

## **BILL ANALYSIS**

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

### **BACKGROUND AND PURPOSE**

In the Texas Commission on Special Education Funding's Final Report to the 88th Legislature, the commission made the following recommendation: "to better serve students with disabilities and unique educational requirements, the legislature should consider Educational Savings Accounts as a form of education funding. Texas should provide additional avenues for families of students with disabilities to access education services." Moreover, recent polling conducted by the Barbara Jordan Public Policy Research and Survey Center at Texas Southern University has shown 63 percent of respondents supported education savings accounts for all parents. Accordingly, C.S.S.B. 2 seeks to address the recommendation of the commission and to answer that public demand by providing Texans with an education savings account program.

C.S.S.B. 2 creates an education savings account (ESA) program that would be administered and regulated by the office of the comptroller of public accounts, with assistance from the Texas Education Agency, and that would pay for a participating child's specified education-related expenses, such as tuition and fees at private schools, training for industry-based credentials, textbooks, fees for classes and assessments, uniforms, tutoring, transportation to and from education service providers or vendors of educational products, certain educational therapies, and the cost of certain meals at private schools. Applications would be prioritized for children with disabilities who are members of a household with a total annual income that is at or below 500 percent of the federal poverty guidelines and makes further program prioritization based on similar factors. Under the ESA program, funds are held in trust for the participating child by certified educational assistance organizations, certified by the comptroller, and parents participating in the program are required to submit a request to the organization to initiate payments for the approved education-related expenses. The bill mandates that audits of the program be conducted at least once a year by a private entity to review participant eligibility, monitor education service provider compliance, and report suspicious or improper use of program funds. If evidence emerges that ESA program money was used for expenses not allowed under the program, the comptroller is authorized to recover the money and is required to notify the appropriate local county or district attorney if the comptroller obtains evidence of fraudulent use of an account or money distributed under the program or any other violation of law.

### **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 comptroller of public accounts and the Texas Education Agency in SECTION 2 of this bill.

## **ANALYSIS**

C.S.S.B. 2 sets out provisions relating to the establishment of an education savings account program for the following purposes:

- to provide additional educational options to assist families in Texas in exercising the right to direct the educational needs of their children; and
- to achieve a general diffusion of knowledge.

### **Establishment of Program; Rules; Procedures**

C.S.S.B. 2 amends the Education Code to require the comptroller of public accounts to establish an education savings account program, applicable beginning with the 2026-2027 school year except as otherwise provided, to provide funding for approved education-related expenses of children participating in the program. The bill establishes that the program confers a state benefit to program participants in addition to a free public education.

C.S.S.B. 2 requires the comptroller to adopt rules and procedures as necessary to implement, administer, and enforce the bill's provisions regarding the program. The comptroller must adopt these rules not later than May 15, 2026.

C.S.S.B. 2 authorizes the comptroller to identify rules required by the passage of the bill's provisions establishing the program that must be adopted on an emergency basis for purposes of the 2026-2027 school year and to use procedures established under applicable provisions of the Administrative Procedure Act for adopting those rules. The comptroller is not required to make the finding required under those applicable provisions to adopt these emergency rules.

### **Definitions**

C.S.S.B. 2 defines the following terms for the purposes of the bill's provisions establishing the program:

- "account" as an education savings account established under the program;
- "certified educational assistance organization" as an organization certified by the comptroller under the bill's provisions to support the administration of the program;
- "child with a disability" as a child who is eligible to participate in a public school district's special education program under applicable state law;
- "higher education provider" as an institution of higher education or a private or independent institution of higher education, as those terms are defined by the Education Code for purposes of the Higher Education Coordinating Act of 1965;
- "parent" as a resident of Texas 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;
- "participating child" as a child enrolled in the program;
- "participating parent" as a parent of a participating child;
- "program" as the education savings account program established under the bill's provisions; and
- "program participant" as a participating child or a participating parent.

### **Amount of Appropriation; Limitation on Expenditures**

C.S.S.B. 2 requires the comptroller, in the comptroller's legislative appropriations request for each state fiscal biennium, to state the amount of money necessary for the biennium to provide the program payment amount specified under the bill's provisions for the following:

- each participating child;
- each child on the program waiting list maintained by the comptroller under the bill's provisions on the January 1 preceding the biennium; and

- each child who is a sibling of a participating child and is eligible for the program for the first time during that biennium.

The bill requires the comptroller to specify the amount necessary to provide such program payments for the first state fiscal year of the biennium and estimate the amount required for the second state fiscal year of the biennium. The bill establishes that, notwithstanding the amount stated in the comptroller's legislative appropriations request under the bill's provisions, the amount appropriated for purposes of the program for a state fiscal biennium must be established by the legislature by appropriation for that biennium, applicable beginning with the 2028-2029 state fiscal biennium.

C.S.S.B. 2, in a temporary provision set to expire September 1, 2027, for the 2026-2027 state fiscal biennium, sets a cap on the amount spent for purposes of the program at \$1 billion.

C.S.S.B. 2, in a temporary provision set to expire September 1, 2027, for the 2026-2027 school year, sets a cap on the total amount of money spent for purposes of participation in the program by children who are members of a household with a total annual income that is at or above 500 percent of the federal poverty guidelines at 20 percent of the amount of money appropriated from the program fund for that school year and requires the comptroller, in allocating money under the program in accordance with this provision, to ensure children who were enrolled in a public school district or open-enrollment charter school for at least 90 percent of the preceding school year are prioritized.

### **Program Fund**

C.S.S.B. 2 establishes a fund for the program as an account in the general revenue fund to be administered by the comptroller, provides that money in the fund may be used only for the purposes specified by the bill, and establishes that the fund is composed of the following:

- general revenue transferred to the fund;
- money appropriated to the fund;
- interest and other earnings attributable to the investment of money in the fund;
- gifts, grants, and donations received under the bill's provisions, as subsequently described, for expenses related to the administration of the program; and
- any other money available for the purposes of the program.

### **Promotion of Program**

C.S.S.B. 2 authorizes the comptroller or the comptroller's designee, notwithstanding any other law, to enter into contracts or agreements and engage in marketing, advertising, and other activities to promote, market, and advertise the development and use of the program. The comptroller may use money from the program fund to pay for those authorized activities.

### **Selection of Certified Educational Assistance Organizations**

C.S.S.B. 2 authorizes an organization to apply to the comptroller for certification as a certified educational assistance organization (CEAO) during an application period established by the comptroller.

C.S.S.B. 2 establishes that, to be eligible for certification, an organization must, as follows:

- have the ability to perform one or more of the duties and functions required of a CEAO under the bill's provisions regarding the program;
- be registered to do business in Texas; and
- be able to assist the comptroller in administering the program wholly or partly, including the ability to:
  - accept, process, and track applications for the program;
  - assist prospective applicants, applicants, and program participants with finding preapproved education service providers and vendors of educational products;

- accept and process payments for approved education-related expenses;
- verify that program funding is used only for approved education-related expenses;
- verify that a program participant is eligible to participate in the program;
- accept, track, review, and resolve inquiries and complaints received regarding the program; and
- establish and maintain a comptroller-approved website for the program.

C.S.S.B. 2 requires the comptroller to establish cybersecurity requirements for CEAOs, including the implementation of best practices developed by the state cybersecurity coordinator under the Information Resources Management Act.

C.S.S.B. 2 authorizes the comptroller to certify not more than five educational assistance organizations to support the administration of the program, including by:

- administering wholly or partly the program application process and the program expenditures process under the respective bill provisions regarding those processes; and
- assisting prospective applicants, applicants, and program participants with understanding approved education-related expenses and finding the preapproved education service providers and vendors of educational products.

C.S.S.B. 2 requires a CEAO designated to perform duties relating to assisting prospective applicants, applicants, and program participants with understanding the approved education-related expenses and finding the preapproved education service providers and vendors of educational products to do the following:

- communicate with parents interested in participating in the program and program participants through synchronous and asynchronous communication, prioritizing synchronous communication, regarding:
  - the educational options available in Texas;
  - how and when to apply to the program and preapproved education service providers;
  - how to manage an account, including requesting payments;
  - program requirements; and
  - any other information necessary to fulfill the CEAO's responsibilities under the bill's provisions; and
- raise awareness regarding the availability of the program.

C.S.S.B. 2 authorizes the comptroller to designate a CEAO to establish and maintain a comptroller-approved website for the program.

### **Eligible Child**

C.S.S.B. 2 establishes that a child is eligible to participate in the program and may, subject to available funding, enroll in the program for the semester following the semester in which the child's application is submitted under the applicable bill provisions if the following conditions are satisfied:

- the child's parent establishes that the child is a citizen or national of the United States or was lawfully admitted into the United States; and
- the child is eligible to attend a public school district or open-enrollment charter school or enroll in a district's or charter school's tuition-free prekindergarten program under applicable state law.

A child who establishes eligibility under these bill provisions may, subject to available funding and the applicable requirements of the bill, participate in the program until the earliest of the date on which the following occur:

- the child graduates from high school;
- the child is no longer eligible to attend a district or charter school or enroll in a district's or charter school's tuition-free prekindergarten program under applicable state law;

- the child enrolls in a district or charter school in a manner in which the child will be counted toward the district's or charter school's average daily attendance (ADA) for purposes of the allocation of funding under the foundation school program; or
- the child is declared ineligible for the program by the comptroller under the bill's provisions regarding the program.

## **Application to Program**

### Application by Parent

C.S.S.B. 2 authorizes a parent of an eligible child to apply to a CEAO designated by the comptroller to enroll the child in the program for the following semester, term, or school year, as determined by the comptroller. The bill requires the comptroller to establish deadlines by which an applicant must complete and submit an application form to participate in the program.

### Applicant Priority

C.S.S.B. 2 requires a CEAO, on receipt of more acceptable applications during an application period for admission than available positions in the program due to insufficient funding, to fill the available positions by lottery of applicants, at the direction of the comptroller, approving applicants as follows:

- in the following order:
  - siblings of participating children;
  - children to whom the following bulleted item does not apply; and
  - children who previously ceased participation in the program due to enrollment in a district or charter school; and
- within each of those described groups, in the following order, as applicable:
  - children with a disability who are members of a household with a total annual income that is at or below 500 percent of the federal poverty guidelines;
  - children who are members of a household with a total annual income that is at or below 200 percent of the federal poverty guidelines;
  - children who are members of a household with a total annual income that is above 200 percent of the federal poverty guidelines and below 500 percent of the federal poverty guidelines; and
  - children who are members of a household with a total annual income that is at or above 500 percent of the federal poverty guidelines.

The bill requires the Texas Education Agency (TEA) to provide to the comptroller the information necessary to make determinations relating to this requirement. In addition, for purposes of this requirement, a CEAO that receives an application from an eligible child and the child's eligible sibling during the same application cycle and approves the child's application must approve the sibling's application at the same time.

C.S.S.B. 2 requires the comptroller to adopt rules necessary to administer the program requirement to fill available positions by lottery not later than May 15, 2026, and to provide for posting on the website established and maintained for the program any rule so adopted under this provision.

### Program Application Form

C.S.S.B. 2 requires the comptroller to create a program application form and to make the application form readily available through various sources, including the website established and maintained for the program. The application form must state the application deadlines established by the comptroller under the applicable bill provisions.

C.S.S.B. 2 requires each CEAO to ensure that the CEAO is capable of receiving the application form, including any required supporting document, electronically.

### Waiting List

C.S.S.B. 2 requires the comptroller to create and maintain a waiting list based on the priority categories described by the bill if, during an application period, there are more acceptable applications for admission than there are available positions.

### Applicant and Participant Handbook and Related Information

C.S.S.B. 2 requires each CEAO designated by the comptroller to provide for posting on the website established and maintained for the program a comptroller-approved applicant and participant handbook with a description of the program, including the following:

- expenses allowed under the program under the applicable bill provisions;
- a list of preapproved education service providers and vendors of educational products under the applicable bill provisions;
- a description of the application process and the program expenditures process under the applicable bill provisions; and
- a description of the responsibilities of program participants.

The bill requires each designated CEAO to provide such information to each participating parent served by the CEAO annually and establishes that a CEAO may provide the information electronically.

### Continued Program Participation

C.S.S.B. 2 establishes the following:

- the comptroller or a designated CEAO may require a participating parent to submit annual notice regarding the parent's intent for the child to continue participating in the program for the next school year; and
- the comptroller or the CEAO may not require a program participant in good standing to annually resubmit an application for continued program participation.

### **Participation in Program**

C.S.S.B. 2 requires a participating parent, in order to receive program funding, to agree to do the following:

- request that program money be spent only for expenses allowed as approved education-related expenses under the applicable bill provisions;
- share or authorize a test administrator to share with the applicable CEAO the results of any statewide standardized tests or nationally norm-referenced tests required to be administered to the child under the applicable bill provisions or other law;
- refrain from selling an item purchased with program money; and
- notify the applicable CEAO not later than 30 business days after the date on which the child, as follows:
  - enrolls in a district or charter school;
  - graduates from high school; or
  - is no longer eligible to enroll in a district or charter school or in a district's or charter school's tuition-free prekindergarten program under applicable state law.

C.S.S.B. 2 requires the administrator of a statewide standardized test or nationally norm-referenced test administered under the applicable bill provisions or other law to share with a parent the participating child's results on the test, including, if available, the participating child's percentile rank. A child's results and rank on such a test administered under the applicable bill provisions are confidential, are not subject to disclosure under state public information law, and may only be shared as necessary to fulfill requirements relating to the program. The bill requires the administrator, in providing the test results and rank, to ensure compliance with state

and federal law regarding the confidentiality of student educational information, including the federal Family Educational Rights and Privacy Act of 1974.

## **Preapproved Providers and Vendors**

### Preapproval Process

C.S.S.B. 2 requires the comptroller by rule to establish a process for the preapproval of education service providers and vendors of educational products for participation in the program. The bill requires the comptroller to allow for the submission of applications on a rolling basis.

### Conditions for Approval

C.S.S.B. 2 requires the comptroller to approve an education service provider or vendor of educational products, as applicable, for participation in the program if, as follows:

- the provider or vendor has previously been approved by TEA to provide supplemental special education services under applicable state law and remains in good standing with TEA;
- for a private school, the provider or vendor demonstrates accreditation by an organization recognized by TEA or the Texas Private School Accreditation Commission and demonstrates annual administration for students in grades 3 through 12 of a nationally norm-referenced test or the appropriate test required under applicable state law;
- notwithstanding the condition for a private school described in the immediately preceding bullet, for a private provider serving children in prekindergarten or kindergarten, the provider demonstrates that the provider meets the requirements to be an eligible private provider under applicable state law regarding high quality prekindergarten program requirements;
- for a district or charter school, the provider or vendor demonstrates accreditation by TEA and the ability to provide services or products to participating children in a manner in which the children are not counted toward the district's or charter school's ADA;
- for a private tutor, therapist, or teaching service, the provider or vendor demonstrates that, as follows:
  - the tutor or therapist or each employee of the teaching service who intends to provide educational services to a participating child, as follows:
    - is an educator employed by or a retired educator formerly employed by a school accredited by TEA, an organization recognized by TEA, or an organization recognized by the Texas Private School Accreditation Commission;
    - holds a relevant license or accreditation issued by a state, regional, or national certification or accreditation organization; or
    - is employed in or retired from a teaching or tutoring capacity at a higher education provider;
  - the tutor or therapist or each employee of the teaching service who intends to provide educational services to a participating child provides to the comptroller a national criminal history record information review completed for the tutor, therapist, or employee, as applicable, within a period established by comptroller rule or authorizes the comptroller or the comptroller's designee to conduct such a review of the tutor, therapist, or employee as prescribed by comptroller rule; and
  - the tutor or therapist or each employee of the teaching service who intends to provide educational services to a participating child is not required to be discharged or refused to be hired by a district under applicable state law, based on being convicted of or placed on deferred adjudication community supervision for certain offenses, or is not included in the registry of persons not eligible for employment in public schools under applicable state law; or

- for a higher education provider, the provider or vendor demonstrates nationally recognized postsecondary accreditation.

C.S.S.B. 2 authorizes the comptroller to approve a vendor of educational products that provides the following products or services, which are described in the bill's provision regarding approved education-related expenses, for participation in the program in accordance with comptroller rule:

- an online educational course or program;
- the purchase of textbooks or other instructional materials or uniforms required by a private school, higher education provider, or course in which the child is enrolled, including purchases made through a third-party vendor of educational products;
- costs related to academic assessments;
- fees for transportation provided by a fee-for-service transportation provider for the child to travel to and from a preapproved education service provider or vendor of educational products;
- costs of computer hardware or software and other technological devices required by an education service provider or vendor of educational products or prescribed by a physician to facilitate a child's education, not to exceed in any year 10 percent of the total amount transferred to the participating child's account that year; or
- costs of breakfast or lunch provided to a child during the school day by a private school.

The comptroller may approve only an education service provider located in Texas or vendor of educational products registered to do business in Texas.

#### Verifying Eligibility for Preapproval

C.S.S.B. 2 requires an education service provider or vendor of educational products to provide information requested by the comptroller to verify the provider's or vendor's eligibility for preapproval under the bill's provisions. The bill prohibits the comptroller from approving a provider or vendor if the comptroller cannot verify the provider's or vendor's eligibility for preapproval.

#### Comptroller's Review of Provider and Vendor Applicants; Related Amendments to Current Law

C.S.S.B. 2 requires each applicant for approval as a preapproved provider or vendor to submit to the comptroller, using the interagency reportable conduct search engine established by the Department of Information Resources (DIR) under applicable state law, documentation demonstrating that each person employed by the applicant or provider who will interact with a participating child is not identified as having engaged in misconduct described under applicable state law relating to a person who, as follows:

- abused or otherwise committed an unlawful act with a student or minor; or
- was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.

The bill requires the comptroller or the comptroller's designee to review the documentation for each person employed by an applicant or provider who will interact with a participating child. Each applicant for approval must provide the comptroller or the comptroller's designee with any information requested by the comptroller or designee to enable the comptroller or designee to complete the review. Accordingly, the bill revises current law to reflect the comptroller's prescribed review duties under these bill provisions, as follows:

- the bill amends the Government Code to entitle the comptroller to obtain criminal history record information maintained or indexed, as applicable, by the FBI, the Department of Public Safety, or any other criminal justice agency in Texas about a person who is an employee of an education service provider or vendor of educational products who intends to provide educational services to a child participating in the program and is seeking approval to receive money distributed under the program;

- the bill amends the Health and Safety Code to make provisions relating to the interagency reportable conduct search engine established by DIR applicable to the comptroller; and
- the bill amends the Education Code, with respect to current law governing the registry of persons not eligible for employment in public schools and those to whom TEA must provide equivalent access to the registry, to require TEA to provide such equivalent access to the comptroller for the purpose of preapproving education service providers and vendors of educational products under the applicable bill provisions.

#### Required Agreement by Provider or Vendor

C.S.S.B. 2 establishes that an education service provider or vendor of educational products must agree to do the following:

- abide by the program fund disbursement schedule under the applicable bill provision regarding verified expense requests and all other requirements of the bill's provisions relating to the program;
- accept money from the program only for education-related expenses approved under the applicable bill provision;
- notify the comptroller not later than the 30th day after the date that the provider or vendor no longer meets the requirements for preapproval of providers and vendors; and
- return any money received, including any interest or other additions received related to the money, in violation of the bill's provisions relating to the program or other relevant law to the comptroller for deposit into the program fund.

An education service provider or vendor of educational products that receives approval as a preapproved provider or vendor may participate in the program until the earliest of the date on which the provider or vendor no longer meets the requirements for preapproval of providers and vendors or the provider or vendor violates the bill's provisions relating to the program or other relevant law.

#### **Provider and Vendor Suspension and Removal**

C.S.S.B. 2 requires the comptroller to immediately suspend a preapproved education service provider or vendor of educational products on finding that the provider or vendor, as follows:

- is ineligible under the bill's applicable provisions for participation in the program; or
- has failed to remain in good standing by complying with a program requirement under the bill's applicable provisions or other applicable law.

The bill prohibits a payment from being made from a program participant's account to a suspended provider or vendor.

C.S.S.B. 2 requires the comptroller, on such suspension, to immediately send notice of the suspension to the suspended provider or vendor and each CEO by first class mail and email. The notice must include a statement that, as follows:

- specifies the grounds for suspending the provider or vendor;
- no additional payments may be made to the provider or vendor from a program participant's account during the provider's or vendor's suspension; and
- the provider or vendor has 30 days to respond and take any corrective action required to comply with program requirements and applicable law.

C.S.S.B. 2 requires the comptroller, not later than the 30th day after the date the comptroller provides the notice of suspension, to, as follows:

- remove the provider or vendor from the program;
- conditionally reinstate the provider or vendor and require the provider or vendor to perform a specified action; or
- unconditionally reinstate the provider or vendor.

The bill requires the comptroller, on removing a provider or vendor from the program, to notify the provider or vendor and each CEAO of the removal.

### **Approved Education-Related Expenses**

C.S.S.B. 2 establishes that a participating parent may request that program money be spent only for the following education-related expenses incurred by a participating child at a preapproved education service provider or vendor of educational products:

- tuition and fees for a private school, a higher education provider, an online educational course or program, or a program that provides training for an industry-based credential approved by TEA;
- the purchase of textbooks or other instructional materials or uniforms required by a private school, higher education provider, or course in which the child is enrolled, including purchases made through a third-party vendor of educational products;
- fees for classes or other educational services provided by a district or charter school if the classes or services do not qualify the child to be included in the school's ADA;
- costs related to academic assessments;
- fees for services provided by a private tutor or teaching service;
- fees for transportation provided by a fee-for-service transportation provider for the child to travel to and from a preapproved education service provider or vendor of educational products;
- fees for educational therapies or services provided by a practitioner or provider, only for fees that are not covered by any federal, state, or local government benefits such as Medicaid or CHIP or by any private insurance that the child is enrolled in at the time of receiving the therapies or services;
- costs of computer hardware or software and other technological devices required by an education service provider or vendor of educational products or prescribed by a physician to facilitate a child's education, not to exceed in any year 10 percent of the total amount transferred to the participating child's account that year; and
- costs of breakfast or lunch provided to a child during the school day by a private school.

C.S.S.B. 2 prohibits money transferred to a participating child's account under the program from being used to pay any person who is related to the program participant within the third degree by consanguinity or affinity, as determined under applicable state law.

C.S.S.B. 2 establishes that a finding that a program participant requested that program money be spent to pay for an expense not allowed under the bill's provisions does not affect the validity of any payment requested by the participant for an approved education-related expense that is allowed under the bill's provisions.

### **Program Expenditures**

C.S.S.B. 2 requires the comptroller to disburse from the program fund to each CEAO the amount specified by the bill, as subsequently described, for each participating child served by the CEAO. The bill provides the following:

- the participating parent must submit a request in a form prescribed by comptroller rule to the CEAO that serves the child in order to initiate payment to a provider or vendor for an approved education-related expense;
- on receiving a request, a CEAO must verify that the request is for an approved education-related expense and, not later than the 10th business day after the date of the verification, send payment to the provider or vendor, subject to the applicable bill provisions regarding prohibited disbursements in excess of an account balance, a closed account, and a suspended account;
- such a disbursement may not exceed the applicable participating child's account balance; and

- a CEAO must provide participating parents with electronic access to, as follows:
  - view the participating child's current account balance;
  - initiate the payment request process under the applicable bill provision; and
  - view a summary of the past account activity, including payments from the account to education service providers and vendors of educational products.

C.S.S.B. 2 prohibits a payment system established by a CEAO from allowing a program participant to do the following:

- withdraw cash or remove funds from a participating child's account; or
- receive payment or reimbursement directly from the program.

The bill prohibits a CEAO from requiring a program participant to pay a fee to the CEAO or a CEAO affiliate related to the use of a participating child's account, including a transaction fee.

### **Amount of Transfer to Participant Account; Financing**

#### Payment Amount

C.S.S.B. 2 establishes that, regardless of the deadline by which the participating parent applies for enrollment in the program under the applicable bill provisions and except as provided by subsequently described bill provisions regarding the cap on the amount transferred to the account of a child with a disability for a school year, the cap on payments to a home-schooled student for a school year, and the prorated amount transferred to a child's account for a child who enrolls in the program after the beginning of a school year, the CEAO must transfer in accordance with the bill's provisions relating to the administration of accounts of participating children each school year that a participating child participates in the program money distributed to the CEAO to the child's account to be held in trust for the benefit of the child from money available under the program fund as established by the bill. The transferred money is an amount equal to the following:

- 85 percent of the estimated statewide average amount of state and local funding per student in ADA for the most recent school year for which that information is available, as provided by TEA; or
- for a child with a disability, subject to the subsequently described cap for a school year, the sum of the amount as previously described in the immediately preceding bullet and the amount the district in which the child would otherwise be enrolled would be entitled to receive for the child calculated based on the child's individualized education program (IEP), as determined in accordance with the applicable bill provisions regarding IEPs and related evaluations and the provisions of the foundation school program that provide funding based on a child's participation in a district's special education program applicable for the school year preceding the school year in which the child initially enrolls in the program.

The bill caps the amount transferred to the account of a child with a disability for a school year under the immediately preceding bullet at \$30,000. The bill also caps the amount in transfers that a participating child who is a home-schooled student may receive at \$2,000 for a school year. The bill provides for the definition of "home-schooled student" by reference to its Education Code definition as a student who predominantly receives instruction in a general elementary or secondary education program that is provided by the parent, or a person standing in parental authority, in or through the child's home.

C.S.S.B. 2 requires the commissioner of education, in determining the estimated statewide average amount of state and local funding per student in ADA for a school year for purposes of this bill provision regarding the amount of the transfers, to do the following:

- make the determination not later than January 15 preceding the school year; and
- include projected state and local funding under statutory provisions relating to the foundation school program and statutory provisions relating to options for local revenue levels in excess of entitlement and the amount the state is required to contribute to the Teacher Retirement System of Texas under applicable state law for the school year.

### Prorated Amount

C.S.S.B. 2, with respect to a child who enrolls in the program after the beginning of a school year, requires the comptroller to prorate the amount transferred to the participating child's account under these bill provisions based on the date the child enrolls in the program.

### Money Remaining in Account

C.S.S.B. 2 establishes that any money remaining in a participating child's account at the end of a fiscal year is carried forward to the next fiscal year unless another provision of the bill mandates the closure of the account.

### Authorized Payments for Expenses

C.S.S.B. 2 authorizes a participating parent to make payments for the expenses of educational programs, services, and products not covered by money in the account of the parent's child.

### Prohibited Sources of Funding

C.S.S.B. 2 establishes that a transfer under the bill's provisions may not be funded using federal money or money from the available school fund or the state instructional materials and technology fund.

### Transfers Not Taxable Income

C.S.S.B. 2 establishes that transfers to a participating child's account under the program do not constitute taxable income to a participating parent, unless otherwise provided by federal or another state's law.

### TEA Calculation of Payment Amount

C.S.S.B. 2 requires TEA, on dates consistent with satisfying the program application deadlines established by the comptroller, to calculate and report to the comptroller the payment amount specified under the applicable bill provisions for each participating child.

### **Enrollment in Public School**

C.S.S.B. 2 provides, as follows, that if a child ceases participation in the program during a school year due to the child's enrollment in a district or charter school, notwithstanding any other provision of the bill or other law:

- the district or charter school is entitled to receive an allotment in an amount equal to the basic allotment multiplied by 0.1 for the child's ADA at the district or charter school for that school year; and
- the child may not be considered in evaluating the performance of the district or charter school under the public school accountability system as prescribed by state law relating to that system and to accountability interventions and sanctions for the first school year after the child ceases participation in the program.

### **Individualized Education Programs; Evaluations**

C.S.S.B. 2 authorizes a parent of a child who is not enrolled in a district or charter school to request that a district conduct a full individual and initial evaluation of the child for purposes of determining the child's eligibility for special education services under applicable state law and participation in the program as a child with a disability.

C.S.S.B. 2 requires a district that receives such a request to follow procedures, including for timely completion, for a full individual and initial evaluation in accordance with applicable federal and state law not later than the 45th day after the date the district receives parental consent to conduct the evaluation. If a district determines based on the evaluation that a child is eligible for special education services, the district must develop an IEP for the child for purposes of establishing the child's eligibility to participate in the program as a child with a disability. The bill requires a district or charter school, at TEA's request, to provide to TEA a child's IEP developed under applicable state law or under the bill's provisions, as applicable.

C.S.S.B. 2 authorizes TEA to adopt rules as necessary to implement these IEP and evaluation provisions, including rules regarding an appeal of a determination of eligibility for special education services and services to be provided as described in an IEP developed in accordance with these provisions.

### **Administration of Accounts**

C.S.S.B. 2 requires a CEAO, on receipt of money distributed by the comptroller for purposes of making transfers to the accounts of participating children, to hold the money in trust for the benefit of the children participating in the program and make quarterly transfers to the account of each participating child served by the CEAO in equal amounts on or before the first day of July, October, January, and April.

C.S.S.B. 2 sets out the following additional provisions regarding such administration:

- each year, the comptroller may deduct from the total amount of money appropriated for the program's purposes an amount, not to exceed three percent of that total amount, to cover the comptroller's cost of administering the program;
- the comptroller may disburse each state fiscal year a total amount, not to exceed five percent of the amount appropriated for the purposes of the program for that fiscal year, to the CEAOs for the cost of providing services under the program;
- each CEAO, on or before the first day of October and February, must do the following:
  - verify with TEA that each participating child is not enrolled in a district or charter school in a manner in which the child is counted toward the district's or charter school's ADA for purposes of the allocation of state funding under the foundation school program; and
  - notify the comptroller if the CEAO determines that a participating child is not enrolled in a preapproved private school or is enrolled in a district or charter school in a manner in which the child is counted toward the district's or school's ADA for purposes of the allocation of state funding under the foundation school program;
- the comptroller by rule must establish a process by which a participating parent may authorize the comptroller or the CEAO to make a payment directly from a participant's account to a preapproved education service provider or vendor of educational products for an expense allowed under the applicable bill provisions;
- a participating child's account must be closed and any remaining money returned to the comptroller for deposit in the program fund on the date on which the child who participated in the program is no longer eligible to participate in the program under the applicable bill provisions and payments for any education-related expenses allowed under the bill's provisions from the child's account have been completed; and
- each quarter, any interest or other earnings attributable to money held by a CEAO for the purposes of the program must be remitted to the comptroller for deposit in the program fund.

## **Auditing**

C.S.S.B. 2 requires the comptroller to contract with a private entity to audit accounts and program participant eligibility data not less than once per year to ensure compliance with applicable law and program requirements. The audit must include a review of the following:

- each CEAO's internal controls over program transactions; and
- compliance with the applicable bill provisions and other program requirements by CEAOs, program participants, and education service providers and vendors of educational products.

C.S.S.B. 2 authorizes the private entity, in conducting such an audit, to require a program participant, education service provider or vendor of educational products, or CEAO to provide information and documentation regarding any transaction occurring under the program.

C.S.S.B. 2 requires the private entity to report to the comptroller any violation of the bill's provisions relating to the program or other relevant law and any transactions the entity determines to be unusual or suspicious found by the entity during an audit conducted under this bill provision regarding audits. The comptroller must report the violation or transaction to the following:

- the applicable CEAO;
- the education service provider or vendor of educational products, as applicable; and
- each participating parent who is affected by the violation or transaction.

## **Suspension of Account**

C.S.S.B. 2 requires the comptroller to suspend the account of a participating child who fails to remain in good standing by complying with applicable law or a requirement of the program. The bill provides the following regarding such suspension of an account:

- on suspension of an account, the comptroller must notify the participating parent in writing that the account has been suspended and that no additional payments may be made from the account;
- the notification must specify the grounds for the suspension and state that the participating parent has 30 days to respond and take any corrective action required by the comptroller; and
- on the expiration of the 30-day period, the comptroller must, as follows:
  - order closure of the suspended account;
  - order temporary reinstatement of the account, conditioned on the performance of a specified action by the participating parent; or
  - order full reinstatement of the account.

C.S.S.B. 2 authorizes the comptroller to recover money distributed under the program that was used for expenses not allowed under the applicable bill provisions regarding approved education-related expenses, for a child who was not eligible to participate in the program at the time of the expenditure, or from an education service provider or vendor of educational products that was not approved at the time of the expenditure. Moreover, the bill provides the following:

- the money and any interest or other additions received related to the money may be recovered from the participating parent or the provider or vendor that received the money in accordance with provisions of the Tax Code, with respect to general provisions regarding state taxation and to provisions regarding enforcement and collection under those provisions, or as provided by other law if the participating child's account is suspended or closed under these bill provisions regarding such suspension; and
- the comptroller must deposit money recovered under this provision into the program fund.

### **Tuition and Fees; Refund Prohibited**

C.S.S.B. 2 prohibits an education service provider or vendor of educational products from charging a participating child an amount greater than the standard amount charged for that service or product by the provider or vendor.

C.S.S.B. 2 prohibits an education service provider or vendor of educational products receiving money distributed under the program from in any manner rebating, refunding, or crediting to or sharing with a program participant, or any person on behalf of a program participant, any program money paid or owed by the program participant to the provider or vendor.

### **Referral to District Attorney**

C.S.S.B. 2 requires the comptroller, if the comptroller obtains evidence of fraudulent use of an account or money distributed under the program or any other violation of law by a CEAO, education service provider or vendor of educational products, or program participant, to notify the appropriate local county or district attorney with jurisdiction over, as applicable, the principal place of business of the CEAO or provider or vendor or the residence of the program participant.

### **Special Education Notice**

C.S.S.B. 2 requires a CEAO to post on the website established and maintained for the program and provide to each parent who submits an application for the program a notice that, as follows:

- states that a private school is not subject to federal and state laws regarding the provision of educational services to a child with a disability in the same manner as a district or charter school; and
- provides information regarding rights to which a child with a disability is entitled under federal and state law if the child attends a district or charter school, including rights provided under the federal Individuals with Disabilities Education Act and rights provided under state law with respect to the state special education program.

The bill also requires a private school in which a child with a disability who is a participating child enrolls to provide to the participating parent a copy of the notice required under this bill provision.

### **Program Participant, Provider, and Vendor Autonomy**

C.S.S.B. 2 establishes that an education service provider or vendor of educational products that receives money distributed under the program is not a recipient of federal financial assistance and may not be considered to be a state actor on the basis of receiving that money.

C.S.S.B. 2 prohibits a state agency or state official from adopting a rule or taking other governmental action related to the program and a CEAO from taking an action that, as follows:

- limits or imposes requirements that are contrary to the religious or institutional values or practices of an education service provider, vendor of educational products, or program participant; or
- limits an education service provider, vendor of educational products, or program participant from freely doing the following:
  - determining the methods or curriculum to educate students;
  - determining admissions and enrollment practices, policies, and standards;
  - modifying or refusing to modify the provider's, vendor's, or participant's religious or institutional values or practices, operations, conduct, policies, standards, assessments, or employment practices based on the provider's, vendor's, or participant's religious values or practices; or
  - exercising the provider's, vendor's, or participant's religious or institutional practices as the provider, vendor, or participant determines.

## **Student Records and Information**

C.S.S.B. 2 sets out the following provisions regarding student records and other information of a child participating or seeking to participate in the program:

- on request by the child's parent, a district or charter school that the child would otherwise attend must provide a copy of the child's school records possessed by the district or charter school, if any, to the child's parent or, if applicable, the private school the child attends;
- as necessary to verify the child's eligibility for the program, TEA, a district, or a charter school must provide to a CEAO any information available to the respective entity requested by the CEAO regarding the child, including information regarding the following:
  - the child's district or charter school enrollment status; and
  - whether the child can be counted toward a district's or charter school's ADA for purposes of the allocation of funding under the foundation school program;
- a CEAO may not retain the provided information beyond the period necessary to determine eligibility to participate in the program; and
- a CEAO or an education service provider or vendor of educational products that obtains information regarding a participating child, as follows:
  - must comply with state and federal law regarding the confidentiality of student educational information;
  - may not sell information regarding a participating child; and
  - may not distribute information regarding a participating child in a manner not described by the immediately preceding bullet without the program participant's consent.

A student record held by the comptroller or a CEAO is confidential and not subject to disclosure under state public information law. The bill authorizes the comptroller or a CEAO to redact information that constitutes student records from any information the governmental body discloses under the public availability requirement of state public information law, without the necessity of requesting a decision from the attorney general under the applicable provisions of that law.

## **Gifts, Grants, and Donations**

C.S.S.B. 2 authorizes the comptroller to solicit and accept gifts, grants, and donations from any public or private source for any expenses related to the administration of the program, including establishing the program and contracting for the annual longitudinal report required by the bill and subsequently described.

## **Annual Report**

C.S.S.B. 2 requires the comptroller, in collaboration with TEA and the CEAOs, to compile program data and produce an annual longitudinal report regarding the following information:

- the number of program applications received, accepted, and wait-listed, disaggregated by age;
- program participant satisfaction;
- the results of statewide standardized tests or nationally norm-referenced tests shared in accordance with the applicable bill provisions;
- the program's effect on public and private school capacity and availability;
- the amount of cost savings accruing to the state as a result of the program;
- in a report submitted in an even-numbered year only, an estimate of the total amount of funding required for the program for the next state fiscal biennium;
- the amount of gifts, grants, and donations received under the applicable bill provisions; and

- based on surveys of former program participants or other sources available to the CEO, the number and percentage of children participating in the program who, within one year after graduating from high school, are, as follows:
  - college ready, as indicated by earning a minimum of 12 non-remedial semester credit hours or the equivalent or an associate degree from a postsecondary educational institution;
  - career ready, as indicated by earning a credential of value included in a library of credentials established under the tri-agency workforce initiative or by employment at or above the median wage in the child's region; or
  - military ready, as indicated by achieving a passing score set by the applicable military branch on the Armed Services Vocational Aptitude Battery and enlisting in the armed forces of the United States or the Texas National Guard.

C.S.S.B. 2 requires the comptroller, in producing the report, to do the following:

- use appropriate analytical and behavioral science methodologies to ensure public confidence in the report; and
- comply with the requirements regarding the confidentiality of student educational information under the federal Family Educational Rights and Privacy Act of 1974.

The report must cover a period of not less than five years and include, subject to those federal confidentiality requirements for student educational information, the data analyzed and methodology used. The bill requires the comptroller to provide the report for posting on the website established and maintained for the program.

### **Collection and Reporting of Demographic Information**

C.S.S.B. 2 requires the comptroller, in collaboration with TEA and CEOs, to collect and report demographic information regarding each participating child. The report must include the following demographic information:

- the child's grade;
- the child's age;
- the child's sex;
- the child's race or ethnicity;
- the school district in which the child resides;
- the district campus that the child would otherwise attend;
- the child's zip code;
- the child's date of enrollment in the program;
- the child's category with respect to the groups for which a CEO must fill available positions by lottery; and
- whether the child has a disability.

The bill requires the comptroller, not later than August 1 of each year, to submit a written report to the legislature summarizing the demographic information collected by the comptroller.

### **Appeal; Finality of Decisions**

C.S.S.B. 2 authorizes a program participant to appeal to the comptroller an administrative decision made by the comptroller or a CEO under the bill's provisions regarding the program, including a decision regarding eligibility, allowable expenses, or the participant's removal from the program. An appeal under the bill's provisions does not constitute a contested case for any purpose. The bill establishes that its provisions relating to the program may not be construed to confer a property right on a CEO, education service provider, vendor of educational products, or program participant. A decision of the comptroller made under the bill's provisions relating to the program is final and not subject to appeal.

## **Right to Intervene in Civil Action**

C.S.S.B. 2 authorizes a program participant, eligible child, education service provider, or vendor of educational products to intervene in any civil action challenging the constitutionality of the program.

C.S.S.B. 2 authorizes a court in which such a civil action is filed to require that all program participants, eligible children, education service providers, and vendors of educational products wishing to intervene in the action file a joint brief. The bill establishes that a program participant, eligible child, education service provider, or vendor of educational products may not be required to join a brief filed on behalf of the state or a state agency.

## **Determination of Constitutionality and Other Validity**

C.S.S.B. 2 sets out provisions establishing that the constitutionality and other validity under the Texas Constitution or the U.S. Constitution of all or any part of the bill's provisions establishing the education savings account program may be determined in an action for declaratory judgment under the Uniform Declaratory Judgments Act in a district court in the county in which the violation is alleged to have occurred or where the plaintiff resides or has its principal place of business. Furthermore, the bill establishes the following under these bill provisions:

- 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 Texas Constitution or the U.S. Constitution of all or any part of the bill's provisions establishing the education savings account program may be reviewed only by direct appeal to the Texas Supreme Court filed not later than the 15th business day after the date on which the order was entered;
- the supreme court must give precedence to such appeals over other matters;
- the direct appeal is an accelerated appeal;
- the filing of a direct appeal under these bill provisions relating to determinations of constitutionality and other validity will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction granted in accordance with these bill provisions pending final determination by the supreme court, unless the supreme court makes specific findings that the applicant seeking such injunctive relief has pleaded and proved that, as follows:
  - the applicant has a probable right to the relief it seeks on final hearing;
  - the applicant will suffer a probable injury that is imminent and irreparable, and that the applicant has no other adequate legal remedy; and
  - maintaining the injunction is in the public interest;
- such an appeal under these bill provisions, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including the following rules as specifically cited by the bill:
  - Rule 25.1(d)(6): Perfecting Appeal—Civil Cases, regarding the contents of notice of appeal in an accelerated appeal;
  - Rule 28.1: Accelerated Appeals, regarding the types of accelerated appeals, perfection of accelerated appeal, appeals of interlocutory orders, quo warranto appeals, and record and briefs;
  - Rule 32.1: Docketing Statement—Civil Cases, regarding the completion and filing, promptly upon filing the notice of appeal, of the Docketing Statement approved by the Office of Court Administration or another document that includes the same information;
  - Rule 37.3(a)(1): Duties of the Appellate Clerk on Receiving the Notice of Appeal and Record If No Record Filed—Civil Cases, regarding notice of late record;
  - Rule 38.6(a) and (b): Time to File Briefs, regarding the appellant's filing date and regarding the appellee's filing date;

- Rule 40.1(b): Order of Decision—Civil Cases, regarding an accelerated appeal; and
- Rule 49.4: Motion for Rehearing—Further Motion for Rehearing, regarding the filing of a further motion for rehearing after a court decides a motion for rehearing and takes certain actions;
- these bill provisions relating to determinations of constitutionality and other validity do not authorize an award of attorney's fees against the state; and
- the provision of the Uniform Declaratory Judgments Act granting the court the authority to award costs and reasonable and necessary attorney's fees as are equitable and just does not apply to an action filed under these bill provisions relating to determinations of constitutionality and other validity.

The bill further provides that these bill provisions relating to determinations of constitutionality and other validity exercise the authority granted to the legislature by Section 3-b, Article V, Texas Constitution, with respect to its power to provide by law for the direct appeal to the Texas Supreme Court from an order granting or denying an interlocutory or permanent injunction on the grounds of the constitutionality or unconstitutionality of any statute of the state, or on the validity or invalidity of any administrative order issued by any state agency under any statute of the state.

### **Severability of Provisions**

C.S.S.B. 2 provides for the severability of its provisions by specifying that:

- it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in the bill's provisions, and every application of those bill provisions to each person or entity, is severable from each other; and
- if any application of any provision in the bill's provisions to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances must be severed and may not be affected and the court must allow continued operation of the program without regard for the severed provision rather than restrict program operation or participation.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

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

While C.S.S.B. 2 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

#### **Definitions**

The substitute does not include a definition of "low-income household" that was present in the engrossed and that was defined, for purposes of the program, to mean a household with a total annual income that is at or below 500 percent of the federal poverty guidelines.

#### **Applicability to Nonparticipating Home-School Students**

The substitute does not include the provision of the engrossed that established that the requirements of the bill regarding the education savings account program that apply to a child who participates in the program or the child's parent do not apply to a home-schooled student who is not participating in the program or the student's parent.

## **Establishment of Program**

The substitute does not include the provision of the engrossed that established the comptroller has any power necessary to establish and administer the program, including the power to do the following:

- execute contracts, agreements, and other instruments for goods and services;
- engage the services of private consultants, actuaries, trustees, record administrators, managers, and legal counsel for administrative or technical assistance; and
- perform any duty assigned to a CEAO under the bill.

The substitute includes a provision establishing that the education savings account program confers a state benefit to program participants in addition to a free public education, which was absent from the engrossed.

## **Amount of Appropriation; Limitation on Expenditures**

The substitute includes a requirement absent from the engrossed for the comptroller, in the comptroller's legislative appropriations request for each state fiscal biennium, to state the amount of money necessary for the biennium to provide the specified program payment for each participating child, each child on the waiting list on the January 1 preceding the biennium, and each child who is a sibling of a participating child and eligible for the program for the first time during that biennium.

The substitute includes a requirement absent from the engrossed for the comptroller to specify the amount necessary to provide the program payments for the first state fiscal year of the biennium and estimate the amount required for the second state fiscal year of the biennium.

The substitute includes a provision absent from the engrossed establishing that, notwithstanding the amount stated in the comptroller's legislative appropriations request, the amount appropriated for purposes of the program for a state fiscal biennium must be established by the legislature by appropriation for that biennium, applicable beginning with the 2028-2029 state fiscal biennium.

The substitute includes temporary provisions set to expire September 1, 2027, absent from the engrossed, that do the following:

- for the 2026-2027 state fiscal biennium, cap the amount spent for purposes of the program at \$1 billion; and
- for the 2026-2027 school year, cap the total amount of money spent for purposes of participation in the program by children who are members of a household with a total annual income that is at or above 500 percent of the federal poverty guidelines at 20 percent of the amount of money appropriated from the program fund for that school year and requiring that the comptroller, in allocating money under the program in accordance with this cap, to ensure children who were enrolled in a district or charter school for at least 90 percent of the preceding school year are prioritized.

## **Program Fund**

Whereas the engrossed established that money in the program fund may be appropriated only for the uses specified by the bill's provisions relating to the program, the substitute instead establishes that money in the fund may be used only for the purposes specified by those provisions.

## **Promotion of Program**

Whereas the engrossed authorized the comptroller or comptroller's designee to enter into contracts or agreements and engage in activities to promote, market, and advertise the development and the use of the program, notwithstanding a specified state law governing the use of appropriated money, the substitute instead authorizes the comptroller or comptroller's designee to take such actions notwithstanding any other law.

### **Selection of CEAOs**

The substitute and the engrossed both set out eligibility requirements for an organization that applies to the comptroller for certification as a CEAO, but they differ as follows:

- the substitute does not include the provision in the engrossed that required an organization to be a nonprofit or for-profit organization registered to do business in Texas and instead requires that the organization be registered to do business in Texas without reference to its status as a nonprofit or for-profit organization; and
- the substitute specifies that the requirement that an organization be able to assist the comptroller in administering the program includes the following abilities, none of which were in the engrossed version's listed abilities:
  - that the organization be able to verify that a program participant is eligible to participate in the program;
  - that the organization be able to accept, track, review, and resolve inquiries and complaints received regarding the program; and
  - that the organization be able to establish and maintain a comptroller-approved website for the program.

The substitute includes an authorization for the comptroller to designate a CEAO to establish and maintain a comptroller-approved website for the program, which was absent from the engrossed.

### **Identity Theft Protection**

The substitute does not include the provision that was in the engrossed that required each CEAO to comply with the requirements of the Identity Theft Enforcement and Protection Act.

### **Eligible Child**

The substitute includes a provision absent from the engrossed authorizing a child who is eligible to participate, to enroll in the program, subject to available funding, for the semester following the semester in which the application for enrollment in the program is submitted.

The substitute and engrossed both set out eligibility requirements for a child's participation in the program, but the requirements differ as follows:

- whereas the engrossed required a child to be eligible for attendance in a public school or enrollment in a public school's tuition-free prekindergarten program, the substitute instead requires a child to be eligible for attendance in a school district or open-enrollment charter school or enrollment in a district's or charter school's tuition-free prekindergarten program; and
- the substitute includes a requirement absent from the engrossed that the child's parent establish that the child is a citizen or national of the United States or was lawfully admitted into the United States.

The substitute and the engrossed both set out substantially similar provisions establishing when a child's eligibility for participation in the program ends. However, while the engrossed referenced the end of eligibility with regard to attendance in a public school or enrollment in a public school's tuition-free prekindergarten program, the substitute instead references the end of

eligibility with regard to attendance in a school district or open-enrollment charter school or enrollment in a district's or charter school's tuition-free prekindergarten program.

The substitute does not include the provision of the engrossed that made a child ineligible for participation in the program during the period in which the child's parent or legal guardian is a state representative, state senator, or statewide elected official.

## **Application to Program**

### Lottery

Both the engrossed and substitute require a CEOA, on receipt of more acceptable applications for admission than available positions due to insufficient funding, to fill the available positions by lottery of applicants, at the direction of the comptroller. However, the substitute and engrossed differ in the manner by which those available positions are filled. The substitute does not include the following provisions, which were in the engrossed, that require the CEOA to fill the available positions with, as follows:

- the lesser of the following:
  - the number of children who apply for the program and were enrolled in a public school for at least 90 percent of the preceding school year and are members of a low-income household, as the engrossed defined that term, or children with a disability; or
  - 80 percent of available positions in the program with such children described in the immediately preceding bullet; and
- for the remaining available positions in the program, all eligible applicants who are not accepted into the program under the preceding bulleted criteria.

Instead, the substitute sets out provisions establishing categories of priority and a specific order of priority within the applicable category, based either on disability or household income, for filling the available positions by lottery. Accordingly, the substitute prioritizes the approval of applicants by a CEOA in the following categorical order:

- siblings of participating children;
- children to whom the following category does not apply; and
- children who previously ceased participation in the program due to enrollment in a district or charter school.

Within each of the described categories, the substitute prioritizes applicants in the following order, as applicable:

- children with a disability who are members of a household with a total annual income that is at or below 500 percent of the federal poverty guidelines;
- children who are members of a household with a total annual income that is at or below 200 percent of the federal poverty guidelines;
- children who are members of a household with a total annual income that is above 200 percent of the federal poverty guidelines and below 500 percent of the federal poverty guidelines; and
- children who are members of a household with a total annual income that is at or above 500 percent of the federal poverty guidelines.

Moreover, in a provision absent from the engrossed, the substitute includes a requirement for a CEOA that receives an application from an eligible child and the child's eligible sibling during the same application cycle and approves the child's application to approve the sibling's application at the same time.

Both the substitute and the engrossed require the comptroller to post on a website any rule adopted necessary to administer the bill's provisions relating to filling available positions by lottery. The engrossed required the comptroller to post any adopted rule on the comptroller's website, but the substitute does not include that requirement and instead requires the comptroller

to provide for posting any adopted rule on the website established and maintained for the program.

### Application Form

Whereas the engrossed required each CEAO to ensure that the application form, including any required supporting document, is capable of being submitted to the CEAO electronically, the substitute does not include that requirement regarding submission but instead requires the CEAO to ensure that the CEAO is capable of receiving the application form, including any required supporting document, electronically.

### Waiting List

The substitute includes a requirement absent from the engrossed for the comptroller to create and maintain a waiting list based on the priority categories for applicants described by the substitute if, during an application period, there are more acceptable applications for admission than there are available positions.

### Applicant and Participant Handbook

Both the substitute and the engrossed provide for an applicant and participant handbook that includes the same specified information about the program and both provide for the handbook's posting on a certain website, but they differ as follows:

- while the engrossed provided for posting the handbook on a website established and maintained by the comptroller for the program, the substitute instead provides for posting on a website established and maintained for the program and does not include the reference in the engrossed specifying that it is a website established and maintained by the comptroller;
- the substitute does not include the requirement included in the engrossed for each CEAO to submit to the comptroller for approval the applicant and participant handbook; and
- the substitute specifies that the applicant and participant handbook that each CEAO must provide for posting on the applicable website as specified by the substitute is a comptroller-approved applicant and participant handbook.

### Annual Provision of Information in Handbook

Both the substitute and the engrossed require the annual provision of the information in the applicant and participant handbook to a parent. However, while the engrossed required each CEAO to annually provide the information to the parent of each child participating in the program, the substitute revises the requirement to clarify that the requirement applies to each CEAO with respect to each participating parent served by that specific CEAO.

### **Participation in Program**

Both the substitute and the engrossed set out certain conditions to which a participating parent must agree. While the engrossed established such agreement to the conditions as a condition of participating in the program, the substitute establishes that a participating parent must agree to those conditions in order to receive funding under the program. The substitute revises the conditions shared by the substitute and engrossed as follows:

- with respect to the condition regarding approved education-related expenses, while the engrossed specified that the parent must agree to spend money received through the program only for those expenses, the substitute specifies that the parent must agree to request that program money be spent only for such expenses; and
- with respect to the condition requiring a parent to agree to notify the applicable CEAO regarding a child's school enrollment status or a child's ineligibility under state law to enroll in school:

- the substitute removes the engrossed version's references to the child's enrollment in a public school and the child's ineligibility to enroll in a public school or in a public school's tuition-free prekindergarten program; and
- the substitute references the child's enrollment in a school district, retains the engrossed version's references to a child's enrollment in an open-enrollment charter school, and references the child's ineligibility to enroll in a district's or charter school's tuition-free prekindergarten program.

The substitute does not include the condition that was included in the engrossed requiring a participating parent, as a condition of participating in the program, to agree to ensure the annual administration to the child of a nationally norm-referenced test or the appropriate statewide standardized test required under applicable state law. However, in these provisions of the bill regarding participation in the program, the substitute includes the following provisions, none of which were in the engrossed, with respect to the administration of statewide standardized tests or nationally norm-referenced tests under the applicable provisions of the substitute or other law:

- a requirement for the administrator of any such test to share with a parent the participating child's results, including, if available, the participating child's percentile rank;
- a provision establishing that a child's results and rank on a test administered under the substitute's provisions are confidential and establishing that the results are not subject to disclosure under state public information law;
- a provision establishing that the results and rank may only be shared as necessary to fulfill requirements relating to the program; and
- a requirement for the administrator, in providing the results and rank, to ensure compliance with state and federal law regarding the confidentiality of student educational information.

## **Preapproved Providers and Vendors**

### Private School

Both the substitute and the engrossed establish as a condition for comptroller approval of a private school as a preapproved provider or vendor that the private school demonstrate annual administration of a nationally norm-referenced test or the appropriate statewide standardized test required under applicable state law. However, the substitute revises that provision to specify that the annual administration of such a test is for students in grades 3 through 12. In a provision absent from the engrossed, the substitute includes as a condition for comptroller approval of a private school as a preapproved provider or vendor that the provider or vendor demonstrate the school's accreditation by an organization recognized by the Texas Private School Accreditation Commission or TEA.

### School District or Open-Enrollment Charter School

While both the substitute and the engrossed reference an open-enrollment charter school as a preapproved provider or vendor, the substitute replaces the engrossed version's references to a public school as a preapproved provider or vendor with references to a school district as a preapproved provider or vendor.

### Private Tutor, Therapist, or Teaching Service

Both the substitute and the engrossed establish as a condition for comptroller approval of a private tutor, therapist, or employee of a teaching service as a preapproved provider or vendor that such a person who intends to provide educational services to a participating child provide to the comptroller a national criminal history record information review within a period established by the comptroller by rule. However, in a provision absent from the engrossed, the

substitute establishes that such a tutor, therapist, or employee instead may authorize the comptroller or comptroller's designee to conduct the review as prescribed by comptroller rule.

#### Private Provider Serving Children in Prekindergarten or Kindergarten

The substitute includes a provision absent from the engrossed that establishes as a condition of approval for participation in the program that, notwithstanding the substitute's conditions of approval for a private school, an applicable private provider serving children in prekindergarten or kindergarten demonstrate that the provider meets the requirements to be an eligible private provider under the high quality prekindergarten program established under applicable state law.

#### Vendor of Educational Products

Whereas the engrossed authorized the comptroller to approve a vendor not described by bill provisions that relate to conditions for approval for participation in the program in accordance with comptroller rule, the substitute does not include that authorization but instead authorizes the comptroller to approve a vendor that provides any of the following products or services for participation in the program in accordance with comptroller rule:

- an online educational course or program;
- the purchase of textbooks or other instructional materials or uniforms required by a private school, higher education provider, or course in which the child is enrolled, including purchases made through a third-party vendor of educational products;
- costs related to academic assessments;
- fees for transportation provided by a fee-for-service transportation provider for the child to travel to and from a preapproved education service provider or vendor of educational products;
- costs of computer hardware or software and other technological devices required by an education service provider or vendor of educational products or prescribed by a physician to facilitate a child's education, not to exceed in any year 10 percent of the total amount transferred to the participating child's account that year; or
- costs of breakfast or lunch provided to a child during the school day by a private school.

#### Documentation Submitted by Education Service Provider

The substitute does not include the requirement of the engrossed for an education service provider, for purposes of preapproval, to submit to the comptroller documentation demonstrating that the provider requires each person applying for employment with or employed by the provider to submit to a criminal history record review in the same manner as a qualified private school under applicable state law and does not include the requirement for the commissioner by rule to provide a provider access to criminal history record information necessary for their compliance with the requirement.

While both the engrossed and the substitute require the comptroller to review the documentation of each person employed by an education service provider if the applicant or provider will interact with a participating child, the substitute, in a provision absent from the engrossed, provides that the comptroller's designee may conduct that required review.

#### **Approved Education-Related Expenses**

The substitute does not include the engrossed version's prohibition against the use of money received under the program to pay for online or virtual education services. Instead, the substitute includes tuition and fees for an online educational course or program among the approved education-related expenses under the program.

Whereas the engrossed included tuition and fees for a program that provides for an industry-based credential approved by TEA for purposes of indicators of student achievement

in the public school accountability system among the approved education-related expenses under the program, the substitute instead includes tuition and fees for a program that provides for an industry-based credential approved by TEA among such expenses and does not include the specification from the engrossed that provided that such TEA approval is for purposes of public school accountability.

Whereas the engrossed included the purchase of uniforms required by an education service provider or textbooks or other instructional materials among the approved education-related expenses under the program, the substitute specifies that the purchase of uniforms or textbooks or other instructional materials are included among such expenses as required instead by a private school, higher education provider, or course in which the child is enrolled, including purchases made through a third-party vendor of educational products.

With respect to the provision in both the substitute and the engrossed that establishes as approved education-related expenses the fees for classes or other educational services that do not qualify the child to be included in the applicable ADA, the substitute removes the specification that the fees or services are those provided by a public school, including an open-enrollment charter school, and instead specifies that the fees and services are those provided by a school district or open-enrollment charter school.

The substitute includes the costs of breakfast or lunch provided to a participating child during the school day by a private school among the approved education-related expenses under the program, which was absent from the engrossed.

The substitute does not include the engrossed version's prohibition against the use of money received under the program to pay tuition or fees or services provided at a campus located in another state.

Both the engrossed and the substitute provide for a finding regarding the circumstance under which a payment for an expense not allowed as an approved education-related expense does not affect the validity of any payment for any other approved education-related expense that is allowed, but the versions differ as follows:

- the engrossed established that a finding that a program participant used money distributed under the program to pay for an expense not allowed as an approved education-related expense does not affect the validity of any payment made by the participant for an approved education-related expense; and
- the substitute instead establishes that a finding that a program participant requested that program money be spent to pay for an expense not allowed as an approved education-related expense does not affect the validity of any payment requested by the participant for an approved education-related expense.

### **Disbursements to Participant Accounts**

Both the engrossed and the substitute provide for disbursements from the program fund to each participating child's account, both set out the respective amounts to be disbursed, and both share substantially similar provisions related to such disbursements, including proration and certain authorized and prohibited uses of the money. However, the methods of determining the amounts disbursed from the program fund are different and subsequently described.

#### Amount of Payments in Engrossed and Not in Substitute

The substitute does not include the requirement of the engrossed for the comptroller, subject to bill provisions regarding prorated payments and the cap in the engrossed on the total amount in a participating child's account, to credit semiannually from the program fund to each program participant's account a total annual amount equal to the following:

- \$2,000 or a greater amount set by appropriation;

- if the participating child is enrolled in an accredited private school, \$10,000; or
- if the participating child is enrolled in an accredited private school and is a child with a disability, \$11,500.

Furthermore, the substitute does not include the following provisions that were included in the engrossed with respect to the amounts to be disbursed to a participating child's account:

- the requirement for the comptroller to credit semiannually from the program fund to the account of each program participant who is both a child with a disability and a home-schooled student, an amount equal to \$500 and limiting the use of that money for fees for educational therapies or services provided by a practitioner or provider that are not covered by any federal, state, or local government benefits such as Medicaid or CHIP or by any private insurance that the child is enrolled in at the time of receiving the therapies or services;
- the cap on the total amount in a participating child's account in any year at \$20,000; and
- the requirement for the comptroller to reduce the amount of a credit to a program participant's account as necessary to ensure the amount in the account does not exceed that cap.

#### Amount of Transfer to Participant Account in Substitute

The substitute instead requires a CEAO, regardless of the deadline by which the participating parent applies for enrollment in the program and except as provided by a bill provision regarding prorated payments, a cap in the substitute on payments to a child with a disability, and a cap in the substitute on payments to a home-schooled student, to transfer in accordance with the bill's provisions relating to the administration of accounts, each school year that a child participates in the program, money distributed to the CEAO to the child's account to be held in trust for the benefit of the child from the program fund in an amount equal to the following:

- 85 percent of the estimated statewide average amount of funding per student in ADA for the most recent school year for which that information is available, as provided by TEA; or
- for a child with a disability, subject to the cap in the substitute, the sum of the amount as previously described and the amount the district in which the child would otherwise be enrolled would be entitled to receive for the child calculated based on the child's IEP, as determined in accordance with applicable bill provisions, and the foundation school program funding based on a child's participation in a special education program applicable for the school year preceding the school year in which the child initially enrolls in the program.

Furthermore, the substitute includes the following provisions, which were absent from the engrossed:

- a cap on payments to a child with a disability at \$30,000 for a school year;
- a cap on payments to a home-schooled student at \$2,000 for a school year;
- a requirement for the commissioner, in determining the estimated statewide average amount of funding per student, to do the following, which was absent from the engrossed:
  - include projected state and local funding under statutory provisions relating to the foundation school program and options for local revenue levels in excess of entitlement and the amount the state is required to contribute to the Teacher Retirement System of Texas for the applicable school year; and
  - make the determination not later than January 15 preceding the applicable school year; and
- a requirement for TEA, on dates consistent with satisfying the application deadlines established by the comptroller, to calculate and report to the comptroller the specified amount for each participating child.

#### **Enrollment in Public School**

The substitute includes the following provisions, absent from the engrossed, with respect to a child who ceases participation in the program during a school year due to the child's enrollment in a district or charter school, notwithstanding any other provision of the bill or other law:

- a provision entitling the district or charter school to receive an allotment in an amount equal to the basic allotment multiplied by 0.1 for the child's ADA at the district or charter school for that school year; and
- a prohibition against the child being considered in evaluating the performance of the district or charter school under the public school accountability system as prescribed by state law relating to that system and relating to accountability interventions and sanctions for the first school year after the child ceases participation in the program.

### **Individualized Education Programs; Evaluations**

The substitute includes the following provisions with respect to individualized education programs (IEPs) and an evaluation of a child, none of which were in the engrossed:

- an authorization for the parent of a child who is not enrolled in a district or charter school to request that the district conduct a full individual and initial evaluation of the child for purposes of determining the child's eligibility for special education services under state law and participation in the program as a child with a disability;
- requirements for a district that receives such a request to follow procedures for such an evaluation in accordance with federal law not later than the 45th school day after the date the district receives parental consent to conduct the evaluation and, subject to the district's determination that the child is eligible for special education services, to develop an IEP for the child for purposes of establishing the child's eligibility to participate in the program as a child with a disability;
- a requirement for a district or charter school, at TEA's request, to provide to TEA a child's IEP developed under applicable state law or under the substitute's provision, as applicable; and
- an authorization for TEA to adopt rules as necessary to implement such provisions, including rules regarding an appeal of a district's determination of a child's eligibility and services to be provided in an individualized education program under those provisions.

### **Administration of Accounts**

Whereas the engrossed required a CEAO to hold program money distributed by the comptroller in trust for the benefit of children participating in the program and to make quarterly transfers to the account of each participating child served by the CEAO in equal amounts on or before the first day of July, October, January, and April or as otherwise determined by comptroller rule, the substitute does not include the provision establishing that the CEAO may do so as otherwise determined by comptroller rule.

### **Suspension of Account**

Both the engrossed and substitute authorize the recovery of money and any interest or other additions received related to money that was used for expenses not allowed under the bill's provisions from a participating parent, provider, or vendor if the participating child's account is suspended or closed. However, the engrossed authorized such recovery in accordance with unspecified applicable law, while the substitute authorizes such recovery in accordance with enforcement and collection provisions under state taxation law or as provided by other law.

### **Special Education Notice**

The substitute replaces the requirement that was included in the engrossed for a CEAO to submit the special education notice relating to the program to the comptroller for posting on the website

established and maintained for the program with a requirement for a CEAO to post that notice on the website.

The substitute revises the requirement of the engrossed for the special education notice to state that a private school is not subject to federal and state laws regarding the provision of educational services to a child with a disability in the same manner as a public school and to provide information regarding rights to which a child with a disability is entitled under federal and state law if the child attends a public school, including rights provided under the federal Individuals with Disabilities Education Act and rights provided under state law, by specifying that the requirement also includes such information with respect to charter schools and by replacing references to a public school made in those engrossed provisions with references to a school district.

### **Program Participant, Provider, and Vendor Autonomy**

While both the substitute and the engrossed prohibit a state agency or state official from adopting a rule or taking other governmental action related to the program and a CEAO from taking certain specified actions affecting certain matters of autonomy, the substitute does not include the provision included in the engrossed that provides an exception to the prohibition under applicable state law if a government agency makes the requisite demonstration under that law.

### **Student Records and Information**

The substitute revises the requirement that was included in the engrossed for TEA, a district, or a charter school to provide to a CEAO information regarding the child's district enrollment status for purposes of verifying a child's eligibility for the program by clarifying that such entities must provide information regarding the child's district or charter school enrollment status for such purposes.

The substitute does not include the authorization that was included in the engrossed for an education service provider or vendor, with the consent of a participating child's parent, to distribute the child's information for the purpose of the child's application for admission to a postsecondary educational institution. Both the substitute and the engrossed prohibit a CEAO, provider, or vendor from selling or distributing information regarding a participating child, but the substitute replaces the prohibition regarding distribution of such information with a prohibition against distributing such information in a manner not described by the bill without the program participant's consent.

### **Gifts, Grants, and Donations**

The substitute does not include the authorization that was included in the engrossed for a CEAO to solicit and accept gifts, grants, and donations from any public or private source for any expenses related to the administration of the program.

### **Annual Report**

Whereas the engrossed required the comptroller to require that each CEAO compile program data and produce an annual longitudinal report, the substitute requires the comptroller instead to compile program data and produce the annual longitudinal report in collaboration with TEA and CEAOs. The substitute includes among the required contents of the annual report the number of program applications wait-listed, disaggregated by age, which was absent from the engrossed.

### **Collection and Reporting of Demographic Information**

Whereas the engrossed required each CEAO to collect and report to the comptroller demographic information regarding each participating child for whom the CEAO is responsible, the substitute requires the comptroller instead to compile and report that information in collaboration with TEA and the CEAOs and revises the required contents of the report as follows:

- specifies that the child's sex must be included in the report instead of the child's gender, which appeared in the engrossed;
- does not include among the required contents whether the child is educationally disadvantaged, which appeared in the engrossed; and
- includes among the required contents the child's category with respect to the groups for which a CEAO must fill available positions by lottery, which was absent from the engrossed.

### **Severability of Provisions**

The engrossed and substitute both provide for the severability of any provision of the bill that is found by a court to be invalid for any reason and that the remaining applications of that provision to all other persons and circumstances not be affected, but the substitute includes an additional requirement, which is absent from the engrossed, that the court allow the continued operation of the program without regard for the severed provision rather than restrict program operation or participation.