

SUBJECT: State fiscal matters related to public and higher education

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 21 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Eiland, Giddings, Gooden, Hochberg, S. King, Margo, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Zerwas

4 nays — Dukes, Johnson, McClendon, Villarreal

2 absent — Martinez, Morrison

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Since the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.

On April 3, the House passed HB 1 by Pitts, the House version of the general appropriations bill for fiscal 2012-13, and the Senate Finance Committee reported the bill favorably, as substituted, on April 21. For further discussion of issues in the state budget, see HRO State Finance Report Number 82-4, *CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2012-13*, March 31, 2011.

DIGEST: CSHB 3639 would authorize state agencies, schools, and higher education institutions that received appropriations under Article 3, education, of the general appropriations act to reduce or recover expenditures by:

- consolidating any reports or publications the entity was required to make and filing or delivering them exclusively by electronic means;
- extending the effective period of any license, permit, or registration granted or administered by the agency;

- entering into a contract with another governmental entity or a private vendor to perform the agency's duties;
- adopting additional eligibility requirements for people who received benefits from the agency to ensure that benefits were received by the most deserving people, consistent with the purpose of the benefits;
- allowing agency communications, including applications, notices, billing statements, receipts, and certificates, to be sent or delivered by e-mail or through the Internet; and
- adopting and collecting fees to cover agency costs.

CSHB 3639 would amend portions of the Education Code and other statutes as required to implement provisions for public and higher education in the general appropriations act for fiscal 2012-2013.

**Teacher Retirement System.** The bill would remove the requirement that the state's contribution rate to the Teacher Retirement System (TRS) be equal to or above the employee contribution rate. The bill would decrease the state contribution rate to the TRS health insurance for retired members from 1 percent to 0.5 percent. Both provisions would take effect on September 1, 2011.

**Foundation School Program.** The bill would defer the August 2013 payment from the Foundation School Program to school districts until between September 5, 2013 and September 10, 2013.

The bill would repeal current law requiring the comptroller to transfer money from the State Lottery Account to the Foundation School Fund each August.

**Advanced Placement.** The bill would amend the eligibility criteria for awarding advanced placement (AP) exam fee subsidies to students. Eligible students would have to demonstrate financial need, not just academic merit.

**Early High School Graduation Scholarship Program.** A student could not receive an award through the Early High School Graduation Scholarship Program if he or she graduated from high school on or after September 1, 2011. The bill would remove the requirement that savings to the public school finance system from the program be used to provide exemptions for higher education tuition for certain students.

**Tuition exemptions.** The bill would require the education commissioner to transfer funds collected by the Texas Education Agency for tuition exemptions to the Texas Higher Education Coordinating Board to distribute to higher education institutions for certain tuition exemptions.

The bill would limit eligibility for educational aide tuition exemptions to persons seeking certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers.

These provisions would apply beginning with tuition and fees charged for the 2011 fall semester.

**Dual credit course funding.** The bill would prohibit physical education courses from counting toward the contact hours attributable for dual credit funding for the junior college's proportionate share of state appropriations.

This provision would apply beginning with funding for the 2011 fall semester.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

CSHB 3639 would permit the state to save money during tough economic times while focusing available funds on the most pressing needs.

**Teacher Retirement System.** The bill would permit the state to contribute less to TRS, which is necessary in order to enact the appropriations made by CSHB 1. While the bill would allow a reduction in the state contribution to the fund, TRS would remain financially stable, with a balance of more than \$100 billion. It may be harder to achieve full solvency by decreasing contributions for a few years, but the proposed change would not irrevocably damage the fund.

The bill also would permit the state to contribute less to the TRS health insurance plan for retirees, known as TRS Care, which is necessary in order to enact the appropriations made by CSHB 1. The proposal would not harm the fund balance of TRS Care, which currently is about \$805 million. The fund would be valued at around \$66 million at the end of 2012 if the state contributed at the rate of 0.5 percent.

While the state must maintain a certain level of funding in order to receive funds through the federal Early Retirement Reinsurance Program (ERRP), there is no standard definition or quantifiable measure of the federal government's expectations for the state's contribution.

**Foundation School Program.** Deferring the Foundation School Program payment would provide significant relief to the state in fiscal 2012 while still providing the same level of support to local school districts. This would be a simple change that would minimally impact school districts but would substantially affect the budget, and it is expected to save \$1.8 billion in fiscal 2013. The payment delay would be for only a couple of weeks, and school districts would have enough lead time to appropriately budget their spending. Additionally, keeping the deferral permanent would prevent worse problems next biennium if the state had to resume the August payment. As in the past, when state finances improve, the Legislature could consider restoring the previous payment schedule.

**Advanced Placement.** The state should not continue to subsidize exam fees for all students. CSHB 3639 would revise the program, through which students receive subsidies toward the AP or International Baccalaureate Exam fees, to restrict eligibility to students based on financial need. In its *Government Effectiveness and Efficiency Report (GEER)*, the Legislative Budget Board (LBB) determined that the program was unsuccessful at increasing student achievement but caused a significant cost to the state. The incentives provided by the program have not increased the number of students successfully passing AP and International Baccalaureate exams. Changing the eligibility requirements would ensure that the state's money was spent more effectively.

**Early High School Graduation Scholarship Program.** The bill would close the Early High School Graduation Scholarship Program, the scholarship program for high school students finishing in less than four years, in September 2012 and would eliminate it in 2017. There is no evidence that the program provides an effective incentive for high school students to finish early, so closing it would present an opportunity for the state to spend its money more efficiently and effectively.

**Tuition exemptions.** To address the growing need for more qualified teachers, Texas established the Educational Aide Exemption Program, which exempts certain educational classroom aides from tuition and some fees. Awards vary based on the number of hours taken by the student and

the relative costs at the institution. The Legislature appropriated about \$28.7 million to this program for fiscal 2010-2011. In the current budget climate, it would be proper to target this small financial aid program toward people seeking certification in specific subject areas — like bilingual education, math, and science — that are experiencing critical teacher shortages.

The shortage of teachers in critical areas is forcing otherwise unqualified teachers into these subject areas. If there are shortages in certain subject areas, it would make sense to find ways to help a teacher attain the necessary certification to address the shortage. This would offer an incentive for teachers to work in disadvantaged schools.

**Dual credit course offerings.** Dual credit enrollment is growing rapidly in the state. Current law allows public school districts and community colleges to receive state funding for dual credit courses and requires all school districts to allow students to earn the equivalent of 12 hours of college credit while in high school. According to the LBB, from fall 2002 to fall 2009, dual credit enrollment increased more than 200 percent. Ensuring course quality and limiting dual credit courses to those with academic value would further improve college readiness.

As the number of enrolled students and dual credit courses have increased, ensuring the quality of dual credit programs has become more critical. In its *GEER*, the LBB said that the more limited the number of courses approved for dual credit, the easier it would be to monitor quality and to provide high school students with appropriate support. Very few dual credit courses do not count toward a certificate or degree. In general, all courses except for developmental education, basic skills, and noncredit continuing education courses can count toward a degree or certificate. Some have questioned the academic value of physical education courses for college readiness. Accordingly, the LBB recommended that physical education dual credit courses be prohibited from being available for dual credit funding. This would not prohibit students from enrolling in and paying for physical education courses themselves.

In fiscal 2009, 1,900 Texas high school students received both high school and college credit for physical education courses. Physical education courses are not included as part of the required 36 semester-credit hour core curriculum for colleges, so not every community college requires

them to earn an associate's degree. According to the LBB, several other states do not allow physical education courses to count for dual credit.

OPPONENTS  
SAY:

**Teacher Retirement System.** The bill's provisions allowing a lower state contribution would damage the solvency of TRS. At the least, the bill should require the provisions pertaining to TRS to expire so a future Legislature could decide whether to renew it.

The bill would permit the state to contribute less to TRS, which is unfair and inequitable. Decreasing the state's contribution rate would jeopardize the long-term solvency of the fund. The state has an obligation to protect the TRS pension fund for retired teachers who live on fixed incomes. Potential increases in health insurance premiums would further erode retirees' fixed incomes, which decrease in value each year due to inflation.

Decreasing the state's contribution rate to the retiree health insurance program would be too risky. The savings achieved by lowering the state contribution rate would not justify the potential loss of about \$150 million in fiscal 2012-13 federal funding to TRS-Care from a possible decrease in federal ERRP funds. Lowering the state's contribution rate also would increase the chance that the financial burden to meet federal maintenance-of-effort requirements would shift onto school districts.

**Foundation School Program payments.** School districts count on this funding and need the funding as soon as they can get it. In these tight budgetary times, waiting a couple of extra weeks to receive FSP funding would put some school districts in a bind. Many districts do not expect to have sufficient savings to finance the remainder of 2012 while they wait for the state's payment. Additionally, this would be a "sleight of hand" maneuver that does nothing to resolve the structural and other tax and spending problems that are creating the state's shortfall and budget challenges. This deferral would create an even bigger budget hole in the future when the state resumes its normal August payment period.

**Advanced placement.** The bill does not adequately define the financial need that a student would have to demonstrate to qualify for the AP subsidy.

Eliminating incentives to graduate early and to take AP courses would decrease the quality of education for all students. Some students require

the monetary reward to achieve their potential by pursuing early graduation or advanced courses.

**Tuition exemptions.** The bill would eliminate tuition exemptions for certain low-income students, which could limit their access to higher education. The bill could deny or limit access to higher education for educational aides desiring to become teachers.

**NOTES:**

According to the bill's fiscal note, CSHB 3639 would have a positive impact of \$2.5 billion in fiscal 2012-2013.

The companion bill, SB 1581 by Ogden, was reported favorably, as substituted, by the Senate Finance Committee on April 26.