HOUSE RESEARCH ORGANIZATION bill analysis 5/15/2013

SB 215
Birdwell, et al. (Anchia)
(CSSB 215 by Alonzo)

SUBJECT: Continuing the Texas Higher Education Coordinating Board

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 5 ayes — Branch, Patrick, Alonzo, Howard, Raney

3 nays — Clardy, Darby, Murphy

1 absent — Martinez

SENATE VOTE: On final passage, April 11 — 30-1 (Hegar)

WITNESSES: For — (*Registered, but did not testify:* George Torres, Texas Guaranteed Student Loan Corp.)

Against — None

On — Sarah Kirkle, Sunset Advisory Commission; (*Registered, but did not testify:* Raymund Paredes, Texas Higher Education Coordinating Board)

BACKGROUND: The Legislature created the Texas Higher Education Coordinating Board in 1965. According the Sunset Advisory Commission, the board develops and monitors the long-range strategic plan for higher education. It collects, analyzes, and distributes information on higher education. It reviews and approves degree programs and the construction of major facilities at public institutions of higher education. The board administers state financial aid programs and distributes related funds to institutions of higher education. It also administers state and federal grant programs to support higher education goals.

The agency's governing board consists of nine public members appointed by the governor. They serve staggered six-year terms and the chair is chosen by the governor. The commissioner of higher education is appointed by the agency's board. The agency employed 274 people in fiscal 2011.

In fiscal 2012, the board's operating budget was $756.6 million. The vast majority of the funds — 96 percent — passed through to institutions for grants and student financial aid, while the remainder, $32 million, funded the board's operations. About 89 percent of the board's total budget was general revenue.

DIGEST:

CSSB 215 would continue the Texas Higher Education Coordinating Board, change the makeup of its governing board, revise its responsibilities, and alter or eliminate certain programs under its purview.

Changes to the agency's board. CSSB 215 would make changes to the governing board's membership and to its responsibilities.

One-third of members would be experienced in higher-education governance or administration. The bill would require that at least one-third of members of the agency's board possess experience in the field of higher education governance or administration so that the board included experience from both general academic teaching institutions and public junior colleges or public technical institutes. Prior experience of the governing board of a private or public institution of higher education would qualify.

Public comment. CSSB 215 would require the agency's board to provide opportunities for public comment at each of its meetings.

Advisory committees. The bill would require the board's advisory committees to report their recommendations directly to the board, rather than to agency staff. The board could adopt rules about advisory committee size, qualifications for membership, and compliance with open meetings requirements.

Negotiating rule making. CSSB 215 would require the board to engage in negotiated rule making when developing any rule, policy, or procedure if the board determined an issue would be controversial and self-initiated the process or if negotiated rulemaking was requested by at least half of the affected institutions and they agreed to share in the costs.

Long-term planning requirements. The bill would require the board to develop a long-range master plan for higher education. The plan would:

- establish long-term, measurable goals and provide strategies for implementing those goals;

- assess the higher education needs of each region of the state;
- provide for regular evaluation and revision of the plan, as the board considered necessary, to ensure the relevance of goals and strategies;
- take into account input from stakeholders and the general public; and
- take into account the resources of private or independent institutions of higher education.

The board would deliver and report to the governor, the lieutenant governor, the speaker, and the higher education committees of the Senate and House by December 1 of each even-numbered year. The report would cover the state's progress in meeting the goals established in the long-term plan.

Certificate and degree programs. CSSB 15 would remove the board's authority to order the elimination or consolidation of low-producing certificate or degree programs (those that produce a low number of degrees or certificates) and instead would require the board to recommend action to the governing board of the institution.

If an institution's governing board did not accept a recommendation by the agency's board to close or consolidate a low-producing degree program, the institution would identify the programs recommended for consolidation or elimination on its next legislative appropriations request.

The bill would base a low-producing program review on the number of degrees or certificates awarded by a program, not the graduation rate.

Board approval of academic programs. A new degree or certificate program would only be created with the specific prior approval of the board. Before beginning preliminary planning of such a program, an institution would have to notify the board. As part of the approval process, the board would review each proposed program to ensure that it:

- was needed by the state and local community and would not unnecessarily duplicate programs offered by other institutions;
- had adequate funding;
- had the necessary faculty and other resources to ensure student success; and
- met academic standards.

The board would review the number of degrees or certificates awarded by these new programs at least every four years. It would review each new program every 10 years using the same criteria it would for a new program.

Compliance monitoring. CSSB 15 would direct the agency's board to adopt rules to establish an agency-wide, risk-based compliance monitoring function for funds allocated by the board, including student financial aid, academic support grants, and any other grants, to ensure that those funds were distributed in accordance with applicable law and board rules. The board also would monitor data used by the board for financial and policy decisions, as supplied by institutions of higher education, to ensure the data were reported accurately. The bill would stipulate certain criteria to be used when establishing the risk-based compliance monitoring.

If the board's monitoring processes determined that funds awarded by the board to an institution of higher education or independent or private institution had been misused or misallocated by the institution, the board would have to present its determination to the institution and provide an opportunity for a response. The board would report its conclusion and the institution's response to the governor and the Legislative Budget Board.

If the board's monitoring process determined that funds awarded by the board to an institution of higher education had included errors in the institution's data reported for formula funding, the board would calculate a revised appropriations amount for the applicable fiscal year. The information would be sent to the governor, Legislative Budget Board, and comptroller for consideration as the basis for budget execution or other appropriate action.

The board could partner with internal audit offices at institutions of higher education and the state auditor.

B-On-Time loan program. The bill would remove two-year universities from eligibility for the B-On-Time loan program.

CSSB 215 would specify that graduation requirements for the program included total amount of time or credit hours spent at any institution, not just an institution eligible for funding under the program.

Texas Guaranteed Student Loan Corp. The Texas Guaranteed Student Loan Corp. would change to a nonprofit corporation under Business Organizations Code, ch. 22 from a public nonprofit corporation created by general law on or immediately after September 1, 2013. Student loan borrower information collected, assembled, or maintained by the corporation would be confidential and not subject to public disclosure.

Some of the financial education functions of the corporation would be transferred to the board.

Loan default prevention program. CSSB 215 would direct the board to create a student loan default prevention and financial aid literacy pilot program to be implemented by January 1, 2014. The program would be designed to ensure that students were informed consumers with regard to all aspects of student financial aid, including:

- the consequences of borrowing to finance a student's education;
- the financial consequences of a student's academic and career choices; and
- strategies for avoiding student loan delinquency and default.

The board would select at least one general academic teaching institution, public junior college, private or independent institution of higher education, and career school or college to participate in the program. SB 215 would establish criteria for selecting institutions to participate in the program, including a default rate of more than 20 percent or a default rate growing at a faster percentage than those of other post-secondary institutions. The board would establish rules to implement the program. By January 1 of each year, the board and each participating institution would submit a report on the pilot program to the governor, lieutenant governor, and the speaker. The pilot program would expire on December 31, 2020.

Articulation agreements. The bill would require public junior colleges that offered a B.A. program to enter into articulation agreements for the first five years of the program with one or more general academic teaching institutions.

Consolidation of two programs. CSSB 215 would fold the Advanced Technology Program into the Norman Hackerman Advanced Research Program.

Eliminating certain programs. The bill would eliminate 19 unnecessary and unfunded programs and 4 unnecessary reports.

Next sunset review. CSSB 215 would continue the coordinating board until 2025.

Effective date. The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

CSSB 215 would continue the Texas Higher Education Coordinating Board for another 12 years and make needed changes to the makeup of the board, its rule-making authority, and oversight powers. The bill also would eliminate unnecessary and unfunded programs and reports.

Negotiated rule making. CSSB 215 would provide for negotiated rule-making between the board and institutions of higher education if the board determined that the development of a rule would be controversial or if at least one-half of the affected institutions requested negotiated rulemaking and agreed to share the costs. CSSB 215's approach would allow for negotiated rulemaking when appropriate. The vast majority of the board's rulemaking should be approached through normal procedures and the bill would not hamper the board's ability to make rules in a timely manner.

Program review and approval. CSSB 215 would preserve local control while safeguarding taxpayer and institutional resources by removing the board's ability to close low-performing degree programs. It still would review them and advise the governing board of institutions if a program should be closed.

The bill also would clarify the criteria the board would use when evaluating new programs. Current law does not list criteria for evaluating programs nor does it distinguish between different types of review.

The state needs the board to review and approve programs to prevent institutions from expending resources planning for unnecessary or redundant new programs and the bill would properly preserve these valuable functions.

Board membership. CSSB 215 would require that one third of the members of the agency's governing board had experience with higher education to allow the board to better direct policy. Currently, due to a lack of prior experience, the board is heavily reliant on agency staff as its source of expertise. The bill would count prior service on an institution's governing board as qualifying in order to expand the pool beyond individuals who had worked in academia. The bill only would require one third of the board to have this experience. The governor still would have wide discretion to appoint the remaining two-thirds of the board.

It would not be appropriate to open up the requirement that one-third of the board members have higher-education experience to those with pre-school-to-grade-16 experience because that would be too broad. It would be better to seek those with higher education experience because that is the direct knowledge deficiency the board most urgently needs to address.

Changes to the Texas Guaranteed Student Loan Corp. CSSB 215 would transform the Texas Guaranteed Student Loan Corp. from a public non-profit corporation into a private non-profit. This change would allow it to make a one-time gift to the state of $250 million to be used for higher education purposes, such as a foundation to reimburse institutions of higher education for their Hazelwood tuition exemption costs.

CSSB 215 would give the student loan corporation new purpose. The student loan corporation, which previously administered the state's portion of the Federal Education Loan Program, has been adrift since the federal government ended the program. Transforming the corporation into a private, nonprofit entity would allow it to pursue additional contracts and become a regional, if not nationwide entity providing higher-education financial aid and other assistance. The bill would preserve the corporation's status as the guarantor agency for the state under the federal Higher Education Act.

B-On-Time. CSSB 215 would remove public two-year institutions from B-On-Time eligibility because their underuse does not justify the administrative burden. These students should be directed to Texas Equal Opportunity Grants, which are better designed to meet the needs of two-year institution students, as it allows them to enroll part-time.

OPPONENTS SAY:

CSSB 215 would not do enough to protect local control and promote competition between institutions of higher education.

Negotiated rule making. CSSB 215 should follow the Senate engrossed version of the bill by requiring the board to engage institutions of higher education in negotiated rulemaking whenever it is required to consult or cooperate with institutions in the development of a policy, procedure, or rule. The board has strayed from a data gathering and advisory agency to become a regulatory body. The Senate version of the bill, by requiring negotiated rulemaking, would ensure institutions of higher education had sufficient input into the rules that regulate them.

Program review and approval. CSSB 215 would grant the board too much power over the programs institutions of higher education offer or would hope to offer. Institutions should be allowed to decide on their own which programs they offer. Market competition for students, top faculty, and research funding would naturally direct administrations to create productive programs and shutter those that under perform.

OTHER OPPONENTS SAY:

CSSB 215 should allow any board candidate's pre-school-to-grade-16 professional experience to qualify as appropriate experience for board membership. Higher education is not a stand-alone part of the education process; it is only part of the education pipeline. While the bill's requirement that a third of the board members have higher-education experience would deepen the board's knowledge base, it is too narrow a requirement. Preschool-16 experience would add necessary and beneficial breadth as well.

NOTES:

The Legislative Budget Board estimated that SB 215 would have a negative impact of $665,734 to general revenue for fiscal 2014-1015. This would be to fund four full-time-equivalent employees for a proposed new compliance monitoring function.

The House companion bill, HB 2507 by Anchia, was left pending in the House Higher Education Committee on April 3.

The committee substitute to SB 215 differs from the Senate engrossed version in several ways. The committee substitute would:

- prohibit the board from ordering the consolidation or elimination of a degree or certificate program;
- base a review of a low-producing program on the number of degrees or certificates awarded, not on the program's graduation rate;
- require the board to engage in negotiated rulemaking with affected institutions under certain conditions;

- change the Texas Guaranteed Student Loan Corporation from a public nonprofit organization to a private nonprofit organization;
- make several changes to the compliance monitoring function;
- include total amount of time or credit hours spent at any institution when determining graduation requirements for the B-On-Time Program;
- create the Student Loan Default Prevention and Financial Aid Literacy Pilot Program;
- fold the Advanced Technology Program into the Norman Hackerman Advanced Research Program;
- require the board to consider the resources of private higher education institutions in long-range plans for the state; and
- replace language excluding private institutions with language that would include them, where appropriate.