bond debt service payments, capital outlays, and facilities acquisition and construction costs, as those amounts are determined by the commissioner.

Sec. 42.456. FUNDING LIMIT. The amount of grants awarded by the commissioner under this subchapter may not exceed \$100 million for the 2017-2018

school year or \$50 million for the 2018-2019 school year.

Sec. 42.457. NO ADJUSTMENT BASED ON REVISED DATA. The commissioner may not adjust the amount of a school district's grant under this subchapter based on revisions to the district's data received after a grant has been awarded.

Sec. 42.458. RULES. The commissioner may adopt rules as necessary to administer this subchapter.

Sec. 42.459. DETERMINATION FINAL. A determination by the commissioner under this subchapter is final and may not be appealed.

Sec. 42.460. EXPIRATION. This subchapter expires September 1, 2019.

SECTION 3. Effective September 1, 2018, Section 46.032(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal of and interest on eligible bonds. The amount of state support, subject only to the maximum amount under Section 46.034, is determined by the formula:

$$EDA = (EDGL \times ADA \times EDTR \times 100) - (EDTR \times (DPV/100))$$

where:

"EDA" is the amount of state funds to be allocated to the district for assistance with existing debt;

"EDGL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is the lesser of:

(1) \$40 [~~\$35~~] or a greater amount for any year provided by appropriation; or

(2) the amount that would result in a total additional amount of state funds under this subchapter for the current year equal to \$60 million in excess of the state funds to which school districts would have been entitled under this section if the guaranteed level amount were \$35;

"ADA" is the number of students in average daily attendance, as determined under Section 42.005, in the district;

"EDTR" is the existing debt tax rate of the district, which is determined by dividing the amount budgeted by the district for payment of eligible bonds by the quotient of the district's taxable value of property as

No equivalent provision.

determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and "DPV" is the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521.

SECTION 4. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 230 to read as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO CERTAIN EDUCATIONAL ASSISTANCE ORGANIZATIONS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. In this chapter:

(1) "Educational assistance organization" means an organization that:

(A) has the ability according to the organization's charter to award scholarships to or pay educational expenses for eligible students in:

(i) public elementary or secondary schools located in this state; or

(ii) nonpublic elementary or secondary schools located in this state:

(a) that meet the requirements of Section 230.052;

(b) at which a student may fulfill this state's compulsory attendance requirements; and

(c) that are not in violation of the federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); and

(B) uses part of its annual revenue for the purpose provided by Paragraph (A).

(2) "State premium tax liability" means any liability incurred by an entity under Chapter 221, 222, or 224.

(3) "Student with a disability" means a student who is:

(A) eligible to participate in a school district's special education program under Section 29.003, Education Code; or

(B) covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

Sec. 230.002. RULES; PROCEDURES.

(a) The comptroller shall adopt rules and procedures to implement, administer, and enforce this chapter.

(b) A rule adopted under Subsection (a) is

No equivalent provision. (But see SECTION 1 below.)

binding on an organization that applies for certification as an educational assistance organization, an entity that applies for a credit, and a state or local governmental entity, including a political subdivision, as necessary to implement, administer, and enforce this chapter.

SUBCHAPTER B. SCHOLARSHIP AND EDUCATIONAL EXPENSE ASSISTANCE PROGRAM

Sec. 230.051. CERTIFICATION OF EDUCATIONAL ASSISTANCE ORGANIZATION. (a) An organization may apply to the comptroller for certification as a certified educational assistance organization during an application period provided by the comptroller.

(b) To be eligible for certification, the organization:

(1) must:

(A) be exempt from federal tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code;

(B) be in good standing with the state;

(C) be located in the state;

(D) allocate at least 90 percent of its annual revenue from contributions that are designated for scholarships or educational expense assistance for eligible students under this chapter for student scholarships and assistance for educational expenses, including tuition, transportation, textbooks, and other supplies, and for other related educational expense assistance as described by this section;

(E) award scholarships and assistance for qualifying educational expenses to eligible students who demonstrate the greatest financial and academic need;

(F) agree to give each donor a receipt for money contributed to the organization that includes the name of the organization, the name of the donor, the amount of the contribution, the information required by Section 230.054(c), and any other information required by the comptroller;

(G) demonstrate experience and technical expertise in:

(i) accepting, processing, and tracking applications for scholarships or educational expense assistance; and

(ii) awarding scholarships to students in



primary or secondary schools;  
(H) agree to be independently audited on an annual basis and file the audit with the comptroller;  
(I) disburse within two academic years of receipt contributions received from and designated by entities for scholarships or educational expense assistance under this chapter; and  
(J) establish comprehensive and transparent criteria for how the organization will:  
(i) select recipients of scholarships and educational expense assistance; and  
(ii) determine the amount of the scholarship and educational expense assistance awarded to each recipient; and  
(2) may not:  
(A) award all scholarships under this chapter to students who attend a particular school or pay educational expenses incurred only at a particular school;  
(B) provide to a student a scholarship in an annual amount that exceeds the amount provided under Section 230.055(a) unless the money used to provide the portion of the scholarship in excess of that amount was contributed by a person other than an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution; and  
(C) provide to a student educational expense assistance in excess of the amount provided under Section 230.055(b), unless the money used to provide the portion of the assistance in excess of that amount was contributed by a person other than an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution, including assistance for:  
(i) facility fees;  
(ii) instructional materials;  
(iii) school supplies;  
(iv) tutoring;  
(v) academic after-school programs;  
(vi) school or lab fees;  
(vii) before-school or after-school child care; and  
(viii) transportation expenses, including the cost to transfer from one public school to another.  
(c) The comptroller shall certify one organization as the primary certified

educational assistance organization and one organization as the secondary certified educational assistance organization. The comptroller shall select the organizations to certify as the primary and secondary certified educational assistance organizations from among the organizations that apply under Subsection (a) and meet the requirements of Subsection (b). The comptroller has broad discretion in selecting the primary and secondary certified educational assistance organizations.

(d) The comptroller shall notify all organizations that apply under Subsection (a) of the comptroller's selections under Subsection (c).

(e) The comptroller shall attempt to maintain one primary and one secondary certified educational assistance organization at all times. The comptroller shall provide an application period under Subsection (a) as soon as practicable after the comptroller learns there is, or is likely to be, a vacancy for the primary or secondary certified educational assistance organization.

(f) The comptroller's selections under Subsection (c) are final and are not appealable.

Sec. 230.0511. PERFORMANCE OF CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATION POWERS AND DUTIES. (a) Except as provided by Subsection (b), the organization certified as the primary certified educational assistance organization shall perform the powers and duties assigned to the certified educational assistance organization under this chapter.

(b) The organization certified as the secondary certified educational assistance organization shall perform the powers and duties assigned to the certified educational assistance organization under this chapter if:

(1) the organization certified as the primary certified educational assistance organization has its certification revoked;

or

(2) the comptroller otherwise determines the organization certified as the primary educational assistance organization is unable to perform the powers and duties assigned to the certified educational

assistance organization under this chapter.

(c) A reference in this chapter or other law to the certified educational assistance organization means the organization performing the powers and duties of the certified educational assistance organization under Subsection (a) or (b).

Sec. 230.0512. ALLOCATION OF MONEY DESIGNATED FOR SCHOLARSHIPS OR EDUCATIONAL EXPENSE ASSISTANCE. Of the amount required to be allocated as provided by Section 230.051(b)(1)(D), the certified educational assistance organization shall use:

(1) at least 80 percent to award scholarships as described by Section 230.055(a); and

(2) not more than 20 percent to award educational expense assistance as described by Section 230.055(b).

Sec. 230.052. NONPUBLIC SCHOOL REQUIREMENTS. The certified educational assistance organization may not award scholarships to or pay educational expenses for eligible students enrolled in a nonpublic school unless the nonpublic school executes a notarized affidavit, with supporting documents, concerning the school's qualification for scholarships and educational expense assistance for eligible students who receive assistance from the certified educational assistance organization, including evidence of:

(1) accreditation by the Texas Education Agency or by an organization recognized by the Texas Private School Accreditation Commission;

(2) annual administration of a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Section 39.023, Education Code;

(3) valid certificate of occupancy;

(4) policy statements regarding:

(A) admissions;

(B) curriculum;

(C) safety;

(D) food service inspection; and

(E) student to teacher ratios; and

(5) the school's agreement that students who receive scholarships under this chapter are eligible to receive any scholarships offered by the school to the same extent as other students.

Sec. 230.053. ELIGIBILITY OF STUDENTS FOR SCHOLARSHIPS; INCLUSION IN CALCULATION OF EQUALIZED WEALTH LEVEL. (a) A student is eligible to apply for a scholarship from the certified educational assistance organization under this chapter if the student:

- (1) is a student with a disability;
- (2) is eligible to attend a public school under Section 25.001, Education Code;
- (3) was enrolled in a public school in this state during the entire preceding academic year; and
- (4) will attend a nonpublic school in this state during the entire academic year for which the scholarship is awarded.

(b) A student who establishes eligibility under this section may apply for a scholarship from the certified educational assistance organization under this chapter for each academic year until the student:

- (1) graduates from high school;
- (2) is no longer eligible to attend a public school under Section 25.001, Education Code; or
- (3) enrolls in a public school, including an open-enrollment charter school.

(c) Notwithstanding Subsection (b), the comptroller shall establish guidelines for, in the least disruptive manner possible:

- (1) a student who has previously received a scholarship to enroll in a public school, including an open-enrollment charter school; and
- (2) a student who previously received a scholarship and subsequently enrolled in a public school, including an open-enrollment charter school, to reestablish eligibility for a scholarship.

(d) The certified educational assistance organization shall award scholarships to eligible students who apply in accordance with this chapter to the extent money is available for that purpose.

(e) For the first year a student receives a scholarship under this chapter to attend a nonpublic school, the student is included in the weighted average daily attendance of the school district the student would otherwise attend for purposes of determining the district's equalized wealth level under Chapter 41, Education Code.

(f) A nonpublic school may not enroll a student who is awarded a scholarship under

this chapter unless the nonpublic school:

(1) provides to the student's parent a written notice, in the primary language spoken by the parent, describing all expenses other than tuition required for the student to attend the nonpublic school; and

(2) receives from the parent a signed copy of the notice under Subdivision (1).

Sec. 230.0531. ELIGIBILITY OF STUDENTS FOR EDUCATIONAL EXPENSE ASSISTANCE. (a) A student is eligible to apply for educational expense assistance from the certified educational assistance organization under this chapter for an academic year if the student:

(1) is a student with a disability; and

(2) will attend a public school in this state during the entire academic year for which the educational expense assistance is awarded.

(b) A student who establishes eligibility under this section may apply for educational expense assistance from the certified educational assistance organization under this chapter for each academic year the student attends a public school in this state.

(c) The certified educational assistance organization shall award educational expense assistance to eligible students who apply in accordance with this chapter to the extent money is available for that purpose.

Sec. 230.0532. NOTICE TO CERTAIN PARENTS. A school district shall provide written notice of the availability of assistance under this chapter to the parent of a student who is eligible to apply for a scholarship to attend a nonpublic school under Section 230.053. The notice under this section must inform the parent that a nonpublic school is not subject to laws regarding the provision of education services in the same manner as a public school, and a student with a disability attending a nonpublic school may not receive the services a student with a disability attending a public school is entitled to receive under federal and state law. The notice must provide information regarding rights to which a student with a disability is entitled under federal and state law if the student attends a public school, including:

(1) rights provided under the Individuals with Disabilities Education Act (20 U.S.C.

Section 1400 et seq.), including:

- (A) an individualized education program;
- (B) education services provided in the least restrictive environment;
- (C) instruction from certified teachers;
- (D) due process hearings to ensure proper and full implementation of an individualized education program;
- (E) transition and planning services; and
- (F) supplementary aids and services;
- (2) rights provided under Subchapter A, Chapter 29, Education Code; and
- (3) other rights provided under federal or state law.

Sec. 230.054. CREDIT FOR CONTRIBUTIONS. (a) An entity may apply for a credit under this chapter only for money contributed to the certified educational assistance organization and designated for scholarships or educational expense assistance for eligible students.

(b) An entity may not apply for a credit under this chapter for a contribution made to the certified educational assistance organization if:

- (1) the entity requires that the contribution benefit a particular person or school; or
- (2) the contribution is designated to provide a scholarship or educational expense assistance for an entity employee or for a spouse or dependent of an entity employee.

(c) An entity shall notify the certified educational assistance organization in writing when the entity makes a contribution if the entity may apply for a tax credit under this chapter for the contribution. An entity may not apply for a credit for the contribution unless the entity provides the notification at the time the contribution is made. The certified educational assistance organization shall indicate on the receipt provided under Section 230.051(b)(1)(F) that the entity made the notification under this subsection.

Sec. 230.055. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL EXPENSE ASSISTANCE. (a) The maximum scholarship amount the certified educational assistance organization may award to a student under this chapter for an academic year using money contributed by an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the

contribution may not exceed the lesser of:

- (1) \$10,000; and
- (2) the full tuition amount for the nonpublic school the student attends.

(b) The maximum educational expense assistance the certified educational assistance organization may award to a student under this chapter using money contributed by an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution may not exceed \$500 for the 2019 state fiscal year, increased by five percent each subsequent year.

Sec. 230.056. REVOCATION. (a) The comptroller shall revoke a certification provided under Section 230.051 if the comptroller finds that a certified educational assistance organization:

- (1) is no longer eligible under Section 230.051; or
- (2) intentionally and substantially violates this chapter.

(b) The comptroller has broad discretion in determining whether to revoke a certification under Subsection (a).

(c) The comptroller shall notify a certified educational assistance organization in writing of the comptroller's decision to revoke the organization's certification. If the comptroller revokes an organization's certification, the comptroller shall include in the notice of revocation the reasons for the revocation.

(d) If the comptroller revokes a certified educational assistance organization's certification under Subsection (a), the organization may request in writing a reconsideration of the revocation not later than the 10th day after the date of the notice under Subsection (c) or the revocation is final.

(e) An organization that requests a reconsideration under Subsection (d) may submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the organization's request for reconsideration.

(f) The comptroller's reconsideration of a revocation under this section is not a contested case under Chapter 2001, Government Code. The comptroller's decision on a request for reconsideration of a revocation is final and is not appealable.

(g) This section does not create a cause of action to contest a decision of the comptroller to revoke a certified educational assistance organization's certification under this chapter.

(h) Revocation of a certification under this section does not affect the validity of a tax credit relating to a contribution made before the date of revocation.

Sec. 230.057. REPORT OF NET SAVINGS TO PUBLIC EDUCATION. (a) In this section, "net savings" means any positive difference in a state fiscal year between:

(1) the amount by which state spending on public education for that year is reduced as a result of students receiving scholarships and educational expense assistance from the certified educational assistance organization under this chapter; and

(2) the amount by which state revenue derived from Chapters 221, 222, and 224 is reduced as a result of tax credits under this chapter.

(b) Not later than December 31 of each even-numbered year, the comptroller shall determine the amount of net savings for the previous state fiscal biennium and make available to the public a report of that amount of savings.

#### SUBCHAPTER C. CREDIT

Sec. 230.101. CREDIT. An entity may apply for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter. The comptroller shall award credits as provided by Section 230.103.

Sec. 230.102. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a) Subject to Subsections (b) and (c), the amount of an entity's credit is equal to the lesser of the amount of the qualifying contributions made to the certified educational assistance organization or 50 percent of the entity's state premium tax liability.

(b) The total amount of tax credits that may be awarded under this chapter for a state fiscal year may not exceed \$75 million.

(c) The comptroller by rule shall prescribe procedures by which the comptroller may allocate credits under this chapter. The procedures must provide that credits are first allocated to entities that were granted



preliminary approval for a credit under Section 230.1025 in the amount that was preliminarily approved. The procedures must provide that any remaining credits are allocated on a first-come, first-served basis, based on the date the contribution was initially made.

(d) The comptroller may require an entity to notify the comptroller of the amount the entity intends or expects to apply for under this chapter before the beginning of a state fiscal year or at any other time required by the comptroller.

Sec. 230.1025. PRELIMINARY APPROVAL FOR CREDIT. (a) Before making a contribution to the certified educational assistance organization, an entity may apply to the comptroller for preliminary approval of a credit under this chapter for the contribution.

(b) An entity must apply for preliminary approval of a credit on a form provided by the comptroller that includes the amount the entity expects to contribute and any other information required by the comptroller.

(c) The comptroller shall grant preliminary approval for credits under this chapter on a first-come, first-served basis, based on the date the application for preliminary approval is received by the comptroller.

(d) The comptroller shall grant preliminary approval for a credit under this chapter if the total amount of credits preliminarily approved under this chapter does not exceed the amount provided by Section 230.102(b).

(e) A credit for which the comptroller grants preliminary approval remains subject to the limitation under Section 230.102(a) and any other limitations prescribed by this chapter.

Sec. 230.103. APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax return for the taxable year and submit with the application each receipt issued under Section 230.051(b)(1)(F) that includes the information required by Section 230.054(c).

(b) The comptroller shall adopt a form for the application for the credit. An entity must use this form in applying for the credit.

(c) The comptroller may award a credit to an entity that applies for the credit under Subsection (a) if the entity is eligible for the

credit and the credit is available under Section 230.102(b). The comptroller has broad discretion in determining whether to grant or deny an application for a credit.

(d) The comptroller shall notify an entity in writing of the comptroller's decision to grant or deny the application under Subsection (a). If the comptroller denies an entity's application, the comptroller shall include in the notice of denial the reasons for the comptroller's decision.

(e) If the comptroller denies an entity's application under Subsection (a), the entity may request in writing a reconsideration of the application not later than the 10th day after the date of the notice under Subsection (d). If the entity does not request a reconsideration of the application on or before that date, the comptroller's decision is final.

(f) An entity that requests a reconsideration under Subsection (e) may submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the entity's request for reconsideration.

(g) The comptroller's reconsideration of an application under this section is not a contested case under Chapter 2001, Government Code. The comptroller's decision on a request for reconsideration of an application is final and is not appealable.

(h) This section does not create a cause of action to contest a decision of the comptroller to deny an application for a credit under this chapter.

Sec. 230.104. ASSIGNMENT PROHIBITED; EXCEPTION. An entity may not convey, assign, or transfer the credit allowed under this chapter to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

Sec. 230.105. NOTICE OF AVAILABILITY OF CREDIT. The comptroller shall provide notice of the availability of the credit under this chapter on the comptroller's Internet website, in the instructions for insurance premium tax report forms, and in any notice sent to an entity concerning the requirement to file an insurance premium tax report.

SECTION 5. (a) The constitutionality and

No equivalent provision.

other validity under the state or federal constitution of all or any part of Chapter 230, Insurance Code, as added by this Act, may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, except that this section does not authorize an award of attorney's fees against this state and Section 37.009, Civil Practice and Remedies Code, does not apply to an action filed under this section. This section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller of public accounts.

(b) An appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining that all or any part of Chapter 230, Insurance Code, as added by this Act, is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) If the judgment or order is interlocutory, an interlocutory appeal may be taken from the judgment or order and is an accelerated appeal.

(d) A district court in Travis County may grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Chapter 230, Insurance Code, as added by this Act.

(e) There is a direct appeal to the Texas Supreme Court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Chapter 230, Insurance Code, as added by this Act.

(f) The direct appeal is an accelerated appeal.

(g) This section exercises the authority granted by Section 3-b, Article V, Texas Constitution.

(h) The filing of a direct appeal under this

section will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction granted in accordance with this section pending final determination by the Texas Supreme Court, unless the supreme court makes specific findings that the applicant seeking such injunctive relief has pleaded and proved that:

(1) the applicant has a probable right to the relief it seeks on final hearing; and

(2) the applicant will suffer a probable injury that is imminent and irreparable, and that the applicant has no other adequate legal remedy.

(i) An appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 6. An entity may apply for a credit under Chapter 230, Insurance Code, as added by this Act, only for an expenditure made on or after September 1, 2018.

No equivalent provision.

SECTION 7. The comptroller of public accounts shall make the initial determination of net savings and report regarding that savings as required by Section 230.057, Insurance Code, as added by this Act, not later than December 31, 2020, based on the state fiscal biennium ending August 31, 2019.

No equivalent provision.

SECTION 8. Chapter 230, Insurance Code, as added by this Act, applies only to a report originally due on or after September 1, 2018.

No equivalent provision.

SECTION 9. (a) The amount of \$270,000,000 of the unencumbered appropriations from the general revenue fund for the state fiscal biennium ending August 31, 2019, made by S.B. 1, Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act), to the Health and Human Services Commission is transferred to the Texas Education Agency to be used by the agency during that state fiscal biennium as follows:

No equivalent provision.

(1) \$150,000,000 is allocated to fund

financial hardship grants under Subchapter H, Chapter 42, Education Code, as added by this Act;

(2) \$60,000,000 is allocated to fund payments to open-enrollment charter schools under Section 12.106(d), Education Code, as added by this Act; and

(3) \$60,000,000 is allocated for the existing debt allotment under Section 46.032, Education Code, as amended by this Act.

(b) The Health and Human Services Commission shall identify the strategies and objectives out of which the transfer under Subsection (a) of this section is to be made.

No equivalent provision. (But see SECTION 4 above.)

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

SUBCHAPTER J. EDUCATION ENHANCEMENT PROGRAM FOR STUDENTS WITH DISABILITIES

Sec. 29.351. DEFINITIONS. In this subchapter:

(1) "Parent" means a resident of this state who is a natural or adoptive parent, managing or possessory conservator, legal guardian, custodian, or other person with legal authority to act on behalf of a child.

(2) "Program" means the education enhancement program for students with disabilities established under this subchapter.

(3) "Program participant" means a student and a parent of a student who has been accepted into the program.

Sec. 29.352. ESTABLISHMENT OF PROGRAM. The commissioner shall establish and administer an education enhancement program for students with disabilities to provide funding for eligible students to obtain educational support services and other resources that:

(1) supplement the student's public education;

(2) promote and improve the student's overall academic performance; and

(3) exceed the level of services that the student's committee has determined to be necessary for the student to receive a free appropriate public education.

Sec. 29.353. ELIGIBLE STUDENT. (a) A student is eligible to participate in the program if:

(1) the student is enrolled in a school district

and was enrolled in that district during the entire preceding school year;

(2) the student has one or more of the following disabilities:

(A) dyslexia;

(B) autism;

(C) speech disability; or

(D) learning disability; and

(3) for one or more disabilities listed in Subdivision (2):

(A) an individualized education program has been developed for the student under Section 29.005; or

(B) the student is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

(b) Notwithstanding Subsection (a), a student placed in a residential facility primarily for noneducational reasons is not eligible to participate in the program.

Sec. 29.354. APPLICATION PROCESS.

(a) On or before the date established by commissioner rule, each school district annually shall provide information regarding the program to a parent of each student enrolled in the district who may be eligible to participate in the program.

(b) On or before the date established by commissioner rule, a parent of an eligible student may apply on behalf of the student to the agency for participation in the program for the school year for which the application is made. The school district in which the student is enrolled shall assist the parent in making the application.

(c) In accepting students into the program, the commissioner shall:

(1) give priority to students who are educationally disadvantaged; and

(2) to the greatest extent possible, ensure that the accepted students reflect the diversity of the state.

(d) The commissioner annually shall notify each program participant and each school district in which a student participating in the program is enrolled that:

(1) a program participant must reapply to participate in the program for each school year in which the participant wishes to participate in the program; and

(2) continued acceptance into the program is not guaranteed.

Sec. 29.355. ALLOCATION OF MONEY; FINANCING. (a) For each school year, the commissioner shall allocate money available

for the program to each school district in which a student participating in the program is enrolled in amounts determined by the commissioner. The total amount of money used for the program for a school year may not exceed \$15 million.

(b) The commissioner may only use money appropriated to the Foundation School Program for purposes of the program.

Sec. 29.356. QUALIFIED EXPENSES. (a) Funds received under the program may be used only for the following services or goods provided to a program participant by an education service provider or vendor of educational products approved by the commissioner under Section 29.357:

(1) costs of transportation for the student to receive educational support services;

(2) fees for services provided by a private tutor or teaching service;

(3) fees for educational therapies or support services provided by a practitioner or provider;

(4) costs of assistive technology; and

(5) costs associated with the provision of:

(A) in-home and community-based training;

(B) positive behavioral support strategies;

(C) family training support;

(D) communication interventions; and

(E) social skills, supports, and strategies training.

(b) The parent of a student participating in the program, with the assistance of an employee of the school at which the student is enrolled designated for that purpose by the school's principal, shall select the services or goods allowed under Subsection (a) to be provided to the student under the program and the appropriate education service provider or vendor of educational products to provide those services or goods.

(c) On the parent's selection under Subsection (b), the school district in which the parent's student is enrolled shall contract with the selected education service provider or vendor of educational products to provide the selected services or goods to the student.

(d) An education service provider or vendor of educational products may not solicit or provide incentives to any program participant to select the provider or vendor to provide services or goods using money distributed under the program.

Sec. 29.357. PROVIDER AND VENDOR ACCOUNTABILITY. (a) An education

service provider or vendor of educational products must apply to and be approved by the commissioner to receive money distributed under the program.

(b) To be eligible for approval under Subsection (a), an education service provider or vendor of educational products must:

(1) have operated for at least three consecutive years, including at least one year in this state;

(2) provide to the commissioner:

(A) either:

(i) a current financial audit from a certified public accountant; or

(ii) if the provider or vendor is an individual, proof of good standing with the applicable state licensing authority for the services or goods provided;

(B) documentation indicating that the provider or vendor has completed a national criminal history record information review within a period established by commissioner rule; and

(C) a list of any national or state licenses, certifications, or credentials possessed by the provider or vendor; and

(3) agree not to use the national curriculum standards developed by the Common Core State Standards Initiative.

(c) In applying for approval under Subsection (a), an education service provider or vendor of educational products may submit to the commissioner a statement listing the services or goods allowed under Section 29.356(a) that the provider or vendor provides to a school district under an existing contract.

(d) A parent of a student participating in the program, an employee of the student's school designated under Section 29.356(b), or an education service provider or vendor of educational products may appeal the commissioner's rejection of an application submitted under Subsection (a) in accordance with rules established by the commissioner.

(e) To maintain approval under this section, an education service provider or vendor of educational products must, with respect to each student for the benefit of whom the provider or vendor contracts with a school district under Section 29.356(c):

(1) at the end of each semester, report to the school district regarding the services or goods provided under the contract to the



student, including any diagnostic or other evaluative information requested by the district;

(2) conduct pre- and post-measurement evaluations of the student and provide the results of those evaluations to the student's parent and the school district; and

(3) submit to the school district accurate and complete invoices regarding the services or goods provided to the student.

(f) At least once each semester, an education service provider or vendor of educational products selected to provide services or goods to a student participating in the program shall meet with the student's parent and the employee of the student's school designated under Section 29.356(b) at a time and place determined by the school district to discuss the student's progress and to evaluate the continued use of the provider or vendor. The student's parent, designated employee, or provider or vendor may request additional meetings to be held under this subsection.

(g) The commissioner annually shall review each approved education service provider or vendor of educational products and, as appropriate, renew or revoke that approval.

(h) On approving an education service provider or vendor of educational products under this section, the commissioner shall notify the provider or vendor regarding the annual review of approval under Subsection (g). The notice must include a statement that renewed approval under that subsection is not guaranteed.

Sec. 29.358. PROGRAM PARTICIPANT RIGHTS. (a) A student's participation in the program does not affect the student's rights or a school district's obligations with respect to the student under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794); or the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) An education service provider or vendor of educational products must comply with the federal laws listed in Subsection (a) in providing services or goods to the student under the program.

(c) The provision of services or goods to a student under this subchapter does not affect the obligations of any state agency with respect to the student.

Sec. 29.359. RULES. The commissioner may adopt rules as necessary to implement this subchapter.

Sec. 29.3591. PROGRAM REVIEW. (a) Not later than December 31, 2020, the agency shall review the performance of the program and submit to the legislature a report on the agency's conclusions.

(b) In conducting the review, the agency shall solicit input from program participants, participating school districts, and education service providers and vendors of educational products approved by the commissioner under Section 29.357.

(c) This section expires September 1, 2021.

Sec. 29.3592. STUDY ON SPECIAL EDUCATION SERVICES. (a) The agency shall conduct a study on the special education services provided by school districts to students with disabilities to determine whether those services satisfy the requirements under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794); and the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) In conducting the study, the agency shall survey parents of students with disabilities enrolled in school districts.

(c) Not later than September 1, 2018, the agency shall submit to the legislature a report on the results of the study. The report must include a list of services that parents feel are needed but are not currently being provided and the reasons why the listed services are not being provided.

(d) This section expires September 1, 2019.

Sec. 29.360. EXPIRATION. This subchapter expires August 31, 2023.

No equivalent provision.

SECTION 2. Section 25.087, Education Code, is amended by adding Subsection (b-7) to read as follows:

(b-7) A school district shall excuse a student from attending school during lunch, study hall, or an open period to attend an appointment or meeting with an education service provider or vendor of educational products to receive services or goods provided using money distributed under the education enhancement program for students with disabilities under Subchapter J, Chapter 29. This subsection expires August 31, 2023.

No equivalent provision.

SECTION 3. Section 25.087(d), Education Code, as amended by S.B. 1152, Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

(d) A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), ~~(b-7)~~, or (c) may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), ~~(b-7)~~, or (c) shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

No equivalent provision.

SECTION 4. Effective August 31, 2023, Section 25.087(d), Education Code, as amended by S.B. 1152, Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

(d) A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), or (c) may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), or (c) shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

No equivalent provision.

SECTION 5. Section 25.087, Education Code, as amended by Sections 2 and 3 of this Act, and Sections 29.351-29.359, Education Code, as added by this Act, apply beginning with the 2018-2019 school year.

SECTION 10. (a) Except as otherwise provided by this Act:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect December 1, 2017.

SECTION 6. Except as otherwise provided by this Act:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day

(b) Chapter 230, Insurance Code, as added by this Act, takes effect September 1, 2018.

of the legislative session.