

BILL ANALYSIS

Senate Research Center

H.B. 3459
By: Pitts (Bivins)
Finance
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Engrossed

DIGEST AND PURPOSE

Due to the current budget shortfall, state agencies and institutions of higher education were asked to prioritize spending based on core functions and essential services. Legislators looked to these priorities in preparation of the budget; however, certain statutory changes are also needed to conform with appropriations levels in the 2004-05 General Appropriations Act. H.B. 3459 authorizes these statutory changes for the education agencies listed under Article III of the 2004-05 General Appropriations Act.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Commissioner of Education in SECTION 6 (Section 21.413, Education Code), and SECTION 40 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Chapters 41 (Equalized Wealth Level), 42 (Foundation School program), and 46 (Assistance with Instructional Facilities and Payment of Existing Debt); and Section 45.002 (Maintenance Taxes), Education Code.

SECTION 2. Amends Chapter 4, Education Code, by adding Section 4.003, as follows:

Sec. 4.003. STATE RESPONSIBILITY FOR PROVISION OF PUBLIC EDUCATION.

(a) Provides that it is the policy of this state that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student's educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.

(b) Requires the public school finance system of this state to adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences.

(c) Provides that it is the policy of this state that not later than September 1, 2007, the legislature must provide state funding in an amount that constitutes at least 50 percent of the cost of maintaining and operating the public school system.

SECTION 3. Provides that Sections 1 and 2 of this Act take effect September 1, 2004, but only if, before that date, certain conditions exist.

SECTION 4. Amends Subchapter B, Chapter 7, Education Code, by adding Section 7.027, as follows:

Sec. 7.027. LIMITATION ON COMPLIANCE MONITORING. (a) Requires the Texas Education Agency (TEA), except as provided by Section 29.001(5), 39.074, or 39.075, to monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12, including the

process described by Subchapter F, Chapter 11, or a program described by Subchapter A, B, C, D, E, F, H, or I, Chapter 29, or Section 38.003, and the use of funds provided for such a program under Subchapter C, Chapter 42, only as necessary to ensure that certain criteria are met.

(b) Provides that the board of trustees of a school district or the governing body of an open-enrollment charter school has primary responsibility for ensuring that the district or school complies with all applicable requirements of state educational programs.

SECTION 5. Amends Section 8.051(d), Education Code, to authorize, rather than require, each regional education service center to maintain core services for purchase by school districts and campuses.

SECTION 6. Amends Subchapter I, Chapter 21, Education Code, by adding Section 21.413, as follows:

Sec. 21.413. CLASSROOM SUPPLY REIMBURSEMENT PROGRAM. (a) Requires the commissioner of education (commissioner) to establish a reimbursement program under which the commissioner provides funds to a school district for the purpose of reimbursing classroom teachers in the district who expend personal funds on classroom supplies. Requires a school district to match any funds provided to the district under the reimbursement program with local funds to be used for the same purpose.

(b) Requires the commissioner to adopt rules for the local allocation of funds provided to a school district under the reimbursement program. Requires a school district to allow each classroom teacher in the district who is reimbursed under the reimbursement program to use the funds in the teacher's discretion, except that the funds must be used for the benefit of the district's students. Prohibits a school district from using funds received under the reimbursement program to replace local funds used by the district for the same purpose.

(c) Requires the commissioner to identify state and federal funds available for use under the reimbursement program, including funds subject to the Education Flexibility Partnership Act of 1999 (20 U.S.C. Section 5891a et seq.), and its subsequent amendments, as well as consolidated administrative funds.

(d) Requires the commissioner to establish the reimbursement program for implementation beginning not later than the 2005-2006 school year. Authorizes the commissioner to implement the reimbursement program only if funds are specifically appropriated by the legislature for the program or if the commissioner identifies available funds, other than general revenue funds, that may be used for the program.

SECTION 7. Amends Section 29.001, Education Code, to require TEA's statewide design plan to allow TEA to effectively monitor and periodically conduct site visits of all school districts to ensure that districts are complying with federal law and regulations and those state laws and rules necessary to carry out federal and state law and regulations relating to special education, rather than to ensure that rules adopted under this section are applied in a consistent and uniform manner.

SECTION 8. Amends Sections 29.010(a) and (c), Education Code, as follows:

(a) Requires TEA to adopt and implement a comprehensive system for monitoring school district compliance with federal and state law and regulations and state requirements necessary to carry out federal laws and regulations relating to special education.

(c) Requires TEA to develop and implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), federal law or regulations, or state requirements necessary to carry out federal law or regulations relating

to special education.

SECTION 9. Amends Sections 29.062(a) and (e), Education Code, as follows:

(a) Requires TEA, in accordance with the policy of the state, to evaluate the effectiveness of programs under this subchapter based on the results of assessment instruments, including those required under Subchapter B, Chapter 39. Authorizes the agency to combine evaluations under this section with federal accountability measures concerning students of limited English proficiency, rather than monitor compliance with state rules by inspecting each school district and open-enrollment charter school on-site at least every three years.

(e) Requires TEA, if a school district or open-enrollment charter school fails to satisfy appropriate standards adopted by the commissioner for purpose of Subsection (a) to apply sanctions, which may include the removal of accreditation, loss of foundation school funds, or both.

SECTION 10. Amends Section 31.021(b), Education Code, to delete Subdivision 2 relating to a requirement to provide an allotment to be distributed to each district equal to \$30 per student in average daily attendance, or a greater amount for any year provided by appropriation.

SECTION 11. Amends Section 31.103(b), Education Code, to require the commissioner, as made necessary by available funds, to reduce the additional percentage of attendance for which a district or school may requisition textbooks. Authorizes the commissioner, on application of a district or school that is experiencing high enrollment growth, to increase the additional percentage of attendance for which the district or school may requisition textbooks.

SECTION 12. Amends Subchapter A, Chapter 32, Education Code, by adding Section 32.005, as follows:

Sec. 32.005. TECHNOLOGY ALLOTMENT. (a) Provides that each school district is entitled to an allotment of \$35 for each student in average daily attendance or a different amount for any year provided by appropriation.

(b) Authorizes an allotment under this section to be used only to meet certain requirements.

(c) Authorizes the allotment under this section to be paid from certain funds.

SECTION 13. Amends Section 39.023(e), Education Code, to require TEA, under rules adopted by the State Board of Education, every other year, to release the questions and answer keys to each assessment instrument administered under Subsection (a), (b), (c), (d), or (l) after the last time the instrument is administered for that school year.

SECTION 14. Amends Section 39.031(a), Education Code, to require the cost of preparing, administering, or grading the assessment instruments to be paid from foundation school fund allotments other than funds allotted under Section 42.152, and each district to bear the cost in the same manner described for a reduction in allotments under Section 42.253. Deletes text requiring the commissioner to subtract the cost from the district's other foundation school fund allotments.

SECTION 15. Amends Sections 41.0021(a) and (e), Education Code, as follows:

(a) Authorizes a school district, notwithstanding Section 41.002, for the 2003-2004 and 2004-2005, rather than 2001-2002, 2002-2003 and 2003-2004 school years, that in the 1999-2000 school year did not offer each grade level from kindergarten through 12, to elect to have its wealth per student determined under this section.

(e) Provides that this section expires September 1, 2005, rather than 2004.

SECTION 16. Amends Sections 42.152(i)-(l), (n), and (p), Education Code, as follows:

(i) Authorizes, rather than requires, the commissioner each fiscal year, from the total amount of funds appropriated for allotments under this section, to withhold an amount as

determined in the General Appropriations Act and distribute that amount for programs under Subchapter A, Chapter 33, rather than \$7,500,000 or a greater amount. Makes a nonsubstantive change.

(j) Requires the commissioner to coordinate any funds withheld under Subsection (i) and any other funds available for the program and to distribute those funds. Requires a school district to apply to the commissioner to receive available funds for the program. Requires the commissioner, in distributing any funds under this subsection, to give a preference to the districts that apply that have the highest concentration of at-risk students.

(k) Makes a nonsubstantive change.

(l) Authorizes, rather than requires, the commissioner each fiscal year, from the total amount of funds appropriated for allotments under this section, to withhold an amount not more than \$2.5 million for transfer to the investment capital fund under Section 7.024.

(n) Makes a nonsubstantive change.

(p) Authorizes, rather than requires, the commissioner to perform certain actions.

SECTION 17. Amends Subchapter E, Chapter 42, Education Code, by adding Section 42.2516, as follows:

Sec. 42.2516. ADDITIONAL AID FOR 2003-2004 AND 2004-2005 SCHOOL YEARS.

(a) Provides that for the 2003-2004 and 2004-2005 school years, in addition to any other state aid to which a school district is entitled under this chapter, a district is entitled to an amount equal to the product of the number of students in average daily attendance in the district multiplied by \$150.

(b) Provides that a school district that is otherwise ineligible for state aid under this chapter is entitled to state aid under this section. Provides that a school district that is required to take action under Chapter 41 to reduce its wealth per student to the equalized wealth level is entitled to certain benefits.

(c) Provides that in addition to any aid established by Subsection (a), for the 2003-2004 and 2004-2005 school years, a school district with less than 5,000 students in average daily attendance and a wealth per student that does not exceed the equalized wealth level under Section 41.002 is also entitled to additional funding determined by a specific formula.

(d) Provides that this subsection applies only to a current employee of a school district who is entitled to the minimum salary under Section 21.402, who was employed by that district during the 2002-2003 school year, and who received funds under Article 3.50-8, Insurance Code, during the 2002-2003 school year. Provides that for the 2003-2004 school year, a school district must ensure that each employee to whom this subsection applies and who is employed by the district receives the difference, if any, between \$1,000 and the amount per employee that the district receives under other law for purposes of Article 3.50-8, Insurance Code, for employees to whom this subsection applies. Prohibits a district employee from bringing a cause of action against a district under this subsection on the basis of the amount paid to the employee under this subsection if the employee's total salary for the 2003-2004 school year, including amounts paid for purposes of Article 3.50-8, Insurance Code, is equal to or greater than the employee's base salary for the 2002-2003 school year, including any career ladder supplement, plus any money paid to or used on behalf of the employee under Article 3.50-8, Insurance Code.

(e) Provides that this section expires September 1, 2005.

SECTION 18. Amends Subchapter E, Chapter 42, Education Code, by adding Section 42.2517, as follows:

Sec. 42.2517. EXCESS FUNDS FOR COST OF EDUCATION ADJUSTMENT. (a)

Authorizes the commissioner to perform certain actions, if the commissioner determines that the amount appropriated for purposes of the Foundation School Program exceeds the amount to which school districts are entitled under this chapter.

(b) Requires the commissioner, if the amount available under Subsection (a) is not sufficient to provide funding based on the cost of education index adjusted under Subsection (a)(1), to rank districts by the increase in the cost of education adjustment applicable to each district under this section and to provide funding under this section to districts in descending order of the amount of increase in the cost of education adjustment applicable to districts under this section, beginning with the district that has the greatest increase in the cost of education adjustment, until no funds are available for purposes of this section.

SECTION 19. Amends Section 42.253(b), Education Code, to delete text prohibiting the sum of the reductions under this subsection from being greater than the amount necessary to fully fund the entitlement of each district.

SECTION 20. Amends Section 42.259, Education Code, by adding Subsection (g) to provide that notwithstanding Subsections (c)(8) and (d)(3), the payment from the foundation school fund to a category 2 school district or category 3 school district for August 2005 must be made after September 5, 2005, but not later than September 10, 2005. Provides that this subsection expires September 15, 2005.

SECTION 21. Amends Section 43.001(b), Education Code, to add new language to Subdivision (1) relating to interest and dividends arising from any securities or funds belong to the permanent school fund.

SECTION 22. Amends Chapter 43, Education Code, by adding Section 43.020, as follows:

Sec. 43.020. TREATMENT OF ACCRUED INCOME. Requires all interest and dividends accruing from the investments of the permanent school fund to be deposited to the credit of the available school fund in accordance with the accrual basis of accounting. Provides that funds recognized under this section are considered part of the available school fund and authorizes them to be appropriated as provided by Section 5, Article VII, Texas Constitution.

SECTION 23. Amends Section 46.033, Education Code, to change the date specified in Subdivision (1) from 2000-2001 to 2002-2003.

SECTION 24. Amends Section 46.034, Education Code, by amending Subsection (c) and adding Subsections (d) and (e), as follows:

(c) Makes a conforming change.

(d) Provides that notwithstanding any other provision of this chapter, if the appropriation to support newly eligible bonds for the 2003-2004 school year and the 2004-2005 school year is not sufficient to provide the state aid that school districts are entitled to under Section 46.032, the commissioner is directed to reduce the \$35 guaranteed level of state and local support per student per cent of tax effort for newly eligible debt only to the level necessary to fund the sum of the allotments within the appropriated amount. Provides that the guaranteed level for eligible debt through the 2000-2001 school year is not affected by this adjustment. Requires the commissioner to make this determination as soon as practicable, prior to the beginning of the school year. Provides that the decision of the commissioner is final and may not be appealed.

(e) Provides that subsection (d) and this subsection expire September 1, 2005.

SECTION 25. Amends Section 53.47(a)(6), Education Code, to redefine "qualified nonprofit corporation."

SECTION 26. Amends Section 53.47, Education Code, by adding Subsection (l), as follows:

(l) Authorizes the governing body of a city by ordinance or resolution to authorize the incorporation of a nonprofit corporation under this chapter to act on behalf of the city as its

duly constituted instrumentality for the purpose of exercising the powers set forth in this subsection. Provides that on approval by the city, the nonprofit corporation is authorized to issue its revenue bonds and to loan the proceeds of the bonds to an entity that has assumed the outstanding bond obligations of a nonprofit corporation, such loan being for the limited purpose of refunding the outstanding bonds. Provides that in issuing the bonds, the nonprofit corporation is considered to be acting on behalf of the city by which it was created. Requires the bonds to be refunded to have been originally issued as "qualified scholarship funding bonds," as defined by Section 150(d)(2), Internal Revenue Code of 1986, as amended, by a nonprofit corporation that was acting pursuant to Subsection (f) and that subsequently made the election permitted under Section 150(d)(3), Internal Revenue Code of 1986, as amended. Requires any refunding bonds to be solely the obligation of the nonprofit corporation and not be or constitute a debt or obligation of the city. Requires the ordinance or resolution of the city authorizing the incorporation of the corporation to approve the articles of incorporation and any amendments to the articles of incorporation. Provides that on dissolution of the corporation, title to all property owned by the corporation must be vested in and become the property of the city. Authorizes a corporation to be incorporated under this chapter by filing its articles of incorporation with the secretary of state in the manner prescribed for the incorporation of nonprofit corporations under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.). Provides that on filing of the articles of incorporation, the secretary of state must issue a certificate of incorporation showing that the corporation is incorporated under this chapter. Provides that except to the extent provided by this section, Sections 53.131, 53.14, 53.15, 53.31, 53.32, 53.35(a), and 53.39 apply to and govern such corporation and its procedures and bonds. Provides that in addition to the specific powers granted under this subsection, the corporation must have all powers granted under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.) that are necessary, incidental, or subordinate in carrying out the purposes authorized in this subsection.

SECTION 27. Amends Section 62.025, Education Code, by amending Subsection (a) and adding Subsections (g) and (h), as follows:

(a) Makes a conforming change.

(g) Prohibits the comptroller from making the deposit required by Subsection (a)(2) in a fiscal year if certain conditions exist.

(h) Requires the comptroller to make the deposit required by Subsection (a)(1) to the Texas excellence fund not later than November 1 of each fiscal year even if a deposit is not made to the higher education fund under Subsection (a)(2).

SECTION 28. Amends Subchapter I, Chapter 88, Education Code, by adding Sections 88.703 and 88.704, as follows:

Sec. 88.703. SUNSET PROVISION. Provides that the Texas Veterinary Medical Diagnostic Laboratory is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, the laboratory is abolished and this subchapter expires September 1, 2007.

Sec. 88.704. FEES. Authorizes the Texas Veterinary Medical Diagnostic Laboratory to charge and collect fees for goods and services the laboratory provides to any person, including a governmental entity.

SECTION 29. Amends Section 264.756(a), Family Code, to delete text authorizing the formula to provide for the reduction of funds annually contributed by the state to a local program by an amount not more than 50 percent of the amount contributed by the state for the first year of the program and savings accomplished through the implementation of the formula to be used to extend services to counties and municipalities currently not served by a local program or to extend services to counties and municipalities currently served by an existing local program.

SECTION 30. Amends, effective September 1, 2003, Section 1575.203(a), Insurance Code, as effective June 1, 2003, to require each active employee each state fiscal year, to contribute to the fund an amount equal to 0.5, rather than 0.25, percent of the employee's salary.

SECTION 31. Amends, effective September 1, 2004, Section 1575.203(a), Insurance Code, as effective June 1, 2003, to require each active employee each state fiscal year, as a condition of employment, to contribute to the fund an amount equal to 0.75, rather 0.25, percent of the employee's salary.

SECTION 32. Amends Section 1601.104(c), Insurance Code, as effective June 1, 2003, to provide that automatic coverage as described under this section begins on the 90th day after the employee's first date of employment.

SECTION 33. Amends Subchapter E, Chapter 1601, Insurance Code, as effective June 1, 2003, by adding Section 1601.2071, as follows:

Sec. 1601.2071. NEW EMPLOYEE WAITING PERIOD. Prohibits a system from contributing an amount to the cost of coverage under this chapter to an employee before the 90th day after the employee's first date of employment.

SECTION 34. Amends Section 2, Article 3.50-8, Insurance Code, by amending Subsections (a) and (c) and adding Subsection (e), as follows:

(a) Requires the trustee, each year, to deliver to each school district, including a school district that is ineligible for state aid under Chapter 42, Education Code, each other educational district that is a member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the trustee, equal to certain criteria.

(c) Provides that the monthly installments are payable during the first week of the month following the month in which the active employees were employed.

(e) Defines "full-time active employee," "part-time active employee," and "professional employee."

SECTION 35. Amends Article 3.50-8, Insurance Code, by adding Section 2A, as follows:

Sec. 2A. WAITING PERIOD. Provides that an employee is not eligible for health coverage or compensation supplementation under this article until the 90th day after the date the employee is employed by a school district, other educational district, participating charter school, or regional education service center.

SECTION 36. Amends Section 57.046, Utilities Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Adds a new Subdivision (1) to existing text.

(c) Provides that Section 57.047(d) does not apply to the use of money in the public schools account for the purpose specified by Subsection (a)(1).

SECTION 37. (a) Authorizes the commissioner, notwithstanding any other provision of law, to contract for the performance of or delegate all or part of the duties assigned to the commissioner or the Texas Education Agency under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), V.T.C.S.) and Section 29.902, Education Code, to a private or public entity in accordance with this section.

(b) Requires the commissioner to enter into a written agreement that describes the responsibilities of the commissioner and agency and the entity to which a function is delegated or contracted.

(c) Provides that any rule of the commissioner enacted under the Texas Driver and Traffic Safety Education Act remains in effect after a delegation or contract authorized under this section until amended by the commissioner. Requires any investigation, sanction, fine, or administrative or judicial proceeding in progress on the date of delegation or effective date of a contract to continue in effect without

regard to the delegation or contract. Requires any fees due under the Texas Driver and Traffic Safety Education Act to be deposited to the credit of the Texas Education Agency and used to support activities of the agency and to pay reasonable expenses of the entity to which a function is delegated or contracted under this section.

(d) Provides that an entity to which authority under the Texas Driver and Traffic Safety Education Act or Section 29.902, Education Code, is delegated is considered a state agency for purposes of immunity.

(e) Authorizes the commissioner to make rules to implement this section. Provides that a reference in other law to the commissioner of education or the Texas Education Agency with regard to duties or actions under the Texas Driver and Traffic Safety Education Act or Section 29.902, Education Code, must mean an entity delegated or contracted a function by the commissioner to the extent necessary to implement the delegation or contract.

SECTION 38. (a) Repealer: Sections 8.051(a), 8.121, and 53.47(k), Education Code.

(b) Repealer: Section 1575.204, Insurance Code, as effective June 1, 2003.

SECTION 39. Requires the comptroller, effective September 1, 2003, to transfer \$42 million from the Texas school employees uniform group coverage trust fund established under Section 8, Article 3.50-7, Insurance Code, to the retired school employees group insurance fund described by Subchapter G, Chapter 1575, Insurance Code, as effective June 1, 2003, to compensate the retired school employees group insurance fund for money transferred from that fund under Section 4.01, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 40. (a) Provides that the repeal by Section 1 of this Act of Section 45.002, Education Code, does not impair any obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before September 1, 2004, that matures after that date and that is payable from the levy and collection of a maintenance tax under that section or another law, and an independent school district may, on and after September 1, 2004, levy, assess, and collect a maintenance tax, at a rate not greater than the rate required to pay such obligations but only for so long as those obligations remain outstanding and unpaid.

(b) Authorizes a school district that, notwithstanding the repeal by Section 1 of this Act of Chapters 41, 42, and 46, Education Code, and Section 45.002, Education Code, before September 1, 2004, issues bonds, notes, or other evidences of indebtedness under Chapter 45, Education Code, or other applicable law or enters into a lease-purchase agreement under Subchapter A, Chapter 271, Local Government Code, to continue, before, on, and after September 1, 2004, to receive state assistance with respect to such payments to the same extent the district would have been entitled to receive the assistance under Chapter 42 or 46, Education Code, as those chapters existed before repeal by this Act, and provides that the former law is continued in effect for that purpose. Authorizes the commissioner of education to adopt rules to implement this subsection.

(c) Provides that the repeal by Section 1 of this Act of Chapters 41, 42, and 46, Education Code, and Section 45.002, Education Code, does not limit, modify, or eliminate the authority of a school district to perform certain tasks.

(d) Provides that before September 1, 2004, the commissioner of education may not refuse to grant assistance to a school district under Chapter 42 or 46, Education Code, in connection with public securities, lease-purchase agreements, credit agreements, or other obligations, including those described by Subchapter A, Chapter 271, Local Government Code, on the basis that the district's authority to levy a maintenance tax is repealed effective September 1, 2004.

SECTION 41. Requires the commissioner of education to adopt rules and establish the classroom supply reimbursement program as required by Section 21.413, Education Code, as added by this Act, not later than August 1, 2005.

SECTION 42. Makes application of the change in law made by this Act to Section 2, Article 3.50-8, Insurance Code, prospective to September 1, 2003.

SECTION 43. Effective date: upon passage or September 1, 2003.