

BILL ANALYSIS

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DIGEST AND PURPOSE

Currently, Texas is experiencing a shortage of certified teachers willing to work in the public schools. One reason for the teacher attraction and retention problem is that Texas ranks 51st, behind all other states and the District of Columbia, in the amount spent on benefits (insurance and retirement) for every dollar of salary. However, Texas state employees receive a health insurance package that serves as an independent basis for qualified people to become and stay a state employee. As proposed, S.B. 928 provides for a statewide group insurance program for employees and retirees of public schools and also provides for a funding mechanism that involves the state, local districts, and participants.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of the Teacher Retirement System of Texas in SECTION 1.01 (Article 3A.051, Article 3A.053, Article 3A.102, Article 3A.105, Article 3A.106, and Article 3A.107, Insurance Code) and to the commissioner of education in SECTION 2.01 (Section 42.253, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. GROUP INSURANCE PROGRAM

SECTION 1. Amends Title 1, Insurance Code, by adding Chapter 3A, as follows:

CHAPTER 3A. TEXAS SCHOOL EMPLOYEES UNIFORM GROUP INSURANCE BENEFITS ACT SUBCHAPTER A. GENERAL PROVISIONS

Art. 3A.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas School Employees Uniform Group Insurance Benefits Act.

Art. 3A.002. DEFINITIONS. Defines “administering firm,” “board of trustees,” “cafeteria plan,” “employee,” “employer,” “group program,” “health benefits plan,” “optional insurance fund,” “participating school district,” “plan provider,” “primary health fund,” “program participant,” “school district,” and “system.”

Art. 3A.003. DEFINITION OF DEPENDENT AND RELATED TERMS. Defines “dependent,” “dependent child of deceased person,” “surviving dependent child,” and “surviving spouse.”

Art. 3A.004. DEFINITION OF RETIREE. Defines “retiree.”

Art. 3A.005. EXEMPTION FROM PROCESS. Provides that certain funds are exempt from execution, attachment, garnishment, or any other process. Prohibits certain items from being assigned except for direct payment to benefit providers as authorized by the board of trustees of the Teacher Retirement System of Texas (board) by contract or rule.

Art. 3A.006. EXEMPTION FROM STATE TAXES AND FEES. Provides that a premium or contribution on a policy, insurance contract, or agreement authorized by this chapter is not subject to any state tax, regulatory fee, or surcharge, including a contribution or maintenance tax or fee.

Art. 3A.007. APPLICABILITY OF OTHER LAW. Provides that this chapter does not prohibit a school district from providing additional or supplemental insurance coverage under Article 3.51 or 26.036 of this code or Section 22.05 (Health Care Plan and Fund), Education Code.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

Art. 3A.051. ADMINISTRATION. Provides that the board is the trustee for the group program (program) and requires the board to administer the program. Requires the board to adopt rules, plans, procedures, and orders reasonably necessary to implement this chapter, including certain standards and plans. Requires the board, in administration of the program, to determine whether employees and retirees should be treated as one risk pool or as separate risk pools. Requires the board, based on this determination, to administer the program in the manner that results in the greater cost savings to the state.

Art. 3A.052. PERSONNEL. Authorizes the board to employ persons to assist the board in administering this chapter.

Art. 3A.052. USE OF GENERIC AND MAIL-ORDER DRUGS. Requires the board to adopt rules to maximize any available cost savings from the use of generic or mail-order prescription drugs unless the use of those drugs would cause an undue burden on or adversely affect the health of certain individuals.

Art. 3A.054. CONTRACTS. Authorizes the board, on a competitive bid basis, to contract with certain individuals and entities. Requires an independent administrator selected by the board to assist the board to ensure the proper administration of this chapter and the coverages, services, and benefits provided for or authorized by this chapter. Authorizes the board to enter into interagency contracts with any state agency, including the Employees Retirement System of Texas, for assistance in implementing or administering the program provided by this chapter.

Art. 3A.055. ADVISORY COMMITTEES. Authorizes the board to appoint advisory committees to advise the system in the implementation or administration of the program. Authorizes the advisory committees to include a credentialing advisory committee, a medical advisory committee, and a retirement advisory committee.

SUBCHAPTER C. COVERAGE PLANS; PROGRAM PARTICIPATION

Art. 3A.101. GROUP HEALTH BENEFIT PLANS. (a) Requires the board to establish plans of group coverages for plan participants and their dependents. Provides that the plans of group benefits must include at least two tiers of group health benefits coverage, with certain ranges of benefits in each tier. Requires the primary health plan to be comparable in scope and, to the greatest extent possible, in cost to the health benefit plan coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Insurance Code).

(b) Provides that a school district must select the same tier group coverage plan for all district employees. Provides that a school district that selects a coverage plan other than the primary health plan, or that does not levy a tax under Section 45.003(f) (Bond and Tax Elections), Education Code, is not entitled to state contributions under this chapter or otherwise for payments for employee health benefits coverage, other than the state assistance to which the district may be entitled under Chapter 42 (Foundation

School Program), Education Code.

(c) Prohibits an employee of a school district from participating in a group coverage plan unless the district has selected that group coverage plan.

Art. 3A.102. DISTRICT PARTICIPATION IN GROUP PROGRAM. (a) Authorizes a school district, beginning September 1, 2001, to elect to participate in the program provided by this chapter unless the district is participating in a group insurance program under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Insurance Code).

(b) Provides that a school district that elects to participate in the program is required to participate for a minimum of two years. Provides that the beginning of a district's participation in the program must coincide with the beginning of a school year in an odd-numbered year.

(c) Authorizes the board, by rule, to establish a biennial deadline for notification of the board of an election to begin participation.

(d) Authorizes a participating school district to discontinue participation only as provided by Article 3A.109 of this chapter.

Art. 3A.103. PARTICIPATION BY EMPLOYEES. (a) Provides that each full-time employee or retiree of a participating school district is automatically covered by the primary health plan for employees or retirees, as applicable, unless certain conditions are met.

(b) Provides that each full-time employee of a participating school district is eligible to participate in a health plan provided by this chapter on application in the manner provided by the board unless the employee has been expelled from the group program. Requires a participating school district to notify each of its part-time employees of the employee's eligibility for participation.

Art. 3A.104. COVERAGE FOR DEPENDENTS. Provides that a program participant who is covered by a health plan under this chapter is entitled to obtain for a dependent of the program participant coverage in the health plan as determined by the board. Requires additional contribution payments for dependent coverage to be made by the program participant in the manner determined by the board.

Art. 3A.105. COVERAGE FOR SURVIVING SPOUSE OR DEPENDENTS OF SURVIVING SPOUSE. Authorizes a surviving spouse to elect to retain or obtain coverage from the group program for the surviving spouse or dependents of the surviving spouse at the applicable rate for a dependent of a program participant. Provides that a surviving spouse must provide payment of applicable contributions in the manner established by board rules.

Art. 3A.106. COVERAGE FOR SURVIVING DEPENDENT CHILD. (a) Authorizes a surviving dependent child, the guardian of the child's estate, or a person having custody of the child to elect to retain or obtain coverage from the group program for the surviving dependent child at the applicable rate for a dependent. Provides that the applicable contributions must be provided in the manner established by board rules.

Art. 3A.107. OPTIONAL GROUP COVERAGE. (a) Requires the board to contract with a qualified plan provider to offer program participants certain insurance coverage.

(b) Authorizes the board to offer program participants other optional group insurance coverage considered advisable by the board.

(c) Provides that competitive bidding is required in contracting for any benefits under this article. Requires the board to prescribe, by rule, the procedure for conducting the bidding. Authorizes the rules to provide criteria to determine qualified plan providers. Provides that the board is not required to select the lowest bid and requires the board to consider certain criteria. Requires a deviation in the awarding of a contract from products solicited for bidding to be recorded and the reasons for the deviation fully justified in the minutes of the next meeting of the board.

(d) Requires insurance coverage provided under this article to be made available periodically through open-enrollment periods determined by the board.

Art. 3A.108. AVAILABILITY OF OPTIONAL COVERAGE. Requires the board to offer optional insurance coverage under this chapter to certain individuals through certain entities. Requires the board to offer long-term insurance to certain individuals. Provides that each program participant who participates in optional insurance coverage provided under this chapter is responsible for the full cost of that coverage. Requires an employee who participates in optional insurance coverage provided under this chapter to pay contributions by payroll deduction remitted by the employee's employer at the times and in the manner provided by the trustee. Requires a retiree who participates in optional insurance coverage provided under this chapter to pay contributions by deduction from the retiree's monthly retirement annuity.

Art. 3A.109. DISCONTINUANCE OF PARTICIPATION. Authorizes a school district participating in the program to elect to discontinue participation by notifying the board in the manner prescribed by the board and obtaining from the board determination that the district is committed to offering an alternate basic plan of group health benefits that meets the requirements of Section 22.004 (Group Health Benefits for School Employees), Education Code, at no cost to its participating employees. Provides that participation in the program ends immediately before the beginning of the first school year that begins in an odd-numbered year after the date the board of trustees makes the determination required by this article.

SUBCHAPTER D. CONTRIBUTIONS

Art. 3A.151. FUNDING OF HEALTH COVERAGE. Requires the state to contribute the amount provided by the General Appropriations Act for each program participant who is covered by a health plan under this chapter. Requires the board to pay certain costs from state contributions, school district contributions, and other amounts deposited in the primary health fund. Requires the portion of the cost of health coverage selected by the program participant that exceeds the amount of state contributions to be paid by the employee or retiree or the employee's school district, according to the employee's employment contract.

Art. 3A.152. STATE AND EMPLOYEE CONTRIBUTIONS. (a) Requires each employee of a participating school district, for each state fiscal year and as a condition of employment, to contribute a certain amount to the primary health fund. Requires the employer of the employee, each month, to deduct the contributions from the employee's salary and remit them to the board in a certain manner. Authorizes an employer to assume and pay the total contributions due from its active employees for any month instead of deducting the contributions for salaries.

(b) Requires the state to contribute a certain amount to the primary health fund as the state's contribution. Authorizes the state to contribute amounts in addition to the contribution required by this subsection.

(c) Provides that it is the intent of the legislature that the contributions made under Subsections (a) and (b) of this article be treated as a continuation of the same contributions made under Sections 16(a) and (b), Article 3.50-4 of this code, as those sections existed on August 31, 2002.

- (d) Provides that the ratio between the state's contribution and the employee's contributions must be maintained at two to one if certain conditions occur.
- (e) Provides that contributions from employees become the property of the primary health fund on receipt by the board and prohibits them from being refunded under any circumstances.
- (f) Provides that contributions to the primary health fund deducted from the salary of an employee are part of the employee's annual compensation for purposes of the system.
- (g) Requires the board, before November 1 of each even-numbered year, to certify to certain entities for information and review the amounts necessary to pay the contributions of the state to the primary health fund under this article. Requires the board, not later than August 31 of each year, to certify to the comptroller the estimated amount of the state contributions to be received by the primary health fund for the next fiscal year under the appropriations authorized by this article.
- (h) Requires state contributions under this article to be paid from the general revenue fund in equal monthly installments, based on the annual estimate certified by the board to the comptroller for that year and subject to any express limitations specified in the Act making the appropriation. Requires certain variations to be reconciled at the close of the fiscal year and proper adjustments in the annual contributions to the primary health fund to be made.
- (i) Requires interest on unpaid amounts to be paid to the primary health fund by certain employers and sets forth the rate of interest.
- (j) Provides that an employer holds amounts due to the primary health fund under this article in trust for the fund and its participants and prohibits the amounts from being diverted for any other purpose.

SUBCHAPTER E. FUNDS

Art. 3A.201. SCHOOL EMPLOYEES PRIMARY HEALTH COVERAGE FUND.

Creates the school employees primary health coverage fund (primary health fund) as a trust with the comptroller, who is the custodian of the fund. Requires the board to administer the fund on behalf of the participants in the plans of coverage provided under this chapter. Requires certain amounts be paid into the primary health fund. Authorizes money in the primary health fund to be used only to pay for primary health coverage provided under this chapter, including the expenses of administering the program.

Art. 3A.202. PUBLIC SCHOOL EMPLOYEES OPTIONAL INSURANCE FUND.

Creates the school employees optional insurance fund (optional insurance fund) as a trust with the comptroller, who is the custodian of the fund. Requires the board to administer the optional insurance fund on behalf of the participants in the plans of insurance coverage provided under this chapter. Requires certain amounts to be credited to the optional insurance fund. Authorizes money in the optional insurance fund to be used only to pay for optional insurance coverage, including the expenses of administering the program.

Art. 3A.203. INVESTMENT AUTHORITY. Authorizes the board to invest assets of any fund administered under this subchapter in a specific manner.

SUBCHAPTER F. RECORDS, PROCEEDINGS, AND ACCOUNTING

Art. 3A.251. CONFIDENTIALITY OF RECORDS. Provides that Section 825.507

(Confidentiality of Information About Members, Retirees, Annuitants, Beneficiaries, or Alternate Payees), Government Code, applies to certain information. Authorizes the Teacher Retirement System of Texas (system) to disclose to a health or benefit provider information in the records of an individual that the system determines is necessary to administer the group program.

Art. 3A.252. CLAIM DENIAL OR EXPULSION. Authorizes certain individuals to appeal a claim denial or an expulsion from the group program to the board. Provides that adjudication of claims and expulsion from the group program are subject to the contested case provisions under Chapter 2001 (Administrative Procedure), Government Code.

Art. 3A.253. HEARING EXAMINER. Authorizes the board to delegate its authority to adjudicate claims and expulsions to a qualified hearing examiner.

Art. 3A.254. APPEAL. Provides that a decision of the board or a hearing examiner is subject to review by a district court in Travis County or in the county in which the claimant resides.

ARTICLE 2. FUNDING OF GROUP INSURANCE PROGRAM

SECTION 2.01. Amends Section 42.253, Education Code, by amending Subsections (f)-(l) and adding Subsection (m), to provide that for the first school year in which a school district levies a tax under Section 45.003(f), the rate authorized under Subsection (e) is reduced by a certain amount. Authorizes the commissioner of education (commissioner) to adopt rules necessary to administer this subsection. Provides that a decision of the commissioner under this subsection is final and prohibits it being appealed. Makes conforming changes.

SECTION 2.02. Amends Section 42.302(b), Education Code, to add taxes levied under Section 45.003(f) to the list of funds and taxes not included in computing the district enrichment tax rate of a school district.

SECTION 2.03. Amends the heading to Chapter 43, Education Code, as follows:

CHAPTER 43. PERMANENT SCHOOL FUND, AVAILABLE SCHOOL FUND, AND SCHOOL EMPLOYEES PRIMARY HEALTH COVERAGE FUND

SECTION 2.04. Amends Sections 43.001 and 43.002, Education Code, as follows:

Sec. 43.001. Adds certain interest, dividends, and money to the list of items which make up the permanent school fund (PSF). Requires the available school fund (ASF) to be apportioned annually to each school district, rather than each county, according its scholastic population. Adds certain distributions from PSF to the list of items which make up ASF. Deletes wording relating to items which make up ASF. Redefines "scholastic population."

Sec. 43.002. New heading: TRANSFERS FROM PERMANENT SCHOOL FUND AND GENERAL REVENUE FUND TO AVAILABLE FUND. (a) Requires the comptroller, on the first working day of each month in a state fiscal year, to transfer a certain amount from PSF to ASF.

(a-1) Requires the comptroller, notwithstanding Subsection (a), to transfer certain amounts from PSF to ASF on certain dates.

(a-2) Provides that Subsection (a-1) and this subsection expire September 1, 2002.

SECTION 2.05. Amends Chapter 43, Education Code, by adding Section 43.0021, as follows:

Sec. 43.0021. TRANSFER FROM PERMANENT SCHOOL FUND AND GENERAL REVENUE FUND TO SCHOOL EMPLOYEES PRIMARY HEALTH COVERAGE FUND. (a) Requires the comptroller, on the first working day of each month in a state fiscal year, to transfer a certain amount from PSF to the primary health fund.

(b) Requires the comptroller, notwithstanding Subsection (a), to transfer certain amounts for the fiscal year beginning September 1, 2001 from PSF to the primary health fund on certain dates.

(c) Provides that Subsection (b) and this subsection expire September 1, 2002.

SECTION 2.06. Amends Section 45.003, Education Code, by amending Subsection (d) and adding Subsections (f)-(h), as follows:

(d) Provides an exception to this subsection.

(f) Authorizes a proposition, in addition to a proposition submitted under Subsection (d), to be submitted to authorize the levy of maintenance taxes that includes a specific question.

(g) Requires specific wording to be placed on the ballot containing a proposition submitted under Subsection (f). Sets forth the manner in which the amount of a net decrease of a certain tax is to be determined. Sets forth the manner in which the amount of a net increase of a certain tax is to be determined.

(h) Provides that the limitation on the tax rate under Subsection (d) does not apply to the combined rate of taxes imposed as a result of an election under Subsection (d) and an election under Subsection (f).

SECTION 2.07. Amends Chapter 45A, Education Code, by adding Sections 45.0031 and 45.0032, as follows:

Sec. 45.0031. TAX RATE FOR PARTICIPATION IN GROUP HEALTH PLANS. (a) Requires the legislature, in the General Appropriations Act, to set for each year of the state fiscal biennium the effective tax rate, expressed in a certain manner, that school districts must levy under Section 45.003(f) to receive state equalization aid to permit the districts to participate in the group program under Chapter 3A (Texas School Employees Uniform Group Insurance Benefits Act), Insurance Code. Provides that an effective tax rate under this subsection must be based on certain estimates. Provides that certain employees are eligible to participate in the program and are entitled to receive primary health plan coverage under the group program without any further expenditure by the district.

(b) Requires the comptroller, each year, to certify in writing certain information to each participating school district.

(c) Requires each school district that will levy taxes under Section 45.003(f) to determine the nominal rate the district must levy to collect the amount of revenue certified under Subsection (b)(2). Requires a school district, in determining a nominal rate under this subsection, to use the district's anticipated collection rate certified to the district under Section 26.04(b) (Submission of Roll to Governing Body; Effective and Rollback Tax Rates), Tax Code.

Sec. 45.0032. REMITTANCE OF REVENUE FOR PARTICIPATION IN GROUP HEALTH PLAN. (a) Requires a school district that levies a tax under Section 45.003(f) to permit the district to participate in the Texas school employees group insurance plan under Chapter 3A, Insurance Code, to remit to the comptroller for deposit in the primary health fund,

in the time and manner prescribed by comptroller rule, the amount of revenue certified to the district under Section 45.0031(b)(2).

(b) Requires the district to remit other revenue sufficient to comply with Subsection (a) if certain circumstances occur. Requires the district, if the revenue received from a tax levied under Section 45.003(f) is greater than the amount of revenue certified to the district under Section 45.0031(b)(2), to perform certain actions.

(c) Authorizes the comptroller or commissioner to take certain actions if a school district fails to comply with Subsection (a).

(d) Requires a school district that does not levy a tax under Section 45.003(f) but participates in the insurance plan to remit, for each month of a state fiscal year, to the comptroller for deposit in the primary health fund a certain amount.

SECTION 2.08. Amends Section 26.08, Tax Code, by adding Subsection (k) to reduce, for the first tax year in which a school district levies a tax under Section 45.003(f), the rollback rate for the district under Subsection (i) by a certain amount.

ARTICLE 3. CONFORMING AMENDMENT

SECTION 3.01. Amends Section 22.004, Education Code, to authorize each district to participate in the group program provided under Chapter 3A, Insurance Code.

(b) Requires a district that does not elect to participate in the program described by Subsection (a), rather than each district, to make available certain health coverage to its employees.

(c) Requires the cost of the coverage provided under the program described by Subsection (a) to be paid by the state, the district, and the employees in the manner provided by Chapter 3A, Insurance Code. Requires the cost of the coverage provided under a plan adopted under Subsection (b), rather than authorizes the cost of the coverage, to be shared by the employees and the district without contribution by the state.

(d) Requires each district to report the district's compliance with this section, rather than this subsection, to a specific individual not later than a certain date. Makes a conforming change.

(e) Makes a conforming change.

(f) Makes a conforming change.

SECTION 3.02. Amends Section 43.016, Education Code, to require all available school funds to be appropriated in each school district, rather than county, for the education of its students, rather than children.

SECTION 3.03. Amends Section 42.158(d), Education Code, to make a conforming change.

SECTION 3.04. Amends Section 42.2521(b), Education Code, to make a conforming change.

SECTION 3.05. Amends Section 46.009(b), Education Code, to make a conforming change.

SECTION 3.06. Amends Section 56.208(a), Education Code, to make a conforming change.

SECTION 3.07. Amends Section 371.005(f), Government Code, to authorize the governor or the Legislative Budget Board to adjust allocations of certain amounts only for the purpose of conforming the allocations to actual student, rather than pupil, enrollments or attendance. Makes a conforming

change. (Section 371.005(f), Government Code, as referenced in this bill, does not currently exist. It appears that this reference should be to Section 317.005(f), Government Code.)

ARTICLE 4. REPEALER; TRANSITION; EFFECTIVE DATE

SECTION 4.01. Repealer: Article 3.50-4 (Texas Public School Employees Group Insurance Program), Insurance Code;
Article 3.50-4A (Insurance for School District Employees and Retirees), Insurance Code, as added by Chapter 1540, Acts of the 76th Legislature, Regular Session, 1999;
Article 3.50-4A (Texas Public School Employees Group Long-Term Care Insurance Program), Insurance Code, as added by Chapter 372, Acts of the 76th Legislature, Regular Session, 1999.

SECTION 4.02. Repealer: Section 43.008 (Treatment of Premium and Discount), Education Code.

SECTION 4.03. (a) Requires TRS to transfer all assets and liabilities of the programs provided under Article 3.50-4A, Insurance Code, as added by Chapter 1540, Acts of the 76th Legislature, Regular Session, 1999, and Article 3.50-4A, Insurance Code, as added by Chapter 372, Acts of the 76th Legislature, Regular Session, 1999, all coverage provided under those programs, and all records pertaining to those programs to the optional group insurance program provided under Chapter 3A, Insurance Code, as added by this Act, not later than the date that optional program is implemented.

(b) Requires TRS to transfer all assets and liabilities of the program provided under Article 3.50-4, Insurance Code, all coverages provided under that program, and all records pertaining to that program to the group program provided under Chapter 3A, Insurance Code, as added by this Act, not later than the date the group program provided under Chapter 3A is implemented.

SECTION 4.04. (a) Requires TRS, during the first year of the 2002-2003 state fiscal biennium, to use money appropriated by the 77th Legislature for the development of a primary health plan in a manner necessary to ensure that enrollment in that plan provided under Chapter 3A, Insurance Code, as added by this Act, begins not later than September 1, 2002.

(b) Requires TRS, not later than December 31, 2001, to deliver to certain entities a comprehensive report on its proposal for the health plans under Chapter 3A, Insurance Code, as added by this Act, and the status of planned implementation of those health plans.

SECTION 4.05. (a) Effective date: January 1, 2002, except as provided by Subsection (b) or (c) of this section.

(b) Makes Section 4.01 of this Act effective September 1, 2002, except as provided by Subsection (c) of this section.

(c) Provides that this Act takes effect only if the constitutional amendment proposed by the 77th Legislature, Regular Session, 2001, relating to the provision of group health benefits for active and retired school employees, distributions from PSF, and the school employees primary health coverage fund is approved by the voters. Provides that if the proposed constitutional amendment is not approved by the voters, this Act has no effect.