

Wrap-Up for the 87th Legislature School Finance & Public Education

HB 1525 by Huberty — the “HB 3 Clean-up Bill”

There is virtually unanimous agreement among legislators that HB 3 by Huberty (R-Humble), the school finance overhaul bill passed by the 86th Legislature in 2019, was the most meaningful school finance bill in decades. The bill repealed outdated formula elements and infused \$6 billion into the school finance formulas, while at the same time allocating an additional \$5 billion to reduce property taxes by compressing school district maintenance and operations tax rates.

Because HB 3 was over 300 pages long and very complicated, the legislature wisely included a provision in the bill that authorized the Commissioner of Education to adjust a school district’s funding entitlement if the funding formulas resulted in an unanticipated loss or gain for a district during the interim. The Commissioner was required to obtain approval from the Governor and members of the Legislative Budget Board in order to use this authority, and was instructed to inform the legislature of the changes made under the provision so that the issues could be addressed by the 87th Legislature if necessary.

To the credit of HB 3’s drafters, Commissioner Morath used this authority only 4 times during the interim to remedy the following issues: 1) correct a drafting error regarding the base tax rate used for tax rate compression; 2) clarify that Pathways in Tech-

nology Early College High School (PTECH) campuses receive an additional \$50 per student in average daily attendance (ADA); 3) ensure that special education funding sent to open-enrollment charter schools (tuition-free schools operating under a charter approved by the Commissioner of Education) meets the federal maintenance of effort requirement; and 4) restore the state staff salary supplement for non-administrative employees of Regional Education Service Centers.

Upon receiving the required report from Commissioner Morath, companion “clean-up” bills were filed by the authors of HB 3 during the 86th Legislative Session. Representative Dan Huberty (R-Humble) filed HB 1525, and Senator Larry Taylor (R-Friendswood) filed SB 1536 to address the “unintended consequences” issues and other provisions that had been brought to their attention. HB 1525 became the primary vehicle for the changes during the session and was signed into law by Governor Abbott on June 16. The bill addresses the following issues:

Tax Rates

To the extent property values grow by more than 2.5% in a given year, HB 3 requires school districts to reduce their tax rates accordingly. HB 1525 codifies

this calculation of a school district’s “maximum compressed rate” (MCR) to reflect the methodology used by TEA to calculate those rates. A contingency rider in the appropriations bill (SB 1) reduces the calculated MCR further by 0.30 percent for each year of the biennium reflecting a provision in HB 3 that requires any tax rate compression not realized due to unrecognized value growth be rolled into the statewide MCR calculation in the following biennium. HB 1525 directs the Commissioner to reduce state aid or increase the amount recaptured from a school district that fails to reduce its rate in compliance with the compressed tax rate calculation.

“Swap and Drop.” The bill also directs the Texas Education Agency to develop a method to identify “swap and drop” school districts — districts that trade higher maintenance and operations taxes for lower debt service taxes as a way of drawing additional state aid. If TEA identifies a school district that has done this, the Commissioner must order the school district to correct the action not later than 3 years after the date of the order and assist the district in developing a corrective action plan that does not result in a net increase in the district’s total tax rate if feasible. If a school district does not comply, the Commissioner is authorized to reduce state aid or increase the amount recaptured from the school district. TEA is required to post a list of school districts that violate this provision on its website. School districts will not be required to take corrective action if the district’s interest and sinking fund tax revenue is insufficient to pay the district’s debt service due to circumstances beyond the district’s control, and the use of the surplus maintenance tax is necessary to prevent a default on the district’s debt.

Formula Changes

Gifted and Talented Allotment. HB 1525 reinstates the allotment providing additional funds for students in gifted and talented programs that was repealed by HB 3 in the 86th Legislative Session. Texas school finance formulas adjust the amount of revenue provided for students in certain categories. Students such as those in the gifted and talented program are given an additional “weight” in the funding

formulas to compensate for the higher cost of their education. The weight per gifted and talented student is 0.07, less than the 0.12 it was in prior law, and the number of students eligible to draw down the additional funding is limited to 5% of the district’s students in average daily attendance — as it was in prior law.

Career and Technology Allotment. Due to changes made by HB 3 last session, some small and mid-size school districts received less revenue for students enrolled in career and technology programs. HB 1525 corrects this issue by providing that for each full-time equivalent student in average daily attendance in an approved career and technology education program, a school district is entitled to the basic allotment plus the small or mid-size district allotment. That amount is then multiplied by one of the following weights: (1) 1.1 for a full-time equivalent student in career and technology education courses not in an approved program of study (2) 1.28 for a full-time equivalent student in a TEA-approved “level one” or “level two” career and technology education course, and (3) 1.47 for a full-time equivalent student in levels three and four career and technology education courses in an approved program of study. Districts receive an additional \$50 if the student is enrolled in two or more advanced career and technology classes. In addition, a school district is entitled to \$50 for each student enrolled at a Pathways in Technology Early College High School (PTECH) campus or a campus that is a member of the New Tech Network. TEA will publish a list of career and technology courses that qualify for an allotment and the weight for which the course qualifies each year.

Fast Growth Allotment. Beginning in the 2022-2023 school year, HB 1525 modifies provisions relating to “fast growth” school districts to ensure that districts of all sizes are eligible for additional funding. If the number of students in the prior year exceeds the level of enrollment six years prior by more than 250 students, those excess students are assigned an additional “weight” for funding purposes: 0.48 for the top 40% of districts, 0.33 for the middle 30% of districts, and 0.18 for the bottom 30% of districts. For the 2021-2022 school year the weights are 0.45 for

the top 40% of districts, 0.30 for the middle 30% of districts, and 0.15 for bottom 30% of districts. Districts are held harmless in the 2021-2022 school year for up to a total of \$40 million statewide. The total amount that may be used to provide allotments cannot exceed \$270 million for the 2021-2022 school year, \$310 million for the 2022-2023 school year, and \$315 million for the 2023-2024 school year, and \$320 million for the 2024-2025 and subsequent school years. If the total entitlement exceeds these amounts, the allotment for each district will be proportionately reduced.

Special Education. The Commissioner of Education will adjust funding to charter schools to ensure compliance with federal requirements for maintenance of state financial support for special education funding.

Recapture. If the Commissioner of Education determines that a school district is subject to recapture after the date of initial notification for the school year, the Commissioner will include the amount of the recapture in the annual review for the following school year.

Other formula changes include:

- School districts will receive the basic allotment x 1.275 (highest compensatory education weight) for each student who is homeless.
- Formula transition grants (hold harmless for changes in HB 3, 86th Legislature) received by school districts will be capped at \$400 million per year statewide. If calculated grants exceed \$400 million per year, the Commissioner will reduce the allotment for each school district or charter school.
- Expands allowable expenditures for the compensatory education, school safety, and instructional materials and technology allotments.
- Adds “earns an associate degree” to conditions under which a high school graduate demonstrates college readiness for purposes of the col-

lege, career, or military readiness outcomes bonus received by school districts.

- A school district campus that received an overall performance rating of F for four years over a 10-year period of time can apply to the Commissioner of Education to be designated as a resource campus and receive additional funding to provide quality education and enrichment for campus students. The campus must implement an improvement plan and adopt an accelerated campus excellence turnaround plan, as well as satisfy certain staff criteria.
- The Commissioner of Education is authorized to adjust the average daily attendance of a school district for formula aid purposes if a disaster or calamity affects the district’s attendance. The adjustment can be for the semester in which the calamity first occurred and an additional school year.

Federal Funds

HB 1525 directs the Texas Education Agency to use discretionary federal funds received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act to do the following:

- Provide allotments to school districts and charter schools for “intensive educational supports” for students not performing satisfactorily. They will receive \$208.35 for each student enrolled in the district not performing satisfactorily in the 2021-2022 and 2022-2023 school years, and \$1,290 for each enrolled student that did not perform satisfactorily on a State of Texas Assessments of Academic Readiness (STAAR) test during the 2020-2021 school year.
- Establish programs that assist school districts and open-enrollment charter schools in implementing intensive supports to ensure students perform at grade level and graduate demonstrating college, career, or military readiness. Programs must include options for Pathways in Technology Early College High School (P-Tech), the Texas Regional Pathways Network, and the

Jobs and Education for Texans (JET) Grant Program. Supplemental instructional supports such as tutoring and COVID-19 learning acceleration supports must also be included.

- Provide reimbursement for technology acquisitions made by school districts and charter schools before February 28, 2021.

The Commissioner of Education will increase a school district or charter school entitlement to ensure compliance with federal maintenance of effort requirements for certain federal pandemic relief funds. He must notify the Legislative Budget Board and the Governor before making the increase. If he doesn't receive written disapproval within 30 days, he may increase the entitlement.

School Employees

A school district or charter school employee who received a salary increase in the 2019-2020 school year due to HB 3, will receive a salary that is at least equal to that salary in subsequent school years as long as the district is receiving at least the same amount of funding, and the district has not declared a financial exigency.

The bill authorizes teachers at the School for the Deaf and School for the Visually Impaired to qualify for salary supplements under the Teacher Incentive Allotment. Because Regional Education Service Centers do not receive state aid based on students, HB 1525 reinstates state aid for staff salaries at Regional Education Service Centers of \$500 for each full-time employee and \$250 for each part-time employee, excluding administrators, classroom teachers, librarians, school counselors, and school nurses.

In order to provide assistance to school districts with remediation of students who fell behind during the pandemic, HB 1525 establishes a tutoring program that active or retired teachers can participate in for compensation or on a volunteer basis. A school district or open-enrollment charter school can use any

available local, state, or federal funds to provide compensation to a person participating in the program as a tutor.

HB 1525 extends the deadline to the 2022-2023 school year for teachers who teach grades K-3 and principals of schools with grades K-3 who must attend a teacher literacy achievement academy.

Miscellaneous

- A student can take a test used by colleges and universities as part of their undergraduate admissions processes at state cost if circumstances existed that prevented the student from taking the test before the student graduated from high school.
- Requires each school district and open-enrollment charter school to report truancy data disaggregated by campus and grade.
- Requires school districts to accept and spend donations from a parent-teacher organization or an association recognized by the district designated to fund supplemental educational staff positions.
- Establishes regulations for meetings of a school health advisory council (SHAC) and requires school boards to adopt a policy for the adoption of curriculum materials for human sexuality instruction. Parents must be provided a detailed description of the content of the instruction and must give consent before a student can take the course.
- Authorizes regional education service centers to administer grants for programs providing services to students with autism and for training related to dyslexia.
- Strengthens security requirements for operators of school district websites and operators of websites contracting with TEA.
- Creates a 7-member commission to make recommendations on Special Education Funding.

Other Bills of Interest

State of Texas Assessments of Academic Readiness (STAAR) Tests. HB 3261 by Huberty (R-Humble) puts the infrastructure in place for online STAAR tests. The bill permits the Instructional Materials and Technology Allotment to be used to purchase “services, equipment, and technology infrastructure necessary to ensure Internet connectivity and adequate bandwidth” and pay for “training personnel in the electronic administration of assessment instruments.” The Commissioner of Education is directed to assess the technology needs for all school districts and provide an estimate of the cost for these resources to the State Board of Education each biennium. Beginning on September 1, 2023, the total projected cost of instructional materials requests for production issued by the State Board of Education cannot exceed 75% of the total amount used to fund the instructional materials and technology allotment for a biennium. The Commissioner of Education is authorized to establish a matching grant program to ensure that all school districts and open-enrollment charter schools have the necessary infrastructure to administer assessment instruments electronically. The Commissioner can set eligibility criteria to receive a matching grant and is given the authority to contract with developers of technology to ensure the most efficient and cost-effective internet connectivity infrastructure for electronic administration of assessment instruments. Beginning in the 2023-2024 school year, all STAAR and end-of-course tests must be administered electronically unless otherwise provided by commissioner rule.

Home-Schooled Students’ Participation in UIL Activities. HB 547 by Frank (R-Wichita Falls) authorizes a public school to allow a home-schooled student who meets league eligibility standards to represent the school in a UIL activity. A home school student who participates in a league activity on behalf of a school is subject to relevant policies that apply to students enrolled in the school regarding registration, age eli-

gibility, fees, insurance, transportation, physical condition, qualifications, responsibilities, event schedules, standards of behavior, and performance, as well as the immunization requirements and exceptions that apply to the public school students. The parent or person standing in parental relation to a home school student is responsible for oversight of academic standards relating to the student’s participation in a league activity, but as a condition of eligibility to participate during the first six weeks of a school year, a home schooled student must demonstrate grade-level academic proficiency on any nationally recognized, norm-referenced assessment instrument, such as the Iowa Test of Basic Skills, Stanford Achievement Test, California Achievement Test, or Comprehensive Test of Basic Skills.

Individual Graduation Committees. Individual Graduation Committees were created in 2015 to give students that fail two or more end-of-course tests a chance to graduate from high school without repeating a grade. The committee is comprised of a student’s teacher, department head of the subject, principal, and parent and can determine that a student who failed not more than two end-of-course tests can still graduate from high school. The provision was for two years only, but was re-authorized by the Legislature in 2017 and 2019.

- **HB 1603 by Huberty (R-Humble)** makes the committees permanent and authorizes the Commissioner of Education to open an investigation if 10% or more of the students graduating in a particular school year from a particular high school campus graduate based on the determination of an individual graduation committee. **HB 999 by Bernal (D-San Antonio)** authorizes the committees to allow a high school senior in the 2020-2021 school year to graduate even if the student failed more than two end-of-course tests. The bill is applicable only to the 2020-2021 school year due to the disruption in instruction caused by the COVID-19 pandemic.

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Strong Foundations Grant Program. HB 4545 by Dutton (D-Houston) directs the Commissioner of Education to establish a “Strong Foundations Grant Program” for grades pre-k through 5 to implement high quality instruction. The Commissioner will adopt components that school districts, charter schools, and campuses must implement in order to receive a grant. He will use funds appropriated, federal funds, and other funds available for the strong foundations grant program to assist school districts and open-enrollment charter schools in implementing the program.

The Commissioner of Education is authorized to require a school district or charter school campus with a D or F rating that is in the bottom 5% of performance on the 3rd grade reading STAAR test to comply with the requirements of the Strong Foundations Grant Program.

Each school district and charter school must establish an accelerated learning committee for every student who does not perform satisfactorily on the third, fifth, or eighth grade mathematics or reading STAAR test to develop an educational plan for that student.

The student will be assigned to a class taught by a master, exemplary, or recognized teacher in the applicable subject area for the subsequent summer or school year, or will receive supplemental instruction. A parent can request that the student be assigned to a particular teacher if more than one teacher is available.

If the student fails a subsequent test, the superintendent or his/her designee will review the educational plan developed by the accelerated learning committee and make any necessary adjustments.

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