

## **BILL ANALYSIS**

C.S.S.B. 778  
By: Seliger  
Higher Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties suggest that certain public institutions of higher education should meet targets on a majority of certain performance measures to increase designated tuition beyond the rate of inflation and that a failure to meet those targets should result in the institution's designated tuition increase being limited to the rate of inflation. C.S.S.B. 778 seeks to implement performance-based designated tuition limitations for certain public institutions of higher education.

### **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 Texas Higher Education Coordinating Board in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

C.S.S.B. 778 amends the Education Code to require the Texas Higher Education Coordinating Board, using the negotiated rulemaking procedures under the Negotiated Rulemaking Act, to define the following performance measures to be used for purposes of imposing performance-based designated tuition limitations on a general academic teaching institution other than a public state college: the total number of undergraduate degrees awarded by the institution; the total number of undergraduate degrees awarded by the institution, adjusted by the institution's six-year graduation rate; the total number of undergraduate degrees awarded by the institution per 100 undergraduate full-time student equivalents; the total number of undergraduate degrees awarded by the institution to at-risk students; the total number of undergraduate students at the institution having successfully completed at least 25 percent of the student's degree requirements or having earned at least 30 credit hours toward a 120-credit-hour degree; the total number of undergraduate students at the institution having successfully completed at least 50 percent of the student's degree requirements or having earned at least 60 credit hours toward a 120-credit-hour degree; the total number of undergraduate students having successfully completed at least 75 percent of the student's degree requirements or having earned at least 90 credit hours toward a 120-credit-hour degree; the average length of enrollment, by number of semesters, required for undergraduate degree completion; the four-year graduation rate of first-time, full-time, bachelor's degree-seeking students who enrolled in at least 12 semester credit hours in the student's first fall semester at the institution and who graduated from the institution or from any other institution of higher education or private or independent institution of higher education; the six-year graduation rate of first-time, full-time, bachelor's degree-seeking students who enrolled in at least 12 semester credit hours in the student's first fall semester at the institution and who graduated from the institution or from any other institution of higher education or private or independent institution of higher education; and the institution's administrative costs.

C.S.S.B. 778 requires the coordinating board, in consultation with the Legislative Budget Board (LBB), to determine whether an institution has achieved certain applicable target levels assigned to the performance measures for purposes of setting designated tuition rates for the next academic year based on the achievement of performance measures. The bill requires the coordinating board, using the negotiated rulemaking procedures, to establish by rule the process by which an institution's achievement on a performance measure is submitted to and verified by the coordinating board.

C.S.S.B. 778 imposes limitations on designated tuition charged for an academic year by an applicable institution based on whether the institution achieved or did not achieve, in the most recent state fiscal year preceding that academic year for which information is available, a majority of the target levels assigned to the performance measures included in the General Appropriations Act as applicable to the institution for that state fiscal year. The bill sets the limitation for an institution that did not achieve a majority of the target levels at the total amount of designated tuition the institution's governing board would have charged to a similarly situated student in the preceding academic year, as that amount is adjusted for inflation. The bill sets the limitation for an institution that did achieve a majority of the target levels at a maximum of five percent more than the total amount of designated tuition the institution's governing board would have charged to a similarly situated student in the preceding academic year, as that amount is adjusted for inflation. The bill prohibits the governing board in either case from increasing the amount of tuition charged to a student more than once in any academic year and establishes the circumstances under which students are similarly situated and under which an institution is considered to have achieved a target level assigned to a performance measure.

C.S.S.B. 778 requires the coordinating board to notify the governing board of an institution as soon as practicable after the coordinating board determines a limitation applies to the tuition charged by the institution for an academic year and of the limitation prescribed on the amount of tuition that may be charged by the institution for that academic year.

C.S.S.B. 778 requires the LBB, not later than January 31 of each year, or as soon thereafter as practicable, to publish and certify to the governing board of each applicable institution the inflation rate to be used for purposes of the performance-based designated tuition limitations for the next academic year. The bill sets the inflation rate at the percentage increase, if any, as expressed in decimal form rounded to the nearest thousandth of one percent, in the consumer price index for the preceding calendar year as compared to the consumer price index for the year preceding that year. The bill requires the coordinating board, using negotiated rulemaking procedures, to establish by rule an exception to the limitation imposed on an institution that does not achieve a majority of the target levels assigned to the performance measures in the event of a natural disaster or other extraordinary circumstance affecting the institution's achievement on performance measures. The bill applies the limitation applicable to an institution that does achieve a majority of the performance measure target levels to an institution granted such an exception. The bill's provisions establishing the performance-based designated tuition limitations apply beginning with tuition charged by an applicable institution for the 2018–2019 academic year.

C.S.S.B. 778 amends the Government Code to require the governing board of each institution of higher education to which the bill's performance-based designated tuition limitations apply to submit to the LBB, as part of the institution's legislative appropriations request for the general appropriations bill prepared by the LBB, a target level for each performance measure applicable to the institution for each of the state fiscal years covered by the general appropriations bill. The bill requires the target levels submitted by an institution to be established by the institution's governing board in consultation with the institution's president and provosts and with the institution's system administration, if the institution is a component institution of a university system. The bill requires the coordinating board, using negotiated rulemaking procedures, to develop by rule standards to be considered by the governing board of an institution in establishing the institution's target levels for performance measures and requires an institution's

governing board, in establishing target levels, to consider those standards. The bill requires the coordinating board and the negotiating committee established for the purpose of developing the standards, in doing so, to consider institutional improvement on target levels. The bill requires the coordinating board to reconvene the negotiating committee to assist the coordinating board whenever the coordinating board modifies or updates the standards.

C.S.S.B. 778 requires the LBB, in preparing the general appropriations bill, to include the performance measure target levels submitted by each institution to which money is to be appropriated in the general appropriations bill as recommendations for the target levels to be included in the appropriations to the institution for each of the state fiscal years covered by the general appropriations bill.

### **EFFECTIVE DATE**

September 1, 2015.

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

While C.S.S.B. 778 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. Subchapter B, Chapter 54, Education Code, is amended by adding Sections 54.05131 and 54.05132 to read as follows:

Sec. 54.05131. PERFORMANCE-BASED DESIGNATED TUITION LIMITATIONS.

(a) In this section:

(1) "Administrative costs" means the percentage of an institution's operating budget expended on institutional expenses, as designated in an institution's annual financial reports in the subcategories of executive management, fiscal operations, general administrative and logistical services, administrative computing support, and public relations/development.

(2) "Coordinating board" means the Texas Higher Education Coordinating Board.

(3) "General academic teaching institution" and "public state college" have the meanings assigned by Section 61.003.

(4) "Performance measure" includes only a performance measure defined by coordinating board rule under Subsection (b).

(b) The coordinating board, using the negotiated rulemaking procedures under Chapter 2008, Government Code, shall define the following performance measures to be used for purposes of this section:

(1) the total number of undergraduate degrees awarded by the institution;

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.05131 to read as follows:

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(a) In this section:

(1) "Administrative costs" means the percentage of an institution's operating budget expended on institutional expenses, as designated in an institution's annual financial reports in the subcategories of executive management, fiscal operations, general administrative and logistical services, administrative computing support, and public relations/development.

(2) "Coordinating board" means the Texas Higher Education Coordinating Board.

(3) "General academic teaching institution" and "public state college" have the meanings assigned by Section 61.003.

(4) "Performance measure" includes only a performance measure defined by coordinating board rule under Subsection (b).

(b) The coordinating board, using the negotiated rulemaking procedures under Chapter 2008, Government Code, shall define the following performance measures to be used for purposes of this section:

(1) the total number of undergraduate degrees awarded by the institution;

(2) the total number of undergraduate degrees awarded by the institution, adjusted by the institution's six-year graduation rate under Subdivision (10);

(3) the total number of undergraduate degrees awarded by the institution per 100 undergraduate full-time student equivalents;

(4) the total number of undergraduate degrees awarded by the institution to at-risk students;

(5) the total number of undergraduate students at the institution having successfully completed at least 25 percent of the student's degree requirements or having earned at least 30 credit hours toward a 120-credit-hour degree;

(6) the total number of undergraduate students at the institution having successfully completed at least 50 percent of the student's degree requirements or having earned at least 60 credit hours toward a 120-credit-hour degree;

(7) the total number of undergraduate students having successfully completed at least 75 percent of the student's degree requirements or having earned at least 90 credit hours toward a 120-credit-hour degree;

(8) the average length of enrollment, by number of semesters, required for undergraduate degree completion;

(9) the four-year graduation rate of first-time, full-time, bachelor's degree-seeking students who enrolled in at least 12 semester credit hours in the student's first fall semester at the institution and who graduated from the institution or from any other institution of higher education or private or independent institution of higher education;

(10) the six-year graduation rate of first-time, full-time, bachelor's degree-seeking students who enrolled in at least 12 semester credit hours in the student's first fall semester at the institution and who graduated from the institution or from any other institution of higher education or private or independent institution of higher education; and

(11) the institution's administrative costs.

(c) This section applies only to a general academic teaching institution other than a public state college.

(d) The coordinating board in consultation with the Legislative Budget Board shall determine whether an institution has

(2) the total number of undergraduate degrees awarded by the institution, adjusted by the institution's six-year graduation rate under Subdivision (10);

(3) the total number of undergraduate degrees awarded by the institution per 100 undergraduate full-time student equivalents;

(4) the total number of undergraduate degrees awarded by the institution to at-risk students;

(5) the total number of undergraduate students at the institution having successfully completed at least 25 percent of the student's degree requirements or having earned at least 30 credit hours toward a 120-credit-hour degree;

(6) the total number of undergraduate students at the institution having successfully completed at least 50 percent of the student's degree requirements or having earned at least 60 credit hours toward a 120-credit-hour degree;

(7) the total number of undergraduate students having successfully completed at least 75 percent of the student's degree requirements or having earned at least 90 credit hours toward a 120-credit-hour degree;

(8) the average length of enrollment, by number of semesters, required for undergraduate degree completion;

(9) the four-year graduation rate of first-time, full-time, bachelor's degree-seeking students who enrolled in at least 12 semester credit hours in the student's first fall semester at the institution and who graduated from the institution or from any other institution of higher education or private or independent institution of higher education;

(10) the six-year graduation rate of first-time, full-time, bachelor's degree-seeking students who enrolled in at least 12 semester credit hours in the student's first fall semester at the institution and who graduated from the institution or from any other institution of higher education or private or independent institution of higher education; and

(11) the institution's administrative costs.

(c) This section applies only to a general academic teaching institution other than a public state college.

(d) The coordinating board in consultation with the Legislative Budget Board shall determine whether an institution has

achieved the applicable target levels for purposes of Subsections (f) and (g). Using the negotiated rulemaking procedures under Chapter 2008, Government Code, the coordinating board by rule shall establish the process by which an institution's achievement on a performance measure is submitted to and verified by the coordinating board.

(e) The coordinating board shall notify the governing board of an institution as soon as practicable after the coordinating board determines that Subsection (f) or (g) applies to the tuition charged by the institution for an academic year and of the limitation prescribed by the applicable subsection on the amount of tuition that may be charged by the institution for that academic year.

(f) This subsection applies to tuition charged for an academic year by an institution to which this section applies only if the institution did not achieve, in the most recent state fiscal year preceding that academic year for which information is available, a majority of the target levels assigned to the performance measures included in the General Appropriations Act as applicable to the institution for that state fiscal year. For an academic year in which this subsection applies to the tuition charged by an institution, unless the institution has been granted an exception under Subsection (j) for that year, the amount of tuition the governing board of the institution charges under Section 54.0513 to a student for that academic year may not exceed the total amount of tuition that the governing board would have charged under that section to a similarly situated student in the preceding academic year, as that amount is adjusted for each academic year for inflation as determined under Subsection (i). The governing board may not increase the amount of tuition charged under this subsection to a student more than once in any academic year.

(g) This subsection applies to tuition charged for an academic year by an institution to which this section applies only if the institution achieved, in the most recent state fiscal year preceding that academic year for which information is available, a majority of the target levels assigned to the performance measures included in the General Appropriations Act as applicable to the institution for that state fiscal year. For

achieved the applicable target levels for purposes of Subsections (f) and (g). Using the negotiated rulemaking procedures under Chapter 2008, Government Code, the coordinating board by rule shall establish the process by which an institution's achievement on a performance measure is submitted to and verified by the coordinating board.

(e) The coordinating board shall notify the governing board of an institution as soon as practicable after the coordinating board determines that Subsection (f) or (g) applies to the tuition charged by the institution for an academic year and of the limitation prescribed by the applicable subsection on the amount of tuition that may be charged by the institution for that academic year.

(f) This subsection applies to tuition charged for an academic year by an institution to which this section applies only if the institution did not achieve, in the most recent state fiscal year preceding that academic year for which information is available, a majority of the target levels assigned to the performance measures included in the General Appropriations Act as applicable to the institution for that state fiscal year. For an academic year in which this subsection applies to the tuition charged by an institution, unless the institution has been granted an exception under Subsection (j) for that year, the amount of tuition the governing board of the institution charges under Section 54.0513 to a student for that academic year may not exceed the total amount of tuition that the governing board would have charged under that section to a similarly situated student in the preceding academic year, as that amount is adjusted for inflation as determined under Subsection (i). The governing board may not increase the amount of tuition charged under this subsection to a student more than once in any academic year.

(g) This subsection applies to tuition charged for an academic year by an institution to which this section applies only if the institution achieved, in the most recent state fiscal year preceding that academic year for which information is available, a majority of the target levels assigned to the performance measures included in the General Appropriations Act as applicable to the institution for that state fiscal year. For

an academic year in which this subsection applies to the tuition charged by an institution, the amount of tuition the governing board of the institution charges under Section 54.0513 to a student for that academic year may not exceed by more than three percent the total amount of tuition that the governing board would have charged under that section to a similarly situated student in the preceding academic year, as that amount is adjusted for each academic year for inflation as determined under Subsection (i). The governing board may not increase the amount of tuition charged under this subsection to a student more than once in any academic year.

(h) For purposes of this section:

(1) an institution is considered to have achieved a target level assigned to a performance measure if the institution has achieved at least 98 percent of the target level; and

(2) students are similarly situated if they share the same residency status, degree program, course load, course level, tuition exemption status, and other circumstances affecting the tuition charged to the student.

(i) Not later than January 31 of each year, or as soon thereafter as practicable, the Legislative Budget Board shall publish and certify to the governing board of each institution to which this section applies the inflation rate to be used for purposes of this section for the next academic year. The inflation rate is the percentage increase, if any, as expressed in decimal form rounded to the nearest thousandth of one percent, in the consumer price index, as defined by Section 341.201, Finance Code, for the preceding calendar year as compared to the consumer price index for the year preceding that year.

(j) The coordinating board, using the negotiated rulemaking procedures under Chapter 2008, Government Code, by rule shall establish an exception to the application of Subsection (f) for an institution to which that subsection would otherwise apply for an academic year in the event of a natural disaster or other extraordinary circumstance affecting the institution's achievement on performance measures. Subsection (g) applies to an institution that is granted an exception under this subsection.

an academic year in which this subsection applies to the tuition charged by an institution, the amount of tuition the governing board of the institution charges under Section 54.0513 to a student for that academic year may not exceed by more than five percent the total amount of tuition that the governing board would have charged under that section to a similarly situated student in the preceding academic year, as that amount is adjusted for inflation as determined under Subsection (i). The governing board may not increase the amount of tuition charged under this subsection to a student more than once in any academic year.

(h) For purposes of this section:

(1) an institution is considered to have achieved a target level assigned to a performance measure if the institution has achieved at least 98 percent of the target level; and

(2) students are similarly situated if they share the same residency status, degree program, course load, course level, tuition exemption status, and other circumstances affecting the tuition charged to the student.

(i) Not later than January 31 of each year, or as soon thereafter as practicable, the Legislative Budget Board shall publish and certify to the governing board of each institution to which this section applies the inflation rate to be used for purposes of this section for the next academic year. The inflation rate is the percentage increase, if any, as expressed in decimal form rounded to the nearest thousandth of one percent, in the consumer price index, as defined by Section 341.201, Finance Code, for the preceding calendar year as compared to the consumer price index for the year preceding that year.

(j) The coordinating board, using the negotiated rulemaking procedures under Chapter 2008, Government Code, by rule shall establish an exception to the application of Subsection (f) for an institution to which that subsection would otherwise apply for an academic year in the event of a natural disaster or other extraordinary circumstance affecting the institution's achievement on performance measures. Subsection (g) applies to an institution that is granted an exception under this subsection.

Sec. 54.05132. TEMPORARY  
LIMITATION ON TOTAL AMOUNT OF  
TUITION. (a) In this section:

(1) "General academic teaching institution"  
and "public state college" have the meanings  
assigned by Section 61.003.

(2) "Tuition" includes:

(A) tuition for which the rates are prescribed  
by this chapter; and

(B) tuition charged by an institution of  
higher education under Section 54.0513 or  
another law authorizing an institution to  
establish tuition rates.

(b) Notwithstanding Section 54.0513, the  
total amount of tuition charged by a general  
academic teaching institution other than a  
public state college to a student for the  
2016-2017 or 2017-2018 academic year  
may not exceed by more than one percent  
the total amount of tuition that the  
institution would have charged under this  
chapter to a similarly situated student for the  
preceding academic year, as that amount is  
adjusted for each academic year for inflation  
as determined under Subsection (c). For  
purposes of this subsection, students are  
similarly situated if they share the same  
residency status, degree program, course  
load, course level, tuition exemption status,  
and other circumstances affecting the tuition  
charged to the student. This subsection does  
not ensure that the total amount of tuition  
charged to an individual student does not  
increase based on a change in the student's  
residency status, degree program, course  
load, course level, tuition exemption status,  
or other circumstance affecting the tuition  
charged to the student.

(c) Not later than January 31 of each year,  
or as soon thereafter as practicable, the  
Legislative Budget Board shall publish and  
certify to the governing board of each  
institution to which this section applies the  
inflation rate to be used for purposes of this  
section for the next academic year. The  
inflation rate is the percentage increase, if  
any, as expressed in decimal form rounded  
to the nearest thousandth of one percent, in  
the consumer price index, as defined by  
Section 341.201, Finance Code, for the  
preceding calendar year as compared to the  
consumer price index for the year preceding  
that year.

(d) This section expires September 1, 2018.

No equivalent provision.

SECTION 2. Chapter 322, Government Code, is amended by adding Section 322.025 to read as follows:

Sec. 322.025. RECOMMENDATIONS FOR PERFORMANCE MEASURE TARGET LEVELS FOR CERTAIN INSTITUTIONS OF HIGHER EDUCATION. (a) In this section:

(1) "Institution of higher education" and "university system" have the meanings assigned by Section 61.003, Education Code.

(2) "Performance measure" means a performance measure adopted under Section 54.05131(b), Education Code.

(b) The governing board of each institution of higher education to which Section 54.05131, Education Code, applies shall submit to the board, as part of the institution's legislative appropriations request for the general appropriations bill prepared by the board under Section 322.008, a target level for each performance measure applicable to the institution for each of the state fiscal years covered by the bill. The target levels submitted by an institution under this subsection must be established by the institution's governing board in consultation with the institution's president and provosts and with the institution's system administration, if the institution is a component institution of a university system. In establishing the target levels, the institution's governing board shall adhere to the Texas Higher Education Coordinating Board's standards under Subsection (c).

(c) The Texas Higher Education Coordinating Board, using the negotiated rulemaking procedures under Chapter 2008, by rule shall develop standards to be considered by the governing board of an institution of higher education in establishing the institution's target levels for performance measures under Subsection (b). In developing the standards, the negotiating committee established for purposes of this subsection and the coordinating board shall consider institutional improvement on target levels. The coordinating board shall reconvene the negotiating committee to assist the coordinating board whenever the coordinating board modifies or updates the standards.

(d) The board, in preparing the general appropriations bill under Section 322.008,

SECTION 2. Chapter 322, Government Code, is amended by adding Section 322.025 to read as follows:

Sec. 322.025. RECOMMENDATIONS FOR PERFORMANCE MEASURE TARGET LEVELS FOR CERTAIN INSTITUTIONS OF HIGHER EDUCATION. (a) In this section:

(1) "Institution of higher education" and "university system" have the meanings assigned by Section 61.003, Education Code.

(2) "Performance measure" means a performance measure adopted under Section 54.05131(b), Education Code.

(b) The governing board of each institution of higher education to which Section 54.05131, Education Code, applies shall submit to the board, as part of the institution's legislative appropriations request for the general appropriations bill prepared by the board under Section 322.008, a target level for each performance measure applicable to the institution for each of the state fiscal years covered by the bill. The target levels submitted by an institution under this subsection must be established by the institution's governing board in consultation with the institution's president and provosts and with the institution's system administration, if the institution is a component institution of a university system. In establishing the target levels, the institution's governing board shall consider the Texas Higher Education Coordinating Board's standards under Subsection (c).

(c) The Texas Higher Education Coordinating Board, using the negotiated rulemaking procedures under Chapter 2008, by rule shall develop standards to be considered by the governing board of an institution of higher education in establishing the institution's target levels for performance measures under Subsection (b). In developing the standards, the negotiating committee established for purposes of this subsection and the coordinating board shall consider institutional improvement on target levels. The coordinating board shall reconvene the negotiating committee to assist the coordinating board whenever the coordinating board modifies or updates the standards.

(d) The board, in preparing the general appropriations bill under Section 322.008,

shall include the performance measure target levels submitted by each institution under Subsection (b) of this section to which money is to be appropriated in the bill, as recommendations for the target levels to be included in the appropriations to the institution for each of the state fiscal years covered by the bill.

SECTION 3. Section 54.05131, Education Code, as added by this Act, applies beginning with tuition charged by a general academic teaching institution to which that section applies for the 2018-2019 academic year.

SECTION 4. This Act takes effect September 1, 2015.

shall include the performance measure target levels submitted by each institution under Subsection (b) of this section to which money is to be appropriated in the bill, as recommendations for the target levels to be included in the appropriations to the institution for each of the state fiscal years covered by the bill.

SECTION 3. Section 54.05131, Education Code, as added by this Act, applies beginning with tuition charged by a general academic teaching institution to which that section applies for the 2018-2019 academic year. Tuition charged by an institution for an academic year before that academic year is covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 4. Same as engrossed version.