LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATURE 4th CALLED SESSION 2023

November 9, 2023

TO: Honorable Brandon Creighton, Chair, Senate Committee on Education

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **SB1** by Creighton (Relating to the establishment of an education savings account program.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1, As Introduced: a negative impact of ($500,000,000) through the biennium ending August 31, 2025.

The bill would establish an Education Savings Account and would limit the program to funding available for this purpose. Pursuant to General Appropriations Act, Article IX, Section 18.78 (e), Eighty-eighth Legislature, Regular Session, the total biennial appropriation that is contingent on enactment of legislation relating to parental rights and the establishment of an education savings account, by the Eighty-eighth Legislature, is $500,000,000 in General Revenue Funds for the 2024-25 biennium. Therefore, this analysis assumes that any costs related to implementing the provisions of the bill would have a 2024-25 biennial cost of $500,000,000 in General Revenue Funds.

The bill would establish an Education Savings Account program to be administered by the Comptroller. The program fund would be an account in the General Revenue Fund. This account would consist of transfers, appropriations, gifts, grants, and donations, and any other money available for the purpose of the program.

The bill would define "certified educational assistance organization" (CEAO) and set eligibility requirements for the selection of such organizations by the Comptroller. The Comptroller could certify not more than five such organizations to support the administration of the program. The bill would require the Comptroller to require that each CEAO produce an annual report regarding program participation and performance.

The bill would require the Comptroller to make payments from the program fund account to each CEAO for deposit into the individual accounts. The Comptroller would disburse funds to the CEAOs to cover their cost of administering the program in an amount not to exceed five percent of fiscal year appropriations for the program.

The bill would set program eligibility requirements for children and educational services providers and provide a list of approved education-related expenses on which program funds could be spent. A child would be eligible to participate in the program if the child were eligible to attend public school or enroll in a public prekindergarten program and they were either enrolled in a public school in this state for at least 90 percent of the preceding school year; were enrolling in prekindergarten or kindergarten for the first time; attended a private school full-time for the preceding school year; or were home-schooled for the preceding school year.

The bill would disallow children of serving statewide elected officials, state senators, and state representatives from participating in the program.

The bill would establish a lottery system to process applications to the program should the demand exceed the amount appropriated for the program. The lottery system would prioritize not more than 40 percent of available positions for applicants who attended public school or are entering prekindergarten or kindergarten for the first time and whose household annual incomes at or below 185 percent of the federal poverty guidelines; not more than 30 percent of available positions for applicants who attended public school or are entering prekindergarten or kindergarten for the first time and whose household annual incomes are greater than 185 percent and below 500 percent of the federal poverty guidelines; not more than 20 percent of available positions for applicants with a disability who attended public school or are entering prekindergarten or kindergarten for the first time and who were not accepted under the prior two prioritizations; and remaining available positions for all other eligible applicants not accepted under prior prioritizations.

The total annual payments to each participating child's account would be $8,000, or $1,000 for home-schooled participants. In addition, school districts with fewer than 5,000 enrolled students experiencing a decline in enrollment as a result of the program would be entitled to receive $10,000 per participating child residing in the district for three years.

The fiscal impact of the bill would be subject to appropriation. This analysis assumes that demand for the program would exceed the number of participants that could be supported by the appropriation; therefore, the number of participants would be limited by appropriation.

This analysis assumes that the Comptroller would require 11.0 FTEs to administer the program and implement the provisions that would be required by the bill. This includes 1.0 Project Manager V and 1.0 Administrative Assistant V to oversee implementation and administration, 1.0 Contract Administrative Manager II to develop and manage contracts with the auditor and software development team, 2.0 Accountants V to review fund transfers, process requests for distributions, and reconcile account activity, and 2.0 Program Specialists (III and IV) to compile listings of service providers and vendors and review requests for additional listings.

Additionally, this analysis assumes 4.0 Attorneys V would be needed to defend against anticipated litigation challenging the legality of the program, draft rules for the program and review comments, support fraud investigations and prosecutions, and handle administrative appeals.

The Comptroller assumes there would also be administrative costs associated with outside counsel to provide legal support in development and administration of the program, outside audit services to perform audits, funds for marketing and advertising, a specialist to assist with development of the report required annually, software development costs, and a toll-free line to provide customer support.

This analysis assumes the total administrative fiscal impact to the Comptroller would be $3.1 million in fiscal year 2024, and $3.4 million in subsequent fiscal years.

To implement the provisions of the bill Texas Education Agency (TEA) assumes that they would need to develop a new Education Savings Account Application to collect and verify data and to interface and exchange data with the Comptroller. The agency assumes that the cost to develop and implement the requirements in the new ESA application would be $673,833 in fiscal year 2024 and $2,021,499 in fiscal year 2025. The agency assumes that costs associated with the DCS program would be a one-time cost of $11,532 in fiscal year 2024 and ongoing costs of $108,756 in subsequent fiscal years. Additionally, one Programmer V and one System Analyst V would be required to provide ongoing maintenance and support. The agency assumes that the cost to develop and implement the requirements in the Texas Student Data System would be $20,606 in fiscal year 2024 and $61,818 in fiscal year 2025.

TEA assumes there would be a fiscal impact to the state to compile, analyze and share data as required in the bill. TEA would be responsible for providing a list of organizations recognized by the agency to accommodate private schools and coordinate with the Comptroller regarding sharing of necessary information and support for the Texas Private School Accreditation Commission. The agency assumes that they would need 1.0 Director III, 1.0 Director I, 1.0 Data Analyst V, and 1.0 Data Analyst IV position to complete this work.

This analysis assumes that the total cost of additional TEA FTEs would be $814,467 in fiscal year 2024 and $838,057 in subsequent years.

This analysis assumes that there would be a savings to the Foundation School Program (FSP) starting in the fiscal year following the effective date of the program as a result of students leaving the public school system for the ESA program, estimated to equal an average of $9,727 per student each year. The savings would be dependent on the number of eligible public school students that would participate in the program and the extent to which funds would be available to serve them.

Local Government Impact

This analysis assumes Local Education Agencies (LEAs) may experience a decrease in FSP funding as a result of this bill due to students leaving public schools to participate in the program. However, the number of students leaving public schools would depend on the amount that would be appropriated for the program, capacity at private schools, and the extent to which public school students would choose to participate. Additionally, LEAs with fewer than 5,000 enrolled students experiencing a net decline in enrollment as a result of the program would be entitled to receive $10,000 per participating child residing in the district for three years, out of funding appropriated for the ESA program.

Source Agencies: 304 Comptroller of Public Accounts, 701 Texas Education Agency

LBB Staff: JMc, CMA, ASA, MJe