

BILL ANALYSIS

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S.B. 2539
By: Creighton et al.
Subcommittee on Higher Education
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current formula for state funding of community colleges, which hasn't been adjusted in nearly 50 years, is primarily driven by the amount of contact hours community colleges offer. Additionally, the current formula does not reflect the differences between the type of students enrolled as there is no consideration of the extra costs associated with educating adult learners, low-income students, and academically unprepared students. A majority of community college funding comes through locally generated property tax and tuition revenue. However, there is wide variation in both property tax rates and property values across all 50 community college districts.

While enrollment in dual credit courses has accelerated rapidly, enrollments continue to lag for students who are economically disadvantaged. In addition, tuition charged to high school students for these courses varies greatly between different colleges and different programs at the same college. A new funding model can provide clear incentives for colleges to increase enrollment in high-cost or high demand fields, develop new capacity to offer programs in those fields, and work collaboratively with private business to meet regional and state workforce needs.

S.B. 2539 creates a new community college outcomes funding model that recognizes and rewards community colleges' vital role in awarding associate degrees, certificates, and other credentials of value. The new model will fully recognize non-credit workforce education programs that have become increasingly important to meet workforce demands and that are critical to mid-career employees' upskilling and reskilling. The new formulas will also include additional funding for students who need extra support for students who are economically disadvantaged, academically disadvantaged, or returning adult students. Lastly, this proposal ensures community colleges across Texas can access foundational levels of funding for instruction and operations – this new provision is especially important for small and rural colleges.

As proposed, S.B. 2539 amends current law relating to the administration, coordination, and support of public higher education, including the public junior college state finance program and an Advanced Career and Education (ACE) scholarship program for students enrolled in dual credit courses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 2 (Section 28.0095, Education Code) and SECTION 18 (Sections 130A.005, Sec.130A.006, 130A.053, 130A.054, and 130A.055, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2 (Section 28.0095, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of higher education in SECTION 18 (Section 130A.056, Education Code) of this bill.

Rulemaking authority previously granted to the Texas Higher Education Coordinating Board is modified in SECTION 17 (Section 130.355, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 28.009(b-2), Education Code, as follows:

(b-2) Requires that any agreement, including a memorandum of understanding or articulation agreement, between a school district and public institution of higher education to provide a dual credit program described by Subsection (b-1):

(1)-(9) makes no changes to these subdivisions;

(10) ensure the accurate and timely exchange of information necessary for an eligible student to receive a scholarship under Section 28.0095; and

(11)-(12) Redesignates existing Subdivisions (10) and (11) as Subdivisions (11) and (12).

SECTION 2. Amends Subchapter A, Chapter 28, Education Code, by adding Section 28.0095, as follows:

Sec. 28.0095. ADVANCED CAREER AND EDUCATION (ACE) SCHOLARSHIP PROGRAM. (a) Defines "coordinating board," "dual credit course," and "institution of higher education."

(b) Requires the Texas Education Agency (TEA) and the Texas Higher Education Coordinating Board (THECB) to jointly establish the Advanced Career and Education (ACE) scholarship program (program) to award scholarships to eligible students enrolled in dual credit courses at participating institutions of higher education.

(c) Provides that a student is eligible to receive a scholarship under the program if the student:

(1) is enrolled:

(A) in high school in a school district; and

(B) in a dual credit course at a participating institution of higher education; and

(2) was educationally disadvantaged at any time during the four school years preceding the student's enrollment in the dual credit course described by Subdivision (1)(B).

(d) Provides that an institution of higher education is eligible to participate in the program only if the institution charges for each dual credit course offered by the institution an amount of tuition that does not exceed the amount prescribed by THECB rule for purposes of this section.

(e) Provides that the amount of a scholarship under the program is equal to the amount of tuition set by THECB rule as described by Subsection (d) for each dual credit course in which an eligible student is enrolled.

(f) Requires each school district to:

(1) on a high school student's enrollment in a dual credit course, determine whether the student meets the criteria for a scholarship under the program under Subsection (c)(2); and

(2) notify the institution of higher education that offers the dual credit course in which the student is enrolled of the district's determination under Subdivision (1).

(g) Authorizes a school district to make the determination under Subsection (f)(1) based on the district's records, TEA's records, or any other method authorized by commissioner of education (commissioner) rule. Requires the district, if the district bases the determination on a method other than TEA's records, to report the method used and the data on which the method is based to TEA for purposes of verification.

(h) Requires a participating institution of higher education, on receipt of notice under Subsection (f)(2), to certify to TEA and THECB the student's eligibility for a scholarship under the program.

(i) Requires TEA, from money appropriated for the Foundation School Program, to transfer an amount equal to the total amount of scholarships for which students are eligible under this section to THECB for distribution to the participating institutions of higher education in proportion to the number of eligible students enrolled in a dual credit course at the institution.

(j) Requires the commissioner and the commissioner of higher education to coordinate as necessary to:

(1) confirm an eligible student's enrollment in a participating institution of higher education; and

(2) obtain or share data necessary to verify a student's eligibility under Subsection (c)(2).

(k) Requires the commissioner and THECB to adopt rules as necessary to implement this section.

SECTION 3. Amends Section 28.010(a), Education Code, as follows:

(a) Requires a school district, each school year, to notify the parent of each district student enrolled in grade nine or above of:

(1) the availability of:

(A) makes no changes to this paragraph;

(B) makes a nonsubstantive change to this paragraph;

(C) makes no changes to this paragraph;

(D) scholarships for dual credit courses under Section 28.0095; and

(2) the qualifications for:

(A) creates this subdivision from existing text; or

(B) receiving a scholarship described by Subdivision (1)(D).

SECTION 4. Amends Section 61.003(2), Education Code, to redefine "public junior college."

SECTION 5. Amends Section 61.0571, Education Code, by adding Subsections (c), (d), (e), and (f), as follows:

(c) Authorizes THECB to provide administrative support and services to institutions of higher education as necessary to implement Chapter 61 (Texas Higher Education Coordinating Board), Chapter 130 (Junior College District), or Chapter 130A.

(d) Authorizes THECB to establish an institutional collaboration center within THECB to support the implementation of Chapter 130A and the efficient and effective operations of institutions of higher education.

(e) Authorizes THECB, from money appropriated or otherwise available for the purpose, to procure goods and services for the direct benefit of an institution of higher education and enter into an interagency contract under Chapter 771 (Interagency Cooperation Act), Government Code, with the institution to reimburse THECB for the cost of the goods and services.

(f) Authorizes THECB to accept gifts, grants, or donations from any public or private source to pay for goods or services procured for the direct benefit of an institution of higher education under Subsection (e).

SECTION 6. Amends Section 61.059, Education Code, by adding Subsection (b-3), as follows:

(b-3) Requires THECB, in carrying out its duties under Section 61.059 (Appropriations) in regard to formulas used for appropriations recommendations for public junior colleges, to ensure that the formulas are devised in accordance with Chapter 130A.

SECTION 7. Amends Section 61.063, Education Code, as follows:

Sec. 61.063. New heading: LISTING OF PUBLIC JUNIOR COLLEGES; ELIGIBILITY FOR STATE APPROPRIATIONS. (a) Requires the commissioner of higher education to file with the Comptroller of Public Accounts of the State of Texas (comptroller) on or before September 1 of each year a list of each public junior college in this state that has certified to THECB under Section 130.003 (State Appropriation for Public Junior Colleges) that the college is in compliance with the requirements of Subsection (b) of that section, rather than file on or before October 1 of each year a list of the public junior colleges in this state. Makes a nonsubstantive change.

(b) Provides that only a public junior college included on the list under Subsection (a) is eligible for and is authorized to receive money appropriated, rather than requires only those colleges which are so certified to be eligible for and are authorized to receive any appropriation made, by the legislature to public junior colleges.

SECTION 8. Amends Sections 130.003(a), (b), (e), and (f), Education Code, as follows:

(a) Requires that the sum be allocated in accordance with Chapter 130A, rather than on the basis of contact hours within categories developed, reviewed, and updated by THECB.

(b) Requires a public junior college, to be eligible for and to receive money appropriated under Subsection (a), to certify to THECB, in the manner prescribed by THECB rule, that the college:

(1) offers a minimum of 24 semester hours of vocational and/or terminal courses;

(2) collects from each full-time and part-time student enrolled, tuition and other fees in the amounts required by law or in the amounts set by the governing board of the junior college district as authorized by Title 3 (Higher Education);

(3) grants, when properly applied for, the scholarships and tuition exemptions provided for in this code;

(4) for a public junior college established on or after September 1, 1986, levies and collects ad valorem taxes as provided by law for the operation and maintenance of the college; and

(5) has complied with all laws and THECB rules for the establishment and operation of a public junior college.

Deletes existing text requiring a public junior college, to be eligible for and to receive a proportionate share of the appropriation, to:

(1) be certified as a public junior college as prescribed in Section 61.063;

(3) have complied with all existing laws, rules, and regulations governing the establishment and maintenance of public junior colleges;

(4) collect, from each full-time and part-time student enrolled, matriculation and other session fees in the amounts required by law or in the amounts set by the governing board of the junior college district as authorized by this title.

Makes nonsubstantive changes.

(e) Requires that the primary purpose of each public junior college be to provide certain programs, including courses in the core curriculum and field of study curriculum, as those terms are defined by Section 61.821 (Definitions). Deletes existing text requiring that the purpose of each public community college be to provide certain programs, including freshman and sophomore courses in arts and sciences. Makes nonsubstantive changes.

(f) Provides that this section does not affect the application of Section 54.231 (Resident of Bordering State or Nation or Participant in Student Exchange Program: Tuition), rather than alter, amend, or repeal Section 54.060 (Resident of Bordering State or Nation or Participant in Student Exchange Program: Tuition) of this code.

SECTION 9. Amends Section 130.0033(c), Education Code, as follows:

(c) Provides that charging tuition at a reduced rate under Section 130.0033 (Pilot Project: Reduced Tuition for Certain Courses) does not affect the right of the public junior college to an allocation, rather than a proportionate share, of state appropriations under Section 130.003 (State Appropriation for Public Junior Colleges) for the contact hours attributable to students paying tuition at the reduced rate.

SECTION 10. Amends Section 130.0034(a), Education Code, as follows:

(a) Authorizes the governing board of a junior college, rather than the governing board of a public junior college, to charge a student a higher rate of tuition than the tuition that would otherwise be charged for a course in which the student enrolls if certain criteria are met. Makes a conforming change.

SECTION 11. Amends Section 130.0051(a), Education Code, as follows:

(a) Authorizes the board of trustees of a junior college district by resolution to change the name of the district or a college within the district, rather than change the name by eliminating the words "community" or "junior" from the name of the district or college, unless the change would cause the district or college to have the same or substantially the same name as an existing district, college, or other public or private institution of higher education in this state.

SECTION 12. Amends Section 130.008(c), Education Code, to make a conforming change.

SECTION 13. Amends Section 130.085(b), Education Code, to make nonsubstantive and conforming changes.

SECTION 14. Amends Section 130.090(c), Education Code, to make a conforming change.

SECTION 15. Amends Sections 130.310(a) and (b), Education Code, to make conforming changes.

SECTION 16. Amends Section 130.352, Education Code, as follows:

Sec. 130.352. FORMULA FUNDING FOR WORKFORCE CONTINUING EDUCATION COURSES. Makes a conforming change to this section.

SECTION 17. Amends Section 130.355, Education Code, as follows:

Sec. 130.355. RULES. Deletes existing text requiring THECB, in adopting those rules, to use the negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code.

SECTION 18. Amends Subtitle G, Title 3, Education Code, by adding Chapter 130A, as follows:

CHAPTER 130A. PUBLIC JUNIOR COLLEGE STATE FINANCE PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 130A.001. LEGISLATIVE INTENT. Provides that it is the intent of the legislature that, as public junior colleges are locally governed institutions, providing foundational funding for instruction and operations of public junior colleges should be primarily a local responsibility, supported through a combination of tuition, fees, and local property taxes, with state funding focused primarily on rewarding outcomes aligned with regional and state education and workforce needs.

Sec. 130A.002. PURPOSE. Provides that the purpose of the public junior college state finance program established under this chapter is to provide a modern and dynamic finance system that ensures that each public junior college has access to adequate state appropriations and local resources to support the education and training of the workforce of the future.

Sec. 130A.003. DEFINITIONS. Defines "commissioner," "coordinating board," "program," and "public junior college."

Sec. 130A.004. PROGRAM COMPONENTS. Provides that the public junior college state finance program (finance program) consists of:

(1) a base tier of state and local funding determined in accordance with Subchapter B that ensures each public junior college has access to a consistent level of base funding for instruction and operations; and

(2) a performance tier of state funding determined in accordance with Subchapter C that constitutes the majority of state funding and is distributed based on measurable outcomes aligned with:

(A) regional and state workforce needs; and

(B) state goals aligned to the state's long-range master plan for higher education developed under Section 61.051 (Coordination of Institutions of Public Higher Education).

Sec. 130A.005. ADMINISTRATION OF PROGRAM. (a) Authorizes THECB to adopt rules, require reporting, and take other actions consistent with Chapter 61, Chapter 130, and this chapter as necessary to implement and administer the finance program.

(b) Authorizes THECB to adopt rules under this section in consultation with public junior colleges.

(c) Provides that THECB, notwithstanding Section 61.033 (Negotiated Rulemaking; Alternative Dispute Resolution), is not required to use negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules under this section.

Sec. 130A.006. **REQUIRED REPORTING.** Requires THECB by rule to require each junior college district to report to THECB through the Education Data System, Community College Annual Reporting and Analysis Tool, or any successor program, data necessary to:

(1) calculate funding under this chapter;

(2) provide timely data and analyses to inform management decisions by the governing body of each junior college district; or

(3) administer or evaluate the effectiveness of the program.

Sec. 130A.007. **COMMISSIONER AUTHORITY TO RESOLVE DATA REPORTING ERRORS AND UNINTENDED CONSEQUENCES FROM FUNDING FORMULAS.**

(a) Authorizes the commissioner of higher education to review the accuracy of contact hour and semester credit hour data reported to THECB by junior college districts.

(b) Authorizes the commissioner of higher education to adjust:

(1) the distribution of funding under this chapter for a state fiscal year as necessary to correct errors in data reporting identified through the commissioner of higher education's review under Subsection (a); and

(2) a junior college district's funding under this chapter if the funding formulas used to determine the district's entitlement would result in an unanticipated loss or gain for the district that would have a substantial negative impact on the district's operations.

(c) Requires the commissioner of higher education, before making an adjustment under this section, to request and receive written approval from the Legislative Budget Board (LBB) and the office of the governor. Provides that a request to make an adjustment is considered approved unless LBB or the office of the governor issues a written disapproval within 60 business days after the date on which the request is received.

(d) Requires the commissioner of higher education, if the commissioner of higher education makes an adjustment under Subsection (b), to provide to the legislature an explanation regarding the changes necessary to resolve the data reporting errors or the unintended consequences, as applicable.

Sec. 130A.008. **CENSUS DATE ELIGIBILITY.** Authorizes a junior college district to report a student in attendance on the district's approved course census date for the purpose of funding under this chapter.

Sec. 130A.009. **RECOVERY OF OVERALLOCATED FUNDS.** (a) Requires THECB, if a junior college district has received an overallocation of state funds, to recover from the district an amount equal to the overallocation by withholding from subsequent allocations of state funds for the current or subsequent academic year or by requesting and obtaining a refund from the district.

(b) Authorizes THECB, notwithstanding Subsection (a), to recover an overallocation of state funds over a period not to exceed the subsequent five academic years if the commissioner of higher education determines that the overallocation was the result of exceptional circumstances reasonably caused by statutory changes to Chapter 130 or this chapter and related reporting requirements.

(c) Requires THECB, if a junior college district fails to comply with a request for a refund under Subsection (a), to certify to the comptroller that the amount constitutes a debt for purposes of Section 403.055 (Payments to Debtors or Delinquents Prohibited), Government Code. Requires THECB to provide to the comptroller the amount of the overallocation and any other information required by the comptroller. Authorizes the comptroller to certify the amount of the debt to the attorney general for collection. Provides that the junior college district's governmental immunity is waived to the extent necessary to collect the debt owed under this section.

(d) Authorizes THECB, subject to Subsection (e), to review a junior college district as necessary to determine if the district qualifies for each amount received by the district under this chapter. Authorizes THECB, if THECB determines that a junior college district received an amount to which the district was not entitled, to establish a corrective action plan or withhold the applicable amount of funding from the district.

(e) Prohibits THECB from reviewing junior college district expenditures that occurred seven or more years before the review.

Sec. 130A.010. GIFTS, GRANTS, AND DONATIONS. Authorizes THECB, except as provided by other law, to solicit and accept gifts, grants, or donations of personal property from any public or private source to implement or administer this chapter.

SUBCHAPTER B. STATE FUNDING: BASE TIER

Sec. 130A.051. BASE TIER FORMULA. Provides that the amount of base tier state funding to which a junior college district is entitled for instruction and operations under this subchapter for a state fiscal year is an amount equal to the amount, if any, by which the district's guaranteed instruction and operations funding, as determined under Section 130A.052, exceeds the district's local share of base tier funding, as determined under Section 130A.056.

Sec. 130A.052. GUARANTEED INSTRUCTION AND OPERATIONS FUNDING FORMULA. Provides that the amount of a junior college district's guaranteed instruction and operations funding for a state fiscal year is equal to the sum of:

(1) the product of:

(A) the district's basic allotment under Section 130A.053; and

(B) the number of weighted full-time equivalent students enrolled at the district determined in accordance with Section 130A.054; and

(2) the district's contact hour funding under Section 130A.055.

Sec. 130A.053. BASIC ALLOTMENT. (a) Provides that the basic allotment for a junior college district for a state fiscal year is an amount per weighted full-time equivalent student set by the General Appropriations Act or other legislative appropriation.

(b) Requires THECB by rule to establish an equitable adjustment to the basic allotment for each junior college district with a total enrollment of fewer than 5,000 full-time equivalent students.

(c) Requires a junior college district that receives an adjustment under Subsection (b), not later than November 1 of each even-numbered year, to submit to the commissioner of higher education a report on the district's participation in institutional partnerships and shared services available under Section 61.0571 (Board Assistance to Institutions) or other partnerships to reduce costs and improve operational efficiency.

Sec. 130A.054. **WEIGHTED FULL-TIME EQUIVALENT STUDENT.** (a) Requires THECB by rule to establish student weights for purposes of this chapter that reflect the higher cost of educating certain students.

(b) Requires that the student weights be established in a manner that results in appropriate funding to a junior college district for the education of a student enrolled in an eligible credit or non-credit program who is:

- (1) 25 years of age or older;
- (2) economically disadvantaged, as defined by THECB rule; or
- (3) academically disadvantaged, as defined by THECB rule.

(c) Provides that the number of weighted full-time equivalent students enrolled at a junior college district for purposes of this subchapter is equal to the product of:

- (1) the number of full-time equivalent students enrolled in the district; and
- (2) the sum of the weights assigned to students enrolled in the district.

Sec. 130A.055. **CONTACT HOUR FUNDING.** (a) Requires THECB by rule to establish the amount of funding to be provided to a junior college district under this subchapter per contact hour.

(b) Requires that the amount of funding per contact hour be weighted by discipline to reflect the cost of providing the applicable course.

Sec. 130A.056. **LOCAL SHARE.** (a) Provides that a junior college district's local share of base tier funding is an amount equal to the sum of the amounts of revenue that would be generated by:

- (1) imposing a maintenance and operations ad valorem tax in the district at a rate of \$0.05; and
- (2) assessing an amount of tuition and fees to each student enrolled in the district equal to the statewide average amount of tuition and fees assessed by junior college districts to an equivalent student, determined as provided by THECB rule.

(b) Authorizes the commissioner of higher education, notwithstanding Subsection (a), by rule to provide that a junior college district that imposes a maintenance and operations ad valorem tax at a rate of less than \$0.05 is authorized to substitute the amount of revenue generated by the district at that tax rate for the amount of revenue required under Subsection (a)(1).

SUBCHAPTER C. STATE FUNDING: PERFORMANCE TIER

Sec. 130A.101. **PERFORMANCE TIER.** (a) Provides that a junior college district is entitled to performance tier funding for a state fiscal biennium in an amount equal to the

sum of the amounts determined under Subsection (b) for each measurable outcome described by Subsection (c).

(b) Provides that the amount of performance tier funding for each measurable outcome described by Subsection (c) is equal to the product of:

(1) the number of times that outcome was achieved by the junior college district during the preceding state fiscal biennium;

(2) for an outcome described by Subsection (c)(1) or (2), the sum of the applicable student weights established by THECB rule under Section 130A.054 for the students who achieved the outcome at the junior college district during the preceding state fiscal biennium; and

(3) the amount set by the General Appropriations Act or other legislative appropriation for the outcome.

(c) Provides that the measurable outcomes considered for purposes of performance tier funding are:

(1) the number of credentials of value awarded, including degrees, certificates, and other credentials from credit and non-credit programs that equip students for continued learning and greater earnings in the state economy, with an additional weight for credentials in a high-demand field, as defined by THECB rule;

(2) the number of students who earn at least 15 semester credit hours or the equivalent at the junior college district and subsequently transfer to a general academic teaching institution, as that term is defined by Section 61.003 (Definitions); and

(3) the number of students who complete a sequence of at least 15 semester credit hours or the equivalent for dual credit courses that apply toward academic and workforce program requirements at the postsecondary level.

SECTION 19. Repealer: Section 61.0593 (Student Success-Based Funding Recommendations), Education Code.

Repealer: Section 130.003(d) (relating to providing that only those colleges that have been certified are required to be eligible for and are authorized to receive any appropriation made by the legislature to public junior colleges), Education Code.

SECTION 20. Provides that Sections 28.009(b-2) and 28.010(a), Education Code, as amended by this Act, and Section 28.0095, Education Code, as added by this Act, apply beginning with the 2023–2024 school year.

SECTION 21. Authorizes THECB to identify rules required by the passage of Chapter 130A, Education Code, as added by this Act, that are required to be adopted on an emergency basis for purposes of the state fiscal year beginning September 1, 2023, and to use the procedures established under Section 2001.034 (Emergency Rulemaking), Government Code, for adopting those rules. Provides that THECB is not required to make the finding described by Section 2001.034(a) (relating to authorizing a state agency to adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the agency meets certain criteria), Government Code, to adopt emergency rules under this section.

SECTION 22. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2023.

(b) Effective date, Sections 28.009(b-2) and 28.010(a), Education Code, as amended by this Act, and Section 28.0095, Education Code, as added by this Act: upon passage or September 1, 2023.