LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 89TH LEGISLATIVE REGULAR SESSION

April 7, 2025

TO: Honorable Brad Buckley, Chair, House Committee on Public Education

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **SB2** by Creighton (relating to the establishment of an education savings account program.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB2, Committee Report 2nd House, Substituted: a negative impact of ($1,000,000,000) through the biennium ending August 31, 2027.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would establish an Education Savings Account (ESA) and would limit the program to funding available for this purpose. For the 2026-27 biennium, the bill would limit the amount that could be spent for purposes of the program to $1,000,000,000.

General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	**Probable Net Positive/(Negative) Impact to** ***General Revenue Related Funds***
2026	($10,825,628)
2027	($989,174,372)
2028 *	($3,072,974,229)
2029 *	($3,171,753,190)
2030 *	($3,981,223,839)

All Funds, Five-Year Impact:

Fiscal Year	**Probable Savings/(Cost) from** ***General Revenue Fund*** **1**	**Probable Savings/(Cost) from** ***Foundation School Fund*** **193**	***Change in Number of State Employees from FY 2025***
2026	($10,825,628)	$0	46.0
2027	($989,174,372)	$0	46.0
2028 *	($3,330,520,566)	$257,546,337	46.0
2029 *	($3,694,157,487)	$522,404,297	46.0
2030 *	($4,786,756,367)	$805,532,528	46.0

* - Estimated amounts reflected above; actual amounts will be determined based on future legislative funding decisions.

Fiscal Analysis

The bill would establish an Education Savings Account (ESA) Program to be administered by the Comptroller. The program fund would be an account in the General Revenue Fund. This account would consist of: transfers; appropriations; gifts, grants, and donations; interest and other earnings attributable to investment of money in the fund; and any other money available for the purpose of the program.

The bill would direct the Comptroller to state in its legislative appropriations request each biennium the amount of money that would be necessary to provide an education savings account for each participating child, child on the waiting list, and eligible sibling of a participating child. The amount of money appropriated for the program would be set by the Legislature each biennium and could not exceed $1 billion for the biennium beginning September 1, 2025.

This legislation would create or recreate a dedicated account in the General Revenue Fund, create or recreate a fund either in, with, or outside of the Treasury, or dedicate or rededicate a revenue source. The Legislature consolidated funds into the General Revenue Fund as of August 31, 1993, and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has enacted a funds consolidation bill. The dedication included in this bill, unless created by a constitutional amendment, would be subject to funds consolidation review by the current Legislature.

The bill would define “certified educational assistance organization” (CEAO) and set eligibility requirements for the selection of such organizations by the Comptroller. The Comptroller could certify not more than five such organizations to support the administration of the program.

The bill would establish the procedure for a CEAO, at the direction of the Comptroller, to allocate available participant positions and to select program participants if there were more acceptable applications than available positions due to insufficient funding. Each school year, the bill would require the Comptroller to make disbursements from the program account to each CEAO to hold in trust for the benefit of participating children; such money held in trust would be deposited to each participant's account quarterly.

The Comptroller could deduct an amount from total appropriations for the program not to exceed three percent to cover the cost of administering the program. The Comptroller would disburse funds each quarter to the CEAOs to cover their cost of administering the program in an amount not to exceed five percent of fiscal year appropriations for the program. Each quarter, any interest earned on the money held by CEAOs would be remitted to the Comptroller for deposit into the program fund account.

The bill would establish procedures for auditing, account suspension (including the recovery of incorrectly used funds for deposit back into the program account), the referral of fraud to a local district attorney for prosecution, and acceptance of gifts, grants, and donations. The bill would require the Comptroller, in collaboration with the Texas Education Agency (TEA) and CEAOs, to produce an annual report and to report demographic information of participating children to the Comptroller. By August 1 of each year, the Comptroller would be required to submit a written report to the Legislature summarizing the demographic information.

The bill would require the Comptroller to adopt rules necessary to implement the bill by May 15, 2026, and the program would begin with the 2026-2027 school year.

The bill would set program eligibility requirements for children and educational services providers and provide a list of approved education-related expenses on which program funds could be spent. Any child who is a citizen or national of the United States or was lawfully admitted into the United States and is eligible to attend a school district or open-enrollment charter school or enroll in a prekindergarten program under Education Code, Section 29.153, would be eligible for an ESA.

Approved education-related expenses would include tuition and fees for private schools, higher education institutions, online educational courses or programs, programs which provide training for industry-based credentials, instructional materials, educational services provided by a district or open-enrollment charter school for which the student would not count towards the school's average daily attendance (ADA), academic assessments, transportation, educational therapies, certain computer hardware or software and other technological devices, and meals provided by a private school.

If there were more applicants than positions available due to insufficient funding, the Comptroller would be required to direct CEAOs to fill available positions by lottery, prioritizing siblings of children participating in the program and children with a disability who are members of a household with a household income at or below 500 percent of the federal poverty level. Students would then be prioritized based on household income. The Comptroller would be required to create and maintain a waiting list based on the priority categories if there were more applicants than available positions.

For fiscal year 2027, the total amount of funding that could be provided to eligible children who are members of a household with a total annual income at or above 500 percent of the federal poverty guidelines could not exceed 20 percent of money appropriated for the program in that year; the Comptroller would be required to prioritize students within that category who were enrolled in a school district or open-enrollment charter school at least 90 percent of the preceding school year. This section would expire beginning in fiscal year 2028.

The bill would establish the ESA amount at 85.0 percent of total state and local maintenance and operations funding under the FSP for the most recent school year for which that information is available. In determining the estimated statewide average amount of state and local funding per student in ADA the bill would require the commissioner to include state and local funding under Chapters 48 and 49 as well as the amount the state is required to contribute to the Teacher Retirement System (TRS) for the school year. Special education students would receive an additional amount equal to the amount the student would generate from the Special Education Allotment under the Foundation School Program (FSP) in their home school district; the total amount for special education students would be limited to $30,000 each year. Participating home-school students would receive an amount not to exceed $2,000 each year.

The bill would entitle districts and open-enrollment charter schools, if a child ceases participation in the ESA program during a school year due to enrollment in the district or charter school, to an additional allotment equal to the basic allotment multiplied by 0.1 for the child's ADA for that school year. The child would also not be considered in performance evaluations for the district or charter school for the first school year after the child ceases participation in the ESA program.

TEA would be required to compile, analyze and share data with the Comptroller; provide data and support to CEAOs; and support responses to public information requests.

The bill would allow a parent of a child enrolled in a non-public school to request a full evaluation from a public school district or charter school to determine if the child qualifies for special education services. The district would be required to complete the evaluation in 45 days and develop an individualized education program (IEP) for the child if the child is found to be eligible for special education services. The district would be required to submit a copy of the IEP to TEA. The agency could create rules to implement this process, including an appeals process for eligibility decisions and service provisions.

Methodology

TEA assumes that the number of students who would be leaving public schools or home schooling to enroll in private school to participate in the ESA program would be limited by the capacity within private schools. The agency assumes there are approximately 350,000 students enrolled in private schools and that private school capacity could increase by ten percent of current enrollment each year. Further, the agency assumes that, of the increased available private school capacity, 70.0 percent would be filled by public school students and 30.0 percent would be filled by home school students who would choose to enroll in a private school under this program. Therefore, this analysis assumes 24,500 students would leave public schools for private schools in fiscal year 2027, increasing to 98,000 in fiscal year 2030, and that 10,500 home school students would enroll in private school in fiscal year 2027, increasing to 42,000 by fiscal year 2030. The number of students leaving the ESA program due to enrollment in a school district or open-enrollment charter school and the additional entitlement generated under the FSP cannot be determined at this time.

This analysis assumes that 85.0 percent of total state and local maintenance and operations funding under the FSP plus state retirement contributions to TRS per student in ADA would be $10,330 in fiscal year 2027,

$10,498 in fiscal year 2028, increasing to $10,899 in fiscal year 2030. The agency assumes 10.0 percent of participating students would be special education students and would therefore generate a higher ESA amount. This analysis assumes the weighted average ESA amount for participating students would be $11,693 in fiscal year 2027, $11,867 in fiscal year 2028, increasing to $12,282 in fiscal year 2030. Estimates are based on current law funding formulas.

Subject to available funding, this analysis assumes that of current home school students, 50.0 percent would apply to participate in the program in the first year, increasing five percent each subsequent year. This analysis assumes that the majority of home school students that would participate in the ESA program would receive the $2,000 ESA amount. The agency assumes there are approximately 560,000 home school students. Accounting for those assumed to enroll in private schools that would receive the higher ESA amount, this analysis assumes that 269,500 home school students would apply to receive the $2,000 ESA amount in fiscal year 2027, increasing to 322,000 in fiscal year 2030.

Subject to available funding, this analysis assumes that of current private school students, 50.0 percent would apply to participate in the program in the first year, increasing five percent each subsequent year. Thus, this analysis assumes 175,000 students currently enrolled in private schools would apply to participate in the program in fiscal year 2027, increasing to 227,500 by fiscal year 2030.

For the 2026-27 biennium, the bill would limit the amount that could be spent for purposes of the program to $1,000,000,000. Therefore, this analysis assumes that the cost of the program in fiscal years 2026 and 2027 would be limited to $1.0 billion, including administrative costs. For subsequent biennia, the Comptroller would be required to state in the agency's Legislative Appropriations Request (LAR) for each state fiscal biennium the amount necessary to provide funding for each participating child, each child on the waiting list, and each eligible child who is a sibling of a participating child. Thus, this analysis assumes participation in fiscal years 2028 and 2029 would be limited to projected demand in fiscal year 2027 and that participation in fiscal year 2030 would be limited to projected demand in fiscal year 2029, as specified in the Comptroller's LAR. Therefore, for subsequent years and based on assumptions outlined above, this analysis assumes the cost of the ESA program would be $3.3 billion in fiscal year 2028, $3.7 billion in fiscal year 2029, and $4.8 billion in fiscal year 2030, although, the ultimate costs of the ESA program would be limited to the amount appropriated by the Legislature.

This analysis assumes public school students that would leave to enroll in private schools would generate a savings under the FSP, estimated at $10,512 per student in fiscal year 2027, increasing to $11,115 in fiscal year 2030. The agency assumes that FSP savings would be realized in the following fiscal year during the settle-up process. This analysis assumes FSP savings would be $257.5 million in fiscal year 2028, increasing to $805.5 million in fiscal year 2030.

TEA assumes there would be a fiscal impact to the state to compile, analyze and share data with the Comptroller as well as provide information as necessary to CEAOs. The agency assumes 8.0 FTEs would be required to implement the provisions of the bill at a cost of $1.1 million in each fiscal year. This analysis assumes fiscal years 2026 and 2027 administrative costs would be included in the $1.0 billion total program appropriation.

The Comptroller assumes 38.0 FTEs would be required to implement the provisions of the bill. This analysis assumes the cost of these FTEs would total $5.4 million in fiscal year 2026 and $4.6 million in subsequent years.

The Comptroller assumes there would be administrative costs related to obtaining outside counsel to provide legal support in development and administration of the program; outside audit services to perform audits required by the bill; and software development costs. The agency assumes the fiscal impact of the necessary technology, professional, and other operating costs that would be required to implement the provisions of this bill would be $3.9 million in fiscal year 2026, $3.4 million in fiscal year 2027, and $2.4 million in fiscal year 2030. This analysis assumes fiscal year 2027 administrative costs would be included in the $1.0 billion total program appropriation.

Technology

TEA assumes IT costs to implement the provisions of the bill would total $0.5 million in fiscal year 2026, $0.9

million in fiscal year 2027, and $0.1 million each subsequent fiscal year.

Local Government Impact

This analysis assumes local education agencies may experience a decrease in FSP funding as a result of the bill due to students leaving public schools to participate in the ESA program. The number of students leaving public schools would depend on the capacity at private schools, the amount that would be appropriated for the program, and the extent to which public school students would choose to participate.

The number of students for whom school districts or open-enrollment charter schools would generate additional entitlement under the FSP after the students ceased participation in the ESA program cannot be determined at this time.

Source Agencies: 304 Comptroller of Public Accounts, 313 Department of Information Resources, 323 Teacher Retirement System, 701 Texas Education Agency

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