

## **BILL ANALYSIS**

C.S.S.B. 1660  
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Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to interested parties, certain changes are needed to facilitate the implementation of recently enacted legislation that changed the measurement of time for the required operation of public schools from days to minutes. C.S.S.B. 1660 seeks to make those changes.

### **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 commissioner of education in SECTIONS 5 and 8 of this bill.

### **ANALYSIS**

C.S.S.B. 1660 amends the Education Code to replace the requirement that each public school district operate for each school year so that the district provides for at least 75,600 minutes of instruction, including intermissions and recesses, for students with a requirement that each district operate for each school year for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses for students. The bill replaces references related to instruction time with references related to operation time. The bill authorizes the commissioner of education to adopt rules to implement provisions relating to the required operation of schools, including rules to determine the minutes of operation that are equivalent to a day of instruction, rules defining instructional time, and rules establishing the minimum number of minutes of instruction required for a full-day and a half-day program to meet the operation time requirements. The bill removes the provision establishing that a reference to a day of instruction for Education Code purposes means 420 minutes of instruction and repeals the requirement that a school day be at least seven hours each day, including intermissions and recess.

C.S.S.B. 1660 authorizes the commissioner to proportionally reduce the amount of funding a district receives under the foundation school program, with regard to the equalized wealth level, or under certain other state assistance programs and the average daily attendance calculation for the district if the district operates on a calendar that provides fewer minutes of operation than the required minimum.

C.S.S.B. 1660 authorizes the commissioner to adopt rules establishing full-day and half-day minutes of operation requirements for kindergarten and prekindergarten programs. The bill establishes that, for a district that operates a half-day program, average daily attendance for purposes of the foundation school program is one-half of the standard calculation of average daily attendance based on days of instruction. The bill makes a district that operates a half-day prekindergarten program eligible to receive the half-day average daily attendance calculation if

the district's prekindergarten program provides at least 32,400 minutes of instruction to students.

C.S.S.B. 1660 authorizes the commissioner to calculate the average daily attendance of a district using an alternative minimum amount of minutes of operation for a dropout recovery school or program and for a school program offered at a residential or correctional facility. The bill exempts such a district or program from the minimum minutes of operation requirement that would otherwise apply, authorizes the commissioner to establish the alternative minimum minutes of operation required for the district or program, and establishes that the commissioner's determination in such a case is final and may not be appealed. The bill authorizes the commissioner to determine the qualifications to be considered a dropout recovery school for purposes of eligibility for an alternative minimum operation time requirement, which may differ from the qualifications required for designating an open-enrollment charter school as a dropout recovery school and from those required for performance evaluation purposes.

C.S.S.B. 1660 requires the commissioner, on application from an open-enrollment charter school or a charter school operated by a public college or university or a public junior college, to calculate the average daily attendance for the school using an alternative minimum amount of minutes of operation if the school was eligible during the 2014-2015 school year to earn a full average daily attendance calculation, the school provides at least the same amount of instruction to students as it provided during that school year, and the school is no longer eligible to earn the full average daily attendance during the current school year. The bill adds a temporary provision set to expire September 1, 2018, authorizing the commissioner to waive a requirement of, or adopt rules to implement, provisions relating to average daily attendance as amended by a specified bill of the 85th Legislature or similar legislation for the purpose of assisting school districts in implementing those provisions.

C.S.S.B. 1660 applies beginning with the 2018-2019 school year.

C.S.S.B. 1660 repeals Section 25.082(a), Education Code.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

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

While C.S.S.B. 1660 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. Section 25.081, Education Code, is amended by amending Subsections (a), (b), (c), and (e) and adding Subsection (a-1) to read as follows:

(a) Except as authorized under Subsection (b) of this section, Section 25.084, or Section 29.0821, for each school year each school district must operate so that the district provides for at least, at the choice of the district:

(1) 75,600 minutes of instruction, including intermissions and recesses, for students; or

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 25.081, Education Code, is amended to read as follows:  
Sec. 25.081. OPERATION OF SCHOOLS.

(a) Except as authorized under Subsection (b) of this section, Section 25.084, or Section 29.0821, for each school year each school district must operate ~~so that the district provides~~ for at least 75,600 minutes, including time allocated for ~~of~~ instruction, ~~including~~ intermissions, and recesses~~;~~ for students.

(2) 180 days of instruction for students.

(a-1) In accordance with rules adopted by the commissioner, each school district shall notify the commissioner whether the district will comply with Subsection (a) on the basis of minutes of instruction or days of instruction.

(b) The commissioner may approve the instruction of students for fewer than the number of minutes or days required under Subsection (a) if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools.

(c) If the commissioner does not approve reduced instruction time under Subsection (b), a school district may add additional minutes to the end of the district's normal school hours or additional days to the district's normal school calendar as necessary to compensate for minutes or days of instruction lost due to school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(e) For purposes of this code, a reference to a day of instruction means a calendar day in which a student is scheduled for and receives at least the minimum number of instructional minutes required for the student to be considered full-time for the purpose of calculating average daily attendance under Section 42.005 [420 minutes of instruction].

(b) The commissioner may approve the operation of schools [instruction of students] for fewer than the number of minutes required under Subsection (a) if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools.

(c) If the commissioner does not approve reduced operation [instruction] time under Subsection (b), a school district may add additional minutes to the end of the district's normal school hours as necessary to compensate for minutes [of instruction] lost due to school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(d) The commissioner may adopt rules to implement this section, including rules:

(1) for the application, on the basis of the minimum minutes of operation [instruction] required by Subsection (a), of any provision of this title that refers to a minimum number of days of instruction under this section;

(2) to determine the minutes of operation that are equivalent to a day of instruction;

(3) defining instructional time, which may include time allocated for recess and for serving breakfast or lunch to students; and

(4) establishing the minimum number of minutes of instruction required for a full-day and a half-day program to meet the time requirements under Subsection (a).

(e) A school district or education program is exempt from the minimum minutes of operation requirement if the district's or program's average daily attendance is calculated under Section 42.005(j). The

commissioner may establish the alternative minimum minutes of operation required for a district or program that is subject to Section 42.005(j). The commissioner's determination under this subsection is final and may not be appealed [For purposes of this code, a reference to a day of instruction means 420 minutes of instruction].

(f) The commissioner may proportionally reduce the amount of funding a district receives under Chapter 41, 42, or 46 and the average daily attendance calculation for the district if the district operates on a calendar that provides fewer minutes of operation than required under Subsection (a).

No equivalent provision.

SECTION 2. The heading to Section 25.082, Education Code, is amended to read as follows:

Sec. 25.082. ~~[SCHOOL DAY;]~~ PLEDGES OF ALLEGIANCE; MINUTE OF SILENCE.

No equivalent provision.

SECTION 3. Section 29.0822(c), Education Code, is amended to read as follows:

(c) Except in the case of a course designed for a student described by Subsection (a)(3), a course offered in a program under this section must provide for at least the same number of instructional hours as required for a course offered in a program that meets the required minimum number of minutes of operation ~~[instructional days]~~ under Section 25.081 ~~[and the required length of school day under Section 25.082]~~.

No equivalent provision.

SECTION 4. Section 29.087(j), Education Code, is amended to read as follows:

(j) For purposes of funding under Chapters 41, 42, and 46, a student attending a program authorized by this section may be counted in attendance only for the actual number of hours each school day the student attends the program, in accordance with Section ~~[Sections]~~ 25.081 ~~[and 25.082]~~.

No equivalent provision.

SECTION 5. Subchapter E, Chapter 29, Education Code, is amended by adding Section 29.162 to read as follows:

Sec. 29.162. DETERMINATION OF FULL-DAY AND HALF-DAY. The commissioner may adopt rules for this subchapter establishing full-day and half-day minutes of operation requirements as provided by Section 25.081.

No equivalent provision.

SECTION 6. Section 30A.104(a), Education Code, is amended to read as follows:

(a) A course offered through the state virtual school network must:

- (1) be in a specific subject that is part of the required curriculum under Section 28.002(a);
- (2) be aligned with the essential knowledge and skills identified under Section 28.002(c) for a grade level at or above grade level three; and

(3) be the equivalent in instructional rigor and scope to a course that is provided in a traditional classroom setting during[=

~~[(A)]~~ a semester of 90 instructional days[; and

~~[(B)]~~ a school day that meets the minimum length of a school day required under Section 25.082].

No equivalent provision.

SECTION 7. Section 37.008(a), Education Code, is amended to read as follows:

(a) Each school district shall provide a disciplinary alternative education program that:

(1) is provided in a setting other than a student's regular classroom;

(2) is located on or off of a regular school campus;

(3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;

(4) focuses on English language arts, mathematics, science, history, and self-discipline;

(5) provides for students' educational and behavioral needs;

(6) provides supervision and counseling; and

(7) employs only teachers who meet all certification requirements established under Subchapter B, Chapter 21[; and

~~[(8)]~~ provides not less than the minimum amount of instructional time per day required by Section 25.082(a)].

SECTION 2. Section 25.082(a), Education Code, is amended to read as follows:

(a) A school day shall be at least seven hours each day, including intermissions and recesses, except as otherwise provided for a school or program described by Section 42.005(j).

SECTION 9. Section 25.082(a), Education Code, is repealed.

SECTION 3. Section 42.005, Education

SECTION 8. Section 42.005, Education

Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (g-1), and (i) through (o) to read as follows:

(a) In this chapter, average daily attendance is:

(1) the quotient of the sum of attendance for each day of the minimum number of days of instruction or the minimum number of minutes of instruction, including intermissions and recesses, as described under Section 25.081(a) divided by the minimum number of days of instruction or the minimum number of minutes of instruction, including intermissions and recesses;

(2) for a district that operates under a flexible year program under Section 29.0821, the quotient of the sum of attendance for each actual day of instruction as permitted by Section 29.0821(b)(1) divided by the number of actual days of instruction as permitted by Section 29.0821(b)(1); or

(3) for a district that operates under a flexible school day program under Section 29.0822, the average daily attendance as calculated by the commissioner in accordance with Sections 29.0822(d) and (d-1).

(a-1) If a district or charter school provides more than 180 days or 75,600 minutes of instruction to students, the commissioner may adjust the determination of average daily attendance under Subsection (a) to reflect the increased instructional time.

(a-2) A district or charter school is eligible to earn full average daily attendance under Subsection (a) if the school or district provides at least 240 minutes of instructional time to students each day.

(g-1) The commissioner shall adopt rules to calculate average daily attendance for students participating in a blended learning program in which classroom instruction is supplemented with applied workforce learning opportunities, including participation of students in internships, externships, and apprenticeships.

(i) A district or a charter school operating under Subchapter B, D, or E, Chapter 12, that operates a prekindergarten program is eligible to receive one-half of average daily attendance under Subsection (a) if the district's or charter school's

Code, is amended by amending Subsection (a) and adding Subsections (i), (j), (k), (l), and (m) to read as follows:

(a) In this chapter, average daily attendance is:

(1) the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under Section 25.081(a) divided by the minimum number of days of instruction;

(2) for a district that operates under a flexible year program under Section 29.0821, the quotient of the sum of attendance for each actual day of instruction as permitted by Section 29.0821(b)(1) divided by the number of actual days of instruction as permitted by Section 29.0821(b)(1); ~~or~~

(3) for a district that operates under a flexible school day program under Section 29.0822, the average daily attendance as calculated by the commissioner in accordance with Sections 29.0822(d) and (d-1); or

(4) for a district that operates a half-day program, one-half of the average daily attendance calculated under Subdivision (1).

(i) A district that operates a half-day prekindergarten program is eligible to receive the half-day average daily attendance calculation under Subsection (a)(4) if the district's prekindergarten program provides at least 32,400 minutes of instruction to

prekindergarten program provides at least 32,400 minutes of instructional time to students.

(j) A district or charter school is eligible to earn full average daily attendance under Subsection (a) if the district or school provides at least 43,200 minutes of instructional time to students enrolled in:

(1) a dropout recovery school or program operating under Section 12.1141(c) or Section 39.0548;

(2) an alternative education program operating under Section 37.008 or 37.011;

(3) a school program located at a day treatment facility, residential treatment facility, psychiatric hospital, or medical hospital;

(4) a school program offered at a correctional facility; or

(5) a charter school operating under Subchapter B, D, or E, Chapter 12.

(k) A charter school operating under a charter granted under Subchapter B, D, or E, Chapter 12, before September 1, 2015, is eligible to earn full average daily attendance under Subsection (a), as that subsection existed immediately before September 1, 2015, for:

(1) all campuses of the charter school operating before September 1, 2015; and

(2) any campus or site expansion approved on or after September 1, 2015.

(l) A district or charter school may operate two programs and be eligible for full average daily attendance for both programs, if the programs operated by the district or charter school satisfy all applicable state and federal requirements.

(m) In accordance with rules adopted by the commissioner, each charter school operating under Subchapter B, D, or E, Chapter 12, shall notify the commissioner whether the charter school will provide instruction to students on the basis of minutes of instruction or days of instruction, as provided by Section 25.081(a).

students.

(j) Notwithstanding Subsection (a), the commissioner may calculate the average daily attendance of a district using an alternative minimum amount of minutes of operation for:  
(1) a dropout recovery school or program;  
and

(2) a school program offered at a residential or correctional facility.

(k) The commissioner may determine the qualifications to be considered a dropout recovery school for the purposes of Subsection (j). The qualifications selected by the commissioner may differ from the qualifications required for a dropout recovery school under Sections 12.137 and 39.0548.

(l) On application from an open-enrollment charter school or a charter school operating under Subchapter E, Chapter 12, the commissioner shall calculate the average daily attendance for the school using an alternative minimum amount of minutes of operation if:

(1) during the 2014-2015 school year, the school was eligible to earn a full average daily attendance calculation under the applicable law governing the school during that school year; and

(2) the school provides at least the same amount of instruction to students as the school provided during the 2014-2015 school year and is no longer eligible to earn the full average daily attendance during the current school year.

(n) The commissioner shall adopt rules necessary to implement this section, including rules that:

(1) establish the minimum number of minutes of instructional time per day that results in 180 days of instruction or 75,600 minutes of instruction for students, as applicable;

(2) establish any requirements necessary to allow a district or charter school to be eligible for one-half of average daily attendance under Subsection (a), which may differ based on the instructional program offered by the district or charter school; and

(3) proportionally reduce the amount of funding a district or open-enrollment charter school receives under this chapter, Chapter 41, or Chapter 46 and the average daily attendance for the district or charter school if the district or open-enrollment charter school operates on a calendar that provides fewer than the required minimum days or minutes of instruction to students.

(o) In this section, "instructional time" means the time allocated by a district or charter school toward instructing students in the required curriculum described by Section 28.002 and includes time allocated for recess, intermissions, and serving breakfast and lunch to students.

SECTION 4. This Act applies beginning with the 2017-2018 school year.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

(m) To assist school districts in implementing this section as amended by H.B. 2442, Acts of the 85th Legislature, Regular Session, 2017, or similar legislation, the commissioner may waive a requirement of this section or adopt rules to implement this section. This subsection expires September 1, 2018.

SECTION 10. This Act applies beginning with the 2018-2019 school year.

SECTION 11. Same as engrossed version.