LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 5, 2023

TO: Honorable Brad Buckley, Chair, House Committee on Public Education

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **SB8** by Creighton (Relating to public education, including parental rights and public school responsibilities regarding instructional materials and the establishment of an education savings account program.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB8, As Engrossed : a negative impact of ($588,298,003) through the biennium ending August 31, 2025.

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

General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	**Probable Net Positive/(Negative) Impact to** ***General Revenue Related Funds***
2024	($4,611,445)
2025	($583,686,558)
2026	($879,865,399)
2027	($1,171,513,843)
2028	($1,463,665,257)

All Funds, Five-Year Impact:

Fiscal Year	**Probable Savings/(Cost) from** ***General Revenue Fund*** **1**	**Probable Savings/(Cost) from** ***Foundation School Fund*** **193**	***Change in Number of State Employees from FY 2023***
2024	($4,611,445)	$0	18.5
2025	($583,686,558)	$0	18.5
2026	($1,111,665,399)	$231,800,000	18.5
2027	($1,454,309,843)	$282,796,000	18.5
2028	($1,798,477,177)	$334,811,920	18.5

Fiscal Analysis

The bill would establish that the rights granted to parents under the laws in Texas may not be infringed on by any public school or state governmental entity unless necessary to further a compelling state interest.

The bill would require a board of trustees at a school district to develop a parental engagement policy and a policy that would provide for at least two opportunities for in-person parent teacher conferences each school year.

The bill would repeal the expiration of TEC 28.004(i-2) which requires a school district to obtain written parental consent before providing a student with human sexuality instruction.

The bill would establish the education savings account program. 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.

This legislation would create or recreate a dedicated account in the General Revenue Fund, create or recreate a fund either in, with, or outside of the Treasury, or dedicate or rededicate a revenue source. The Legislature consolidated funds into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has enacted a funds consolidation bill. The dedication included in this bill, unless created by a constitutional amendment, would be subject to funds consolidation review by the current Legislature.

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 one or more such organizations to support the administration of 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.

The total annual payments to each participating child's account would be $8,000. Money remaining in the child's account could be carried into the next fiscal year. Any money remaining in a child's account after it is closed would be deposited into the program fund account. A school district with student enrollment of less than 20,000 would be entitled to receive $10,000 for the first five school years a child residing in the district participates in the program. The bill would allow the Comptroller to deduct an amount not to exceed three percent of the total amount of money appropriated for the purposes of Subchapter J, Education Savings Account Program, to cover the cost of administering the program.

The bill would require the Comptroller to make quarterly payments from the program fund account to each CEAO for deposit into the individual accounts. The Comptroller would disburse funds each quarter 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 establish procedures for auditing, account suspension, the referral of fraud to district attorneys, and acceptance of gifts, grants and donations.

The bill would require the Comptroller to to require that each CEAO produce an annual report regarding program participation and performance.

The bill would establish additional rights for parents including to select educational setting and request instructional materials review. The bill would establish that a parent is entitled to prompt notification if a school district employee suspects that an offense has been committed against the parent's child; would add to the requirements related to written parental consent; and permit a parent to request that the commissioner appoint a hearing examiner if a grievance filed with the board of trustees of a school district is not resolved to the parent's satisfaction.

The bill would prohibit a school district, charter school, or their employees from providing or allowing a third party to provide instruction, guidance, activities, or programming regarding sexual orientation or gender identity to students enrolled in prekindergarten through twelfth grade.

It would require TEA to adopt rules developing a process by which a school district may conduct a review of instructional materials used by a classroom teacher in a foundational curriculum course.

The bill would amend the Texas Education Code which establishes a grievance appeal process to an independent hearing examiner and the State Board of Education for parents dissatisfied with school board decisions on parent grievances.

The bill would add the section, Local Review of Classroom Instructional Material, to require TEA to adopt rules developing a process by which a school district may conduct a review of instructional materials used by a classroom teacher in a foundation curriculum course. The review under this section could only be conducted using a rubric developed by TEA and approved by the State Board of Education (SBOE).

Methodology

The Comptroller assumes that twelve FTE's would be needed to administer the program. This includes one Project Manager V and one Administrative Assistant V to oversee implementation and administration, one Contract Admin Manager II to develop and manage contracts with the auditor and software development team, and one Accountant V to review fund transfers, process requests for distributions, and reconcile account activity, and 2 Program Specialists (III and IV) to compile listings of service providers and vendors and review requests for additional listings.

Because the Comptroller's Office would be required to create rules about program eligibility, approval/denial of tuition, anti-fraud provisions, and be involved in defending these cases, the agency indicates a need for six Attorneys V to manage an extended litigation process, as well as subsequent appeals resulting in further litigation. The agency estimates that the cost of the FTEs and other associated administrative costs would be $1,753,000 in fiscal year 2024, $1,815,000 in fiscal year 2025, and $1,935,000 annually for fiscal years 2026-28.

TEA assumes there would be costs to the state to pay for the development and execution of a process that supports the Local Review of Classroom Instructional Material. The agency assumes the total cost of Local Review of Classroom Instructional Materials would be $10,100,499 per year for fiscal years 2025-28 which was calculated by multiplying the total teachers receiving audits by the estimated price per audit.

In addition to this cost, it is assumed some districts may seek a local review for all the classrooms in their district. It is assumed 30 districts would receive this review each year at a cost of $20,000 per review and 30 districts would receive this review each year at a cost of $45,000 per review. This cost variance is due to the variance in size of districts. This results in an additional $1,950,000 each year from fiscal years 2024-28. In total, the agency assumes this section would cost $1,950,000 in fiscal year 2024 and then $12,050,499 each year after that from fiscal year 2025-28.

TEA assumes that 6.5 FTEs would be required to implement the provisions of the bill at a cost of $782,642 in fiscal year 2024 and $787,261 in subsequent fiscal years.

The bill would establish the Education Savings Grant Program to be administered by the Comptroller. To be eligible to participate in the program, students would have to be of school age and have attended any public school for 90 percent of the preceding school year; be enrolling in prekindergarten or kindergarten for the first time; or have attended private school on a full-time basis for the preceding school year and be a member of a household with a total annual income at or below 200 percent of the federal poverty level. Not more than 10 percent of program participants may establish eligibility under the latter provision. The bill would prohibit children of state legislators from establishing eligibility.

TEA assumes there are 39,000 students in each pre-k and kindergarten cohort who attend private school under current law. This analysis assumes 50.0 percent of these students would participate in the program and receive $8,000 per year. Additionally, this analysis assumes 43.0 percent of these students would reside in a district with less than 20,000 enrolled students, resulting in an additional $10,000 for the school district in which the student resides. The benefit would last for five years and TEA assumes the payment would be received by districts in the following fiscal year.

This analysis assumes that the number of students who would be leaving public schools to participate in the program would be limited by the capacity within private schools. TEA assumes there are 250,000 students currently enrolled in private schools and that private schools could reasonably accept an additional 10 percent, or 25,000, students in fiscal year 2025. TEA also assumes the capacity would increase by 2 percent in fiscal years 2026-28. Thus, this analysis assumes that 25,000 students would be leaving public schools to participate in the program in fiscal year 2025, 30,500 in fiscal year 2026, 36,100 in fiscal year 2027, and 41,832 in fiscal year 2028. These students would each receive $8,000 per year. Additionally, this analysis assumes 43.0 percent of these students would reside in a district with less than 20,000 enrolled students, resulting in an additional $10,000 for the school district in which the student resides. The benefit lasts for five years and TEA assumes the payment would be received by districts in the following fiscal year. Additionally, these students would generate a savings under the FSP of $9,272 per student.

This analysis assumes that the number of students currently enrolled in private school that would qualify for the program would be limited by the 10 percent cap. The total estimated cost for providing grants under the program is estimated to be $568.9 million in fiscal year 2025, $791.1 million in fiscal year 2026, increasing to $1,238.5 million in fiscal year 2028. The savings to the FSP is estimated to be $231.8 million in fiscal year 2026, $282.8 million in fiscal year 2027, and $334.8 million in fiscal year 2028. This analysis assumes there would be sufficient funds available for the purpose of funding the students participating in the program. To the extent that appropriations, grants, and transfers to the fund under the education savings account program were less, the cost of the program and the number of students it would have the capacity to serve would be less.

Although the bill would create a new civil cause of action, the Office of Court Administration anticipates that case volume driven by the bill could be absorbed by existing resources. No significant fiscal impact is expected.

The bill would require the comptroller to require that each CEAO produce an annual report regarding program participation and performance. This analysis assumes that the cost would be covered by the contract with the Comptroller and would thus be covered by resources provided to the Comptroller to administer the program.

Technology

TEA assumes the cost that would be associated with the development and implementation of the requirements in the Texas Student Data System (TSDS) application would be $47,053 in fiscal year 2024 and $141,159 in fiscal year 2025 for the initial development effort.

TEA assumes the cost that would be associated with Data Center Service (DCS) would include a onetime hardware/software cost of $75,000 and an annual ongoing cost of $3,750.

The Comptroller assumes that if a CEAO is not certified by the Comptroller's office, a programming expense would be incurred, but that the costs cannot be estimated at this time.

Local Government Impact

The bill would require school districts to cover the cost of conducting a hearing before an independent hearing examiner and other associated costs; TEA assumes that these costs cannot be determined at this time.

Local Education Agencies (LEAs) would lose FSP funding as a result of this bill due to students leaving public schools to participate in the program. However, LEAs with fewer than 20,000 enrolled students would receive grants of $10,000 per student residing in the school district participating in the program for the first five years.

There would be implications for school districts to potentially adjust systems for obtaining written parental request as required by this bill. There would likely be costs for districts to conduct reviews of instructional materials used by a classroom teacher upon request.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 701 Texas Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 783 University of Houston System Administration, 978 San Jacinto College

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