

BILL ANALYSIS

Senate Research Center
87R12935 MEW/KJE/BDP-F

S.B. 1536
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Education
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The passage of H.B. 3 in the 86th legislative session and ensuing implementation have revealed several unintended consequences. Though H.B. 3 gave the commissioner of the Texas Education Agency (TEA) authority to address issues which arose over the interim, legislative fixes are needed to implement the reforms in H.B. 3 with fidelity.

Items addressed by the commissioner in the interim, codified in S.B. 1536:

- Charter Special Education Cleanup: Revenue neutral clean up to ensure SPED counts for charters remain at pre-H.B. 3 levels.
- CTE and PTECH students: Ensuring districts receive \$50 per PTECH/New TECH student.
- ESC staff supplement: Maintains staff supplement for service centers. Mistakenly eliminated with district staff supplement and rolled into the Basic Allotment.
- Local Compression: Creates local values using information provided to the agency and adjusted per Government Code. Removes erroneous \$1.00 base year calculation for local compression. Clarifies that districts compress to the 90 percent equity band but no further.

Other items addressed in S.B. 1536:

- Charter Staff Supplement: Fixes misalignment of statutory language with agency practice.
- CCMR Bonus: Includes associate degree as college ready.
- Compensatory Education: Clarify homeless student comp ed weight based on determination of advisory committee.
- CTE Small/Midsize districts: Ensures funding for CTE occurs in addition to the small/mid-size adjustment by using a refined ADA count rather than regular ADA.
- Fast Growth: Clarifies years used in three-year rolling average. Divides quartile into four groups with declining weights.
- High School Equivalency: Pass through of funds moved to Texas Workforce Commission statute.
- Incentive Aid: Aligns consolidation in Chapter 49 with incentive aid from Chapter 13.
- Net Out: Allows recapture funds to net out against all state aid, not just Tier I. Provides a mechanism for recapture of funds when excess revenue determined after notification date.
- Transfer legislatively mandated PEIMS reporting requirements from Chapter 42 (now defunct) to Chapter 48.
- Clarifies that TEA increase recapture or reduce state aid when a district levies a tax that exceeds the allowable tax rate.
- School Safety Allotment moved from Chapter 42 (now defunct) to Chapter 48.
- Requires agency to analyze district data and investigate districts that potentially swapped I&S pennies for M&O and then impose a three-year corrective action plan.
- Repeals current concept of additional tuition for public school students being educated by other school districts which is offset by FSP. The receiving district receives ADA.
- Establishes teacher incentive allotment compensation as creditable performance pay in an approved compensation plan.

As proposed, S.B. 1536 amends current law relating to the public school finance system.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 5 (Section 39.0261, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is modified in SECTION 8 (Section 48.009, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is rescinded in SECTION 15 (Section 42.168, Education Code) and SECTION 25 (Section 42.006, Education Code) of this bill.

Rulemaking authority previously granted to Texas Workforce Commission is modified in SECTION 23 (Section 301.172, Labor Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.106, Education Code, by adding Subsections (a-5) and (a-6), as follows:

(a-5) Requires the commissioner of education (commissioner), to ensure compliance with the requirements for the maintenance of state financial support for special education under 20 U.S.C. Section 1412(a)(18), in determining the funding for an open-enrollment charter school under Subsection (a) (relating to the calculation of the allotment of state funding for school districts based on the number of students attending special education programs) for the Section 48.102 allotment, to:

(1) if necessary, increase the amount of that allotment to an amount equal to the amount the charter holder was entitled to receive for the charter school under the allotment under former Section 42.151 (Special Education), Education Code, for the 2018-2019 school year; and

(2) reduce the amount of the allotment the charter holder is entitled to receive for the charter school under Subsection (a-2) (relating to the calculation of additional state funding a charter holder is entitled to receive for an open-enrollment charter school) by the amount of any increase provided for the charter school under Subdivision (1).

(a-6) Provides that Subsection (a-5) and this subsection expire September 1, 2025.

SECTION 2. Amends Sections 12.133(b), (b-1), and (c), Education Code, as follows:

(b) Deletes existing text requiring certain charter holders, using state funds received by the charter holder for that purpose under Subsection (d) (relating to the calculation of additional amounts of state funding to which certain charter holders are entitled), to provide compensation to certain persons.

(b-1) Makes conforming and nonsubstantive changes to this subsection.

(c) Makes a conforming change to this subsection.

SECTION 3. Amends Section 25.001(h), Education Code, as follows:

(h) Deletes existing text providing that a person who knowingly falsifies information on a form required for enrollment of a student in a school district is liable, for the period during which the ineligible student is enrolled, for the greater of certain amounts, including the maximum tuition fee the district may charge under Section 25.038 (Tuition Fee for Transfer Students). Makes nonsubstantive changes.

SECTION 4. Amends Section 37.108(b-1), Education Code, to require a district, in a school district's safety and security audit required under Subsection (b) (relating to the requirement that each school district or public junior college district conduct a safety and security audit of the district's facilities at least once every three years), to certify that the district used the funds provided to the district through the school safety allotment under Section 48.115, rather than Section 42.168, only for the purposes provided by that section.

SECTION 5. Amends Section 39.0261, Education Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Authorizes the commissioner by rule, notwithstanding Subsection (a)(3) (relating to the authorization of high school students to take certain college preparation assessments at state cost), to allow a student to take at state cost an assessment instrument described by that subsection if circumstances existed that prevented the student from taking the assessment instrument before the student graduated from high school.

(b) Requires the Texas Education Agency (TEA) to:

(1) select and approve vendors of the specific assessment instruments administered under this section and negotiate with each approved vendor a price for each assessment instrument; and

(2) provide reimbursement to a school district in the amount negotiated under Subdivision (1) for, rather than all fees associated with, the administration of the assessment instrument from funds appropriated for that purpose.

SECTION 6. Amends Section 39.053(g-4), Education Code, as follows:

(g-4) Requires the commissioner, for purposes of the computation of dropout and completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix) (relating to the inclusion of high school graduation rates in evaluating the performance of school districts according to the indicators included in the student achievement domain), to exclude a student who was reported as having dropped out of school under Section 48.009(b-4), rather than Section 42.006(a-9) (relating to reporting certain persons as having previously dropped out of school), and prohibits the student from being considered to have dropped out from the school district or campus in which the student was last enrolled.

SECTION 7. Amends Section 45.0021, Education Code, by amending Subsection (a) and adding Subsections (c), (d), and (e), as follows:

(a) Prohibits a school district from imposing, rather than increasing the rate of, the district's maintenance taxes described by Section 45.002 (Maintenance Taxes) at a rate intended to create a surplus in maintenance tax revenue for the purpose of paying the district's debt service.

(c) Requires TEA to:

(1) develop a method to identify school districts that may have adopted a maintenance tax rate in violation of Subsection (a), which must include a review of data over multiple years;

(2) for each school district identified under the method developed under Subdivision (1), investigate as necessary to determine whether the district has adopted a maintenance tax rate in violation of Subsection (a); and

(3) if TEA determines that a school district has adopted a maintenance tax rate in violation of Subsection (a):

(A) order the district to comply with Subsection (a) not later than three years after the date of the order; and

(B) assist the district in developing a corrective action plan that, to the extent feasible, does not result in a net increase in the district's total tax rate.

(d) Provides that the implementation of a corrective action plan under Subsection (c)(3)(B) does not prohibit a school district from increasing the district's total tax rate as necessary to achieve other legal purposes.

(e) Authorizes the commissioner, if a school district fails to take action under a corrective action plan developed under Subsection (c)(3)(B), to impose on the district any interventions or sanctions under Chapter 39A (Accountability Interventions and Sanctions) the commissioner deems appropriate. Provides that Section 39A.003(c)(5) (relating to prohibiting a conservator or management team appointed by the commissioner from setting a tax rate for the district) does not apply to a conservator or management team appointed for a school district under this subsection.

SECTION 8. Amends Section 48.009, Education Code, by amending Subsection (b) and adding Subsection (b-4), as follows:

(b) Requires the commissioner by rule to require each school district and open-enrollment charter school to report through the Public Education Information Management System (PEIMS) information regarding:

(1)-(3) makes no changes to these subdivisions;

(4) and (5) makes nonsubstantive changes to these subdivisions;

(6) disaggregated by campus and grade, the number of:

(A) children who are required to attend school under Section 25.085 (Compulsory School Attendance), are not exempted under Section 25.086 (Exemptions), and fail to attend school without excuse for 10 or more days or parts of days within a six-month period in the same school year;

(B) students for whom the district initiates a truancy prevention measure under Section 25.0915(a-4) (relating to the requirement that a school district initiate truancy prevention measures if a student meets certain requirements); and

(C) parents of students against whom an attendance officer or other appropriate school official has filed a complaint under Section 25.093 (Parent Contributing to Nonattendance); and

(7) the number of students who are enrolled in a high school equivalency program, a dropout recovery school, or an adult education program provided under a high school diploma and industry certification charter school program provided by the district or school and who:

(A) are at least 18 years of age and under 26 years of age;

(B) have not previously been reported to TEA as dropouts; and

(C) enroll in the program at the district or school after not attending school for a period of at least nine months.

(b-4) Requires a student reported under Subsection (b)(7) as having enrolled in a high school equivalency program, a dropout recovery school, or an adult education program

provided under a high school diploma and industry certification charter school program to be reported through PEIMS as having previously dropped out of school.

SECTION 9. Amends Section 48.101(a), Education Code, to redefine "ADA" for Section 48.101 (Small and Mid-Sized District Allotment).

SECTION 10. Amends Section 48.104, Education Code, by adding Subsection (e-1), to entitle a school district, for each student who is a homeless child or youth as defined by 42 U.S.C. Section 11434a, to an annual allotment equal to the basic allotment multiplied by the highest weight provided under Subsection (d) (relating to the weights assigned to the tiers of the index for economically disadvantaged block groups in the state established by the commissioner).

SECTION 11. Amends Section 48.106, Education Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Makes nonsubstantive changes to this subsection.

(a-1) Entitles a district, in addition to the amounts under Subsection (a), to \$50 for each student in average daily attendance enrolled at certain campuses. Makes nonsubstantive changes.

SECTION 12. Amends Section 48.106(b)(1), Education Code, to redefine "career and technology education class" and "career and technology education program" for Section 48.106 (Career and Technology Education Allotment).

SECTION 13. Amends Section 48.110(f), Education Code, as follows:

(f) Provides that, for purposes of Section 48.110 (College, Career, or Military Readiness Outcomes Bonus), an annual graduate demonstrates:

(1) college readiness if the annual graduate:

(A) meets both of certain requirements. Makes nonsubstantive changes; or

(B) earns an associate degree while attending high school or during a time period established by commissioner rule;

(2)-(3) makes no changes to these subdivisions.

SECTION 14. Amends Section 48.111, Education Code, as follows:

Sec. 48.111. FAST GROWTH ALLOTMENT. (a) Creates this subsection from existing text. Provides that a school district in which the growth in student enrollment in the district over the three school years preceding the current school year, rather than the preceding three school years, is in the top quartile of student enrollment growth in school districts in the state for that period, as determined by the commissioner, is entitled to an annual allotment equal to the basic allotment multiplied by the weight assigned to the district's growth category under Subsection (b), rather than multiplied by 0.04, for each student in average daily attendance.

(b) Requires TEA to identify each school district that qualifies for an allotment under this section and rank those districts, from fastest to least fastest growth, based on student enrollment growth, during the period described by Subsection (a). Requires TEA, based on the rankings determined under this section, to divide the districts into four growth categories according to relative student enrollment growth. Requires that each growth category be of approximately equal student enrollments. Requires TEA, if, based on student enrollment, a district is between two growth categories, to assign the district to the faster growth category. Provides that each growth category is assigned a certain weight.

SECTION 15. Transfers Section 42.168, Education Code, as added by Chapter 464 (S.B. 11), Acts of the 86th Legislature, Regular Session, 2019, to Subchapter C, Chapter 48, Education Code, redesignates it as Section 48.115, Education Code, and amends it, as follows:

Sec. 48.115. SCHOOL SAFETY ALLOTMENT. (a)-(c) Makes no changes to these subsections.

Deletes existing text entitling a school district that is required to take action under Chapter 41 (Equalized Wealth Level) to reduce its wealth per student to the equalized wealth level to a credit, in the amount of the allotments to which the district is to receive as provided by appropriation, against the total amount required under Section 41.093 (Cost) for the district to purchase attendance credits. Deletes existing text authorizing the commissioner to adopt rules to implement this section.

SECTION 16. Amends Section 48.2551, Education Code, by amending Subsections (a) and (c) and adding Subsections (d-1) and (d-2), as follows:

(a) Redefines "DPV" for Section 48.2551 (Maximum Compressed Tax Rate).

(c) Provides that, notwithstanding Subsection (b) (relating to the calculation of a district's maximum compressed rate), for a district to which Section 48.2552(b) applies, the district's maximum compressed rate is the value calculated in accordance with Section 48.2552(b), rather than for "MCR" under Subsection (b)(1)(B).

(d-1) Requires local appraisal districts, school districts, and the Comptroller of Public Accounts of the State of Texas to provide any information necessary to TEA to implement this section.

(d-2) Authorizes a school district to appeal to the commissioner the district's taxable property value as determined by TEA under this section. Provides that a decision by the commissioner is final and is prohibited from being appealed.

SECTION 17. Amends Section 48.2552(b), Education Code, as follows:

(b) Provides that, if a school district's maximum compressed rate as calculated under Section 48.2551(b) would be less than 90 percent of another school district's maximum compressed rate, the district's maximum compressed rate is the value at which the district's maximum compressed rate would be equal to 90 percent of the other district's maximum compressed rate.

Deletes existing text providing that, if a school district has a maximum compressed rate that is less than 90 percent of another school district's maximum compressed rate, the district's maximum compressed rate is calculated under Section 48.2551(c) until TEA determines that the difference between the district's and another district's maximum compressed rates is not more than 10 percent.

SECTION 18. Amends Section 48.257(c), Education Code, as follows:

(c) Authorizes, for purposes of Subsection (a) (relating to requiring a school district to reduce its local revenue level from the Foundation School Program if the level exceeds a certain amount), state aid to which a district is entitled under Chapter 48 (Foundation School Program) to offset the amount by which a district is required to reduce the district's revenue level under this section.

Deletes existing text authorizing, for purposes of Subsection (a), state aid to which a district is entitled under this chapter that is not described by certain subsections to offset the amount by which a district must reduce the district's tier one revenue level under Subsection (a).

SECTION 19. Amends Subchapter F, Chapter 48, Education Code, by adding Section 48.2721, as follows:

Sec. 48.2721. RECOVERY OF FUNDS FROM EXCESSIVE TAXATION. Requires the commissioner to reduce state aid or adjust the limit on local revenue under Section 48.257 (Local Revenue Level in Excess of Entitlement) in an amount equal to the amount of revenue generated by a school district's tax effort that is not in compliance with Section 45.003 (Bond and Tax Elections) or this chapter.

SECTION 20. Amends Subchapter G, Chapter 48, Education Code, by adding Section 48.303, as follows:

Sec. 48.303. ADDITIONAL STATE AID FOR REGIONAL EDUCATION SERVICE CENTER STAFF SALARY INCREASES. (a) Entitles a regional education service center to state aid in an amount equal to the sum of:

(1) the product of \$500 multiplied by the number of full-time center employees, other than administrators or classroom teachers, full-time librarians, full-time school counselors certified under Subchapter B (Certification of Educators), Chapter 21, or full-time school nurses; and

(2) the product of \$250 multiplied by the number of part-time center employees, other than administrators or teachers, librarians, school counselors certified under Subchapter B, Chapter 21, or school nurses.

(b) Provides that a determination by the commissioner under Subsection (a) is final and is prohibited from being appealed.

SECTION 21. Amends Subchapter A, Chapter 49, Education Code, by adding Section 49.0041, as follows:

Sec. 49.0041. LOCAL REVENUE LEVEL IN EXCESS OF ENTITLEMENT AFTER REVIEW NOTIFICATION. Requires the commissioner, if the commissioner determines that a school district has a local revenue level in excess of entitlement after the date the commissioner sends notification for the school year under Section 49.004(a) (relating to the requirement that the commissioner review the annual local revenue level of school districts and notify certain districts), to include the amount of the district's local revenue level that exceeded the level established under Section 48.257 for that school year in the annual review for the following school year of the district's local revenue levels under Section 49.004(a).

SECTION 22. Amends Section 49.054(b), Education Code, as follows:

(b) Entitles a consolidated district under Subchapter B (Consolidation by Agreement) to incentive aid under Subchapter G (Incentive Aid Payments), Chapter 13. Deletes existing text providing that, except as provided by Subsection (c) (relating to the authority of four or more school districts that consolidate to receive certain incentive aid), a district receiving incentive aid payments under Section 49.054 (Incentive Aid) is not entitled to incentive aid under Subchapter G, Chapter 13.

SECTION 23. Transfers Section 48.302, Education Code, to Subchapter J, Chapter 301, Labor Code, redesignates it as Section 301.172, Labor Code, and amends it, as follows:

Sec. 301.172. SUBSIDY FOR HIGH SCHOOL EQUIVALENCY EXAMINATION FOR CERTAIN INDIVIDUALS. (a) Requires the Texas Workforce Commission (TWC) to provide to an individual who is 21 years of age or older a subsidy in an amount equal to the cost of taking one high school equivalency examination administered under Section 7.111 (High School Equivalency Examinations), Education Code from funds appropriated for this purpose.

Deletes existing text defining "commission." Deletes existing text requiring TEA to enter into a memorandum of understanding with TWC for TEA to transfer to TWC funds specifically appropriated to TEA for TWC to provide to an individual who is 21 years of age or older a subsidy in an amount equal to the cost of taking one high school equivalency examination administered under Section 7.111.

(b) Makes conforming and nonsubstantive changes to this subsection.

SECTION 24. Amends Section 822.201(b), Government Code, to redefine "salary and wages" in Subsection (a) (relating to the computation of compensation for members of the Teacher Retirement System of Texas subject to contributions and credit).

SECTION 25. (a) Repealer: Section 12.133(d) (relating to entitling a charter holder at an open-enrollment charter school who participated under the Texas School Employees Uniform Group Health Coverage Program to a certain amount of additional state aid), Education Code.

Repealer: Section 12.133(d-1) (relating to entitling a charter holder at an open-enrollment charter school who participated under the Texas School Employees Uniform Group Health Coverage Program to a certain amount of additional state aid), Education Code.

Repealer: Section 12.133(e) (relating to entitling a charter holder at an open-enrollment charter school who participated under the Texas School Employees Uniform Group Health Coverage Program to a certain amount of additional state aid), Education Code.

Repealer: Section 25.038 (Tuition Fee for Transfer Students), Education Code.

Repealer: Section 25.039(b) (relating to the requirement that a school district pay tuition to any district with which it has a contract for each of its students attending school in that district at a grade level for which the district has contracted), Education Code.

Repealer: Section 25.039(c) (relating to the provision that a school district is not required to pay tuition to any district with which it has not contracted for the attendance by any of its students at a grade level for which it has contracted with another district), Education Code.

Repealer: Section 48.154 (Tuition Allotment for Districts Not Offering All Grade Levels), Education Code.

Repealers: Sections 49.054(a) (relating to requiring the commissioner to adjust allotments of incentive aid to consolidated districts as necessary) and (c) (relating to the authority of four or more school districts that consolidate to receive certain incentive aid), Education Code.

Repealer: Section 2 (relating to the requirement of each school district and open-enrollment charter school to report to the commissioner through PEIMS certain disaggregated information by campus and grade), Chapter 1036 (H.B. 548), Acts of the 86th Legislature, Regular Session, 2019.

Repealer: Section 8 (relating to the requirement that each school district or open-enrollment charter school report to the commissioner through PEIMS certain regarding the number of students enrolled in certain high school equivalency programs), Chapter 1060 (H.B. 1051), Acts of the 86th Legislature, Regular Session, 2019.

SECTION 26. Provides that, to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 27. Effective date: September 1, 2021.