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H.B. No. 130

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to an enhanced quality full-day prekindergarten program  
3 provided by public school districts in conjunction with community  
4 providers.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 12.104(b), Education Code, is amended to  
7 read as follows:

8 (b) An open-enrollment charter school is subject to:

9 (1) a provision of this title establishing a criminal  
10 offense; and

11 (2) a prohibition, restriction, or requirement, as  
12 applicable, imposed by this title or a rule adopted under this  
13 title, relating to:

14 (A) the Public Education Information Management  
15 System (PEIMS) to the extent necessary to monitor compliance with  
16 this subchapter as determined by the commissioner;

17 (B) criminal history records under Subchapter C,  
18 Chapter 22;

19 (C) reading instruments and accelerated reading  
20 instruction programs under Section 28.006;

21 (D) satisfactory performance on assessment  
22 instruments and to accelerated instruction under Section 28.0211;

23 (E) high school graduation under Section 28.025;

24 (F) special education programs under Subchapter

1 A, Chapter 29;

2 (G) bilingual education under Subchapter B,  
3 Chapter 29;

4 (H) prekindergarten programs under Subchapter E  
5 or E-1, Chapter 29;

6 (I) extracurricular activities under Section  
7 33.081;

8 (J) discipline management practices or behavior  
9 management techniques under Section 37.0021;

10 (K) health and safety under Chapter 38;

11 (L) public school accountability under  
12 Subchapters B, C, D, and G, Chapter 39;

13 (M) the requirement under Section 21.006 to  
14 report an educator's misconduct; and

15 (N) intensive programs of instruction under  
16 Section 28.0213.

17 SECTION 2. Section 28.002(1), Education Code, is amended to  
18 read as follows:

19 (1) A school district shall require a student enrolled in  
20 full-day prekindergarten, in kindergarten, or in a grade level  
21 below grade six to participate in moderate or vigorous daily  
22 physical activity for at least 30 minutes throughout the school  
23 year as part of the district's physical education curriculum or  
24 through structured activity during a school campus's daily recess.  
25 To the extent practicable, a school district shall require a  
26 student enrolled in prekindergarten on less than a full-day basis  
27 to participate in the same type and amount of physical activity as a

1 student enrolled in full-day prekindergarten. A school district  
2 shall require students enrolled in grade levels six, seven, and  
3 eight to participate in moderate or vigorous daily physical  
4 activity for at least 30 minutes for at least four semesters during  
5 those grade levels as part of the district's physical education  
6 curriculum. If a school district determines, for any particular  
7 grade level below grade six, that requiring moderate or vigorous  
8 daily physical activity is impractical due to scheduling concerns  
9 or other factors, the district may as an alternative require a  
10 student in that grade level to participate in moderate or vigorous  
11 physical activity for at least 135 minutes during each school week.  
12 Additionally, a school district may as an alternative require a  
13 student enrolled in a grade level for which the district uses block  
14 scheduling to participate in moderate or vigorous physical activity  
15 for at least 225 minutes during each period of two school weeks. A  
16 school district must provide for an exemption for:

17 (1) any student who is unable to participate in the  
18 required physical activity because of illness or disability; and

19 (2) a middle school or junior high school student who  
20 participates in an extracurricular activity with a moderate or  
21 vigorous physical activity component that is considered a  
22 structured activity under rules adopted by the commissioner.

23 SECTION 3. Subchapter E, Chapter 29, Education Code, is  
24 amended by adding Section 29.1534 to read as follows:

25 Sec. 29.1534. NOTIFICATION OF PREKINDERGARTEN PROGRAMS.

26 (a) In this section, "prekindergarten program" includes  
27 prekindergarten programs provided by a private entity through a

1 partnership with the school district.

2 (b) The agency shall develop joint strategies with other  
3 state agencies regarding methods to increase community awareness of  
4 prekindergarten programs through programs that provide information  
5 relating to public assistance programs.

6 (c) The agency may develop outreach materials for use by  
7 school districts to increase community awareness of  
8 prekindergarten programs.

9 (d) Each school district shall report annually to the agency  
10 the strategies implemented by the school district to increase  
11 community awareness of prekindergarten programs offered by the  
12 district. The district shall report the information on a form  
13 prescribed by the commissioner. A report required by this  
14 subsection may be combined, at the discretion of the commissioner,  
15 with another report that the district submits to the agency.

16 (e) Not later than the 90th day after the date the agency  
17 receives a report from a school district as required by Subsection  
18 (d), the agency shall post the report on the agency's Internet  
19 website.

20 (f) Not later than April 1, 2010, the agency shall conduct a  
21 study to identify effective methods to communicate to the parent of  
22 an eligible child the availability of prekindergarten programs.  
23 The study must include research on providing information regarding  
24 prekindergarten programs through public, private, and nonprofit  
25 institutions that provide assistance and support to families with  
26 children eligible for prekindergarten programs. Not later than May  
27 1, 2010, the agency shall make recommendations to school districts

1 based on the study regarding the most effective methods to increase  
2 communication regarding the availability of prekindergarten  
3 programs. This subsection expires June 1, 2010.

4 (g) Not later than December 1, 2010, the agency shall  
5 prepare and deliver to the lieutenant governor, the speaker of the  
6 house of representatives, and the presiding officer of each  
7 legislative standing committee with primary jurisdiction over  
8 primary and secondary education a report detailing strategies  
9 developed under Subsection (b) to increase community awareness of  
10 prekindergarten programs. This subsection expires January 1, 2011.

11 SECTION 4. Chapter 29, Education Code, is amended by adding  
12 Subchapter E-1 to read as follows:

13 SUBCHAPTER E-1. ENHANCED QUALITY FULL-DAY PREKINDERGARTEN PROGRAM

14 Sec. 29.164. DEFINITION. In this subchapter, "enhanced  
15 program" or "program" means an enhanced quality full-day  
16 prekindergarten program provided free of tuition or fees in  
17 accordance with this subchapter.

18 Sec. 29.165. ENHANCED QUALITY FULL-DAY PREKINDERGARTEN  
19 PROGRAM GRANTS. (a) From funds appropriated for that purpose, the  
20 commissioner by rule shall establish a grant program under which  
21 grants are awarded to school districts to implement an enhanced  
22 quality full-day prekindergarten program for children eligible for  
23 classes under Section 29.153.

24 (b) A school district may apply to the commissioner to  
25 participate in the grant program. In awarding grants under this  
26 subchapter for each school year, the commissioner shall give  
27 priority in the order listed to the following school districts:

1           (1) school districts that receive grant funding from  
2 the commissioner for early childhood education in a lesser amount  
3 than the amount provided for that purpose during the preceding  
4 school year;

5           (2) school districts that are not eligible to receive  
6 any other existing early childhood grants awarded by the  
7 commissioner; and

8           (3) school districts with a high percentage of  
9 students who are educationally disadvantaged, as determined by the  
10 commissioner.

11           (c) A school district may not enroll more than 22 students  
12 in a program class and must maintain an average ratio in the program  
13 of not less than one certified teacher or teacher's aide for each 11  
14 students. Each program class must have at least one certified  
15 teacher.

16           (d) A certified teacher in the program must have a minimum  
17 of nine semester credit hours of college education courses  
18 emphasizing early childhood education.

19           (d-1) If a certified teacher who meets the requirements of  
20 Subsection (d) is unavailable, a community provider contracting  
21 with a school district under this subchapter may employ a teacher  
22 for the program who has a minimum of three years experience in early  
23 childhood education, who is certified as a Child Development  
24 Associate by the Council for Professional Recognition, and who is  
25 taking one or more college education courses that emphasize early  
26 childhood education. Not later than the third anniversary of the  
27 date the community provider contracts with the district, the

1 community provider must employ a teacher who meets the requirements  
2 of Subsection (d).

3 (e) A school district must select and implement a curriculum  
4 for the program that includes the prekindergarten guidelines  
5 established by the agency.

6 (f) A program is subject to any other requirements imposed  
7 by law that apply to a prekindergarten program not provided in  
8 accordance with this subchapter, except that to the extent a  
9 conflict exists between this subchapter and any other provision of  
10 law, this subchapter prevails.

11 (g) To participate in the program, a school district must  
12 meet requirements adopted by the commissioner under Section 29.174.

13 Sec. 29.166. CONTRACTS WITH COMMUNITY PROVIDERS REQUIRED.

14 (a) A school district that provides an enhanced program shall use  
15 at least 20 percent of grant funds provided under this subchapter to  
16 contract with one or more eligible community providers to provide  
17 the program.

18 (b) The commissioner may waive the requirement under  
19 Subsection (a) on an annual basis if a school district provides  
20 documentation acceptable to the commissioner that:

21 (1) the area served by the district does not have a  
22 sufficient number of eligible community providers;

23 (2) after a good faith effort, the school district did  
24 not receive any applications or other indications of interest in  
25 contracting with the district from eligible community providers; or

26 (3) after a good faith effort and for good cause, the  
27 district and one or more eligible community providers interested in

1 contracting with the district were unable to reach an agreement.

2 (c) Not later than the 30th day after the date the  
3 commissioner receives a request for a waiver under Subsection (b),  
4 the commissioner shall send a written notice to the school district  
5 and the affected community provider, if applicable, granting or  
6 denying the request. A school district or community provider  
7 affected by a decision of the commissioner under this subsection  
8 may appeal the decision as provided by Section 7.057.

9 Sec. 29.167. ELIGIBLE COMMUNITY PROVIDERS. (a) To be  
10 eligible to contract with a school district to provide an enhanced  
11 program, a community provider must be center-based and licensed by  
12 and in good standing with the Department of Family and Protective  
13 Services. For purposes of this subsection, a community provider is  
14 in good standing with the Department of Family and Protective  
15 Services if the department has not taken an action against the  
16 provider's license under Section 42.071, 42.072, or 42.078, Human  
17 Resources Code, during the 12-month period preceding the date of a  
18 contract with a school district.

19 (b) Except as provided by Subsection (c), an eligible  
20 community provider must also meet one of the following criteria:

21 (1) the community provider must be certified through  
22 the school readiness certification system established under  
23 Section 29.161;

24 (2) the community provider must be a Texas Early  
25 Education Model participant;

26 (3) the community provider must be a Texas Rising Star  
27 Provider with a three-star certification or higher; or



1           (4) the community provider must be accredited by a  
2 research-based, nationally recognized, and universally accessible  
3 accreditation system approved by the agency that requires a  
4 developmentally appropriate curriculum that includes math,  
5 science, social studies, literacy, physical development, and  
6 social and emotional components.

7           (c) Notwithstanding failure to satisfy the requirements of  
8 Subsection (b) and subject to Subsection (d), a community provider  
9 otherwise eligible to contract with a school district under  
10 Subsection (a) may contract with a district if:

11           (1) the community provider meets quality criteria  
12 adopted by the district that are:

13                   (A) based on the best available peer-reviewed  
14 research; and

15                   (B) made available to the public in a timely  
16 manner; and

17           (2) the commissioner approves the arrangement.

18           (d) A community provider contracting with a school district  
19 as provided by Subsection (c) must meet the requirements for  
20 eligibility provided by Subsection (b) not later than the first  
21 anniversary of the date the contract was executed.

22           Sec. 29.168. WRITTEN CONTRACT REQUIRED. A school district  
23 and a community provider contracting under this subchapter shall  
24 enter a written contract governing the services to be provided by  
25 the community provider. The contract may provide for, but is not  
26 limited to, the following types of partnerships:

27           (1) the school district leases school facilities to or

1 from the community provider;

2 (2) the school district employs a certified teacher  
3 for the prekindergarten class and the community provider supplies  
4 the school facilities and all other personnel and supplies; or

5 (3) the community provider supplies the school  
6 facilities, certified teachers, personnel, and supplies.

7 Sec. 29.169. FUNDING TO COMMUNITY PROVIDER. (a) Except as  
8 provided by Subsection (b), the amount of reimbursement provided by  
9 a school district to a community provider is negotiable between the  
10 district and the community provider based on the services provided.

11 (b) For each school district prekindergarten student in  
12 attendance in an enhanced program class provided by a community  
13 provider in which the community provider supplies the school  
14 facilities, certified teachers, personnel, and supplies, a school  
15 district shall reimburse the community provider in an amount not  
16 less than the sum of:

17 (1) the amount of the district's adjusted basic  
18 allotment, as determined under Section 42.102 or 42.103, as  
19 applicable, multiplied by 1.0; and

20 (2) the amount of any additional funding received by  
21 the district for the student under Subchapter C, Chapter 42.

22 (c) Funding provided under this section does not affect a  
23 community provider's eligibility to receive any other local, state,  
24 or federal funds to provide before-school, after-school, and summer  
25 child care.

26 Sec. 29.170. DISCRIMINATION BY COMMUNITY PROVIDER  
27 PROHIBITED. A community provider may not deny enhanced program

1 services to a student on the basis of the student's race, religion,  
2 sex, ethnicity, national origin, or disability.

3 Sec. 29.171. ANNUAL ENHANCED PROGRAM REPORT. A school  
4 district operating an enhanced program shall provide an annual  
5 report to the agency not later than August 1 of each year. The  
6 report must include:

7 (1) the percentage of the grant funds provided under  
8 this subchapter used by the district to contract with community  
9 providers; and

10 (2) data components, approved by the commissioner,  
11 that illustrate acquisition of knowledge and skills consistent with  
12 the prekindergarten guidelines established by the agency and  
13 student-level progress towards school readiness.

14 Sec. 29.172. DUTIES OF COMMISSIONER. The commissioner  
15 shall:

16 (1) require regional education service centers to  
17 assist:

18 (A) school districts in:

19 (i) informing parents of prekindergarten  
20 options;

21 (ii) identifying eligible community  
22 providers and maintaining an updated list of eligible community  
23 providers; and

24 (iii) creating standardized forms and  
25 processes for outreach to and contracts with community providers  
26 for use when considering community partnerships;

27 (B) community providers in establishing

1 contracts with school districts under this subchapter; and

2 (C) community providers who are not eligible to  
3 contract with a school district under this subchapter by providing  
4 information regarding eligibility to contract with a school  
5 district; and

6 (2) encourage regional education service centers and  
7 school districts to use locally available child care resources and  
8 referral services.

9 Sec. 29.173. STATE FUNDING; GRANT AMOUNT. (a) From funds  
10 appropriated for the purposes of this subchapter the commissioner  
11 shall award grants as provided by this subchapter.

12 (b) The commissioner, in accordance with this subsection,  
13 shall determine the amount of each grant awarded under this  
14 subchapter. A grant must provide an amount of funding for each  
15 student in the program equal to 70 percent of the statewide average  
16 funding provided per student to an open-enrollment charter school  
17 under Section 12.106, including all adjustments used in computing  
18 per-student funding under that section.

19 (c) Funding provided for each program student through a  
20 grant under this subchapter is in addition to funding otherwise  
21 provided for the student under Chapter 42.

22 Sec. 29.174. RULES. The commissioner may adopt rules  
23 necessary to implement this subchapter.

24 Sec. 29.175. PROHIBITION ON USE OF FUNDS FOR VOUCHERS.  
25 Funds provided for the operation of the enhanced program through a  
26 grant awarded under this subchapter must be paid directly to a  
27 public school district or open-enrollment charter school. It is

1 the intent of the legislature that this requirement is absolute and  
2 that the terms of this requirement be broadly construed so as to  
3 prevent the use of public funds for any program having the same  
4 effect as a voucher program. This section does not prohibit the use  
5 of state funding by a school district or open-enrollment charter  
6 school under a contract entered into by the district or school  
7 before January 1, 2009, under a law in effect at the time the  
8 contract was approved, if state funds are paid directly to the  
9 district or school.

10 Sec. 29.176. ENHANCED PROGRAM EVALUATION. (a) Using  
11 information provided to the agency under Section 29.171 and using  
12 funds available for that purpose, in an amount not to exceed  
13 \$150,000 each fiscal year, the commissioner shall contract for an  
14 evaluation of the effectiveness of the enhanced program in  
15 promoting student achievement and school readiness.

16 (b) Not later than December 1, 2012, the commissioner shall  
17 deliver an interim report to the legislature containing the  
18 preliminary results of the evaluation.

19 (c) Not later than December 1, 2016, the commissioner shall  
20 deliver to the legislature a final report regarding the program.

21 (d) This section expires December 1, 2016.

22 SECTION 5. This Act applies beginning with the 2009-2010  
23 school year.

24 SECTION 6. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section 39, Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for immediate effect, this

H.B. No. 130

1 Act takes effect September 1, 2009.