

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 26, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB6 by Eissler (Relating to the foundation curriculum, the establishment of the instructional materials allotment, and the adoption, review, and purchase of instructional materials and technological equipment for public schools.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB6, As Passed 2nd House: a positive impact of \$355,536,291 through the biennium ending August 31, 2013.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$385,352,384
2013	(\$29,816,093)
2014	\$247,557,783
2015	\$480,185,636
2016	\$37,268,747

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from <i>State Textbook Fund</i> 3	Probable Savings/ (Cost) from <i>Foundation School Fund</i> 193	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1
2012	(\$282,650)	\$382,611,354	\$2,690,953	\$332,727
2013	(\$49,730)	(\$32,359,261)	\$1,899,643	\$693,255
2014	(\$49,730)	\$245,095,431	\$1,818,827	\$693,255
2015	(\$49,730)	\$478,142,888	\$1,399,223	\$693,255
2016	(\$49,730)	\$35,390,045	\$1,235,177	\$693,255

Fiscal Year	Change in Number of State Employees from FY 2011
2012	3.8
2013	13.5
2014	15.5
2015	20.5
2016	22.0

Fiscal Analysis

The bill would establish an instructional materials allotment to which school districts and open-enrollment charter schools would be entitled. School districts would be entitled to an allotment per enrolled student based on the amount of funds available in the Instructional Materials Fund (created in the bill) as determined by appropriation and student enrollment in the prior school year on a date established by the Commissioner of Education. The bill provides for adjustments to the student enrollment count used for purposes of determining a school district's entitlement to Instructional Materials Allotment funds based on student population growth or decline. Such adjustments may be requested by a school district or determined by the Commissioner without a request.

The bill would establish instructional materials accounts for each school district into which Instructional Materials Allotment funds would be deposited. Funds in the account would be available to school districts for permissible purchases throughout the biennium in which they were appropriated and could be carried forward to the next biennium.

The bill would direct the Commissioner to maintain an online requisition system for instructional materials.

The bill would amend provisions related to the sale of textbooks to allow proceeds from permissible sales of instructional material or electronic equipment to be used by the school district to purchase instructional materials or technological equipment.

The bill would direct the State Board of Education to set aside 40 percent of the annual distribution from the Permanent School Fund to the Available School Fund in the 2012-13 biennium and 50 percent of the annual distribution in each subsequent state fiscal biennium to be deposited to the Instructional Materials Fund, subject to appropriation in the General Appropriations Act.

The bill would repeal provisions related to limitations on the cost of instructional materials, textbook credits, requirements that publishers maintain a textbook depository, the technology allotment, and the education internet portal.

The bill would repeal the Technology Allotment.

The bill would repeal the state virtual school network allotment in the FSP, including the commissioner's authority to grant allotments for courses that exceed a normal course load.

The bill would create a Permanent School Fund (PSF) bond guarantee for qualified charter schools. The commissioner of education would administer the program and issue guarantees for qualified charter school bonds. The bill would limit the total amount of charter school bonds to be guaranteed to the portion of total available capacity in the PSF school bond guarantee program that is equal to the proportion of charter school enrollment to total enrollment. The bill would create a special fund in the state treasury outside the general revenue fund to be known as the charter district bond guarantee reserve fund. The bill would require each charter school that has a bond guaranteed to remit an annually amortized amount equal in total to 10 percent of the savings realized due to the bond guarantee. These amounts would be deposited in the charter district bond guarantee reserve fund and would serve as the first source of payment of any defaults of charter bonds carrying PSF guarantees.

The bill would require a person serving as a member of a governing body of a charter holder or open-enrollment charter school or a person serving as an officer of an open-enrollment charter school who receives one of the five highest salaries to submit proof of U.S. citizenship to the Texas Education Agency.

The bill would prohibit the commissioner of education from denying approval for a charter holder to add additional campuses if the charter holder fails to meet performance criteria solely on the basis of dropout and completion rates provided that the charter demonstrates through a process developed by the Agency that those criteria would have been met by excluding from the count of dropouts any students who were at least 17 years of age at the time of enrollment and by counting as graduates those students who complete high school prior to the end of their sixth year of high school enrollment. The bill would also require affected charter holders to have a financial accountability rating of satisfactory or better. The prohibition would expire September 1, 2013.

The bill would limit the number of campuses the commissioner would be authorized to approve under these criteria to 10 campuses in total. Campuses added under the provisions of the bill would also be limited to those that would be located in the charter's specific geographical area, serve only high school students, and enroll a student body with at least 50% representing students who did not graduate with a ninth grade cohort. In addition, the commissioner would have the authority to limit the enrollment at additional campuses to the capacity limit applicable to the charter holder or the demand for services in the geographical area. However, limitations on enrollment at the new campuses could not be less than the number of high school students currently enrolled at a campus operated by the charter holder that focuses on dropout recovery.

The bill would prohibit the commissioner of education from revoking or denying the renewal of a charter if the charter holder has been assigned a financial accountability rating of satisfactory or better and if the charter holder meets all criteria established for adding an additional campus other than performance criteria based on dropout and completion rates provided that the charter holder demonstrates through a process developed by the Agency that those criteria would have been met by excluding from the count of dropouts any students who were at least 17 years of age at the time of enrollment and by counting as graduates those students who complete high school prior to the end of their sixth year of high school enrollment. This prohibition would also expire September 1, 2013.

The bill would allow the State Board of Education (SBOE) to grant up to 10 new licenses for open-enrollment charter schools in a state fiscal year plus a number of licenses equal to any number of charters revoked or surrendered during the preceding state fiscal year, and would enable certain existing charter holders to establish new charter school campuses without applying for authorization.

The bill would permit the SBOE to grant a license to an eligible entity applying for an open-enrollment charter school intended primarily to serve students with disabilities, including students with autism. The SBOE could grant up to two new licenses for open-enrollment charter schools under this section each state fiscal year. Licenses granted under this section would not count toward the annual limit.

The bill would permit the commissioner to establish a fee for applying for an open-enrollment charter school sufficient to cover administrative costs for the application process and investigation of the proposed charter holder.

The limitation on new licenses described above, provided in new Section 21.10111(c), Education Code would not apply to charters granted under Section 12.10111(b)(2) as added under the bill.

The bill would provide for alternatives to revocation and to eliminate the commissioner's authorization to deny renewal of the charter of an open-enrollment charter school and require that the commissioner modify, place on probation, or revoke a charter for certain actions. The bill would make other changes related to the process by which the commissioner may pursue charter revocation or alternatives to revocation.

The bill would require open-enrollment charter schools licensed on or after September 1, 2011, to limit enrollment to students either enrolled in a public school in this state during the preceding school year or enrolling in first grade or lower grade levels.

The bill would take immediate effect contingent on receipt of required voting margins.

Methodology

The bill would direct that in the 2012-13 biennium, 40 percent of the annual distribution from the Permanent School Fund (PSF) to the Available School Fund (ASF) be deposited into the Instructional Materials Fund created by the bill to fund school districts' Instructional Materials Allotment. In each subsequent biennium, that amount would increase to 50 percent of annual distribution.

Under current law, the Legislature appropriates a portion of the ASF revenues available to fund instructional materials and the technology allotment, and the remainder is used as a method of financing the Foundation School Program (FSP). To the extent that more or less ASF is used for

instructional materials, more or less funding from Fund 193, Foundation School Fund (General Revenue) is required to fund the state's obligations under the FSP.

The distribution rate from the PSF to the ASF is 4.2 percent of the 16-quarter trailing average value of the fund for fiscal years 2012 and 2013. For purposes of this estimate, it is assumed that the distribution rate is 3.5 percent in each subsequent fiscal year. An annual rate of return on investment of 8.0 percent is also assumed. These assumptions yield a distribution of \$943.2 million annually in fiscal years 2012 and 2013, \$901.3 million annually in fiscal years 2014 and 2015, and \$973.4 million in fiscal year 2016.

For purposes of determining current law instructional materials costs, instructional materials under Proclamation 2011 (English Language Arts and Reading, part 2) are estimated to cost \$430.0 million and are assumed to enter classrooms in fiscal year 2012. For purposes of this estimate, it is assumed that instructional materials under Proclamation 2012 (Science), which were scheduled to be purchased in fiscal year 2013, but were postponed by the State Board of Education, would be purchased in fiscal year 2014 at a cost of \$343.5 million. It is assumed that Proclamation 2013 (Social Studies) materials would be purchased in fiscal year 2015 at a cost of \$571.9 million, and that Proclamation 2014 (Career and Technical Education and Technology Applications) materials would be purchased in fiscal year 2014 at a cost of \$155.4 million.

Based on the statutory formula of \$30 per student in average daily attendance (ADA), Technology Allotment costs under current law are estimated at \$138.6 million in fiscal year 2012, increasing to \$148.7 million by fiscal year 2016.

Based on these assumptions, the total cost of instructional materials, including continuing contracts, and the technology allotment under current law is estimated at \$758.7 million in fiscal year 2012, \$344.1 million in fiscal year 2013, \$694.8 million in fiscal year 2014, \$927.8 million in fiscal year 2015, and \$521.0 million in fiscal year 2016. Deducting these estimated costs from the total estimated distribution from the PSF to the ASF yields the amount that would serve as a method of financing the Foundation School Program in each year under current law, estimated at \$184.5 million in fiscal year 2012, \$599.1 million in fiscal year 2013, \$206.4 million in fiscal year 2014, (\$26.6 million) in fiscal year 2015, and \$452.3 million in fiscal year 2016. In the case of fiscal year 2015, when the estimated cost of instructional materials exceeds the estimated distribution from the PSF to the ASF, other revenues that are deposited to the ASF make up the difference. These funds would otherwise serve as a method of financing the FSP.

Under the provisions of the bill, the amount of ASF used for instructional materials would be limited to 40 percent of the PSF distribution to the ASF in fiscal years 2012 and 2013 and 50 percent of the distribution in subsequent fiscal years. Based on the methodology described above, it is estimated that the amount of ASF available as a method of financing the FSP would change as follows: increase by \$381.5 million in fiscal year 2012, decrease by \$33.2 million in fiscal year 2013, increase by \$244.2 million in fiscal year 2014, increase by \$477.2 million in fiscal year 2015, and increase by \$34.4 million in fiscal year 2016. Increases in ASF available for financing the FSP yield savings to Fund 193 in like amounts, and decreases in ASF available for financing the FSP yield cost to Fund 193 in like amounts.

Note that estimates of current law instructional materials and technology allotment cost are made without consideration of current legislative deliberations regarding the budget for the 2012-13 biennium. To the extent that less funding is provided relative to costs identified above, the savings or costs attributable to the provisions of this bill would vary.

In addition to savings and costs associated with the FSP, the Texas Education Agency estimates that 1.75 contract FTEs in fiscal year 2012 and 0.5 contract FTEs in each subsequent fiscal year would be required to implement changes to the Educational Materials Online (EMAT) system at an estimated cost of \$282,650 in fiscal year 2012 and \$49,730 in each subsequent fiscal year.

For purposes of this estimate, it is assumed that school districts are already claiming full attendance and therefore earning full FSP funding for students enrolled in courses through the VSN. As a result, no additional FSP cost would accrue by entitling school districts to FSP formula funding for students'

enrollment in courses offered through the state virtual school network (VSN) for courses that are successfully completed. The repeal of the state virtual school network allotment in the FSP would yield a savings estimated at \$1,159,704 in fiscal year 2012 and \$1,217,689 in fiscal year 2013, assumed to increase by 5 percent annually up to \$1,409,627 by fiscal year 2016. Additionally, since the bill repeals the statutory basis for the appropriation supporting allotments for courses in excess of a normal course load, the elimination of that appropriation is estimated to yield a savings of \$3,023,680 (this estimated fiscal year 2011 funding level) in fiscal year 2012 and each year thereafter.

The Texas Education Agency (TEA) indicates that there are currently 214 charter holders operating 649 open-enrollment charter school campuses in the state. Students enrolled in these schools make up approximately 2.7 percent of the total public school population. Accordingly, the amount of charter bonds for which guarantee could be made would be limited to approximately 2.7 percent of available capacity for the overall PSF bond guarantee program.

The TEA states that costs would be incurred for additional administrative functions associated with designating of financially qualified charter districts, determinations of bond guarantee capacity, charter bond issuance tracking, analysis of charter district bond guarantee applications, and technical assistance to charter districts seeking guarantee. The estimated costs for two additional FTE positions and associated operating expenses for these functions are \$178,727 in FY12 and \$162,727 each year thereafter. The Agency estimates revenues generated by application fees will be sufficient to offset costs.

It is assumed for the purpose of this estimate that receiving submitted proof of citizenship as required under the amended bill would not have significant fiscal implications for Agency operations.

The bill would authorize up to 10 additional charter school campuses primarily designed to serve students who had previously dropped out of school. To the extent that such students were not in attendance at another charter school or school district, there would be additional cost to the Foundation School Program in the form of state aid generated by their attendance at the new charter campuses.

Assuming that initial implementation activities at the Agency would occur in FY12, new campuses approved under the bill would be expected to open for enrollment at the beginning of FY13. Based on the average size of charter campuses of potentially affected charter holders, it is assumed that each of the new campuses authorized under the bill would have about 100 students in average daily attendance. For the purpose of this estimate, it is assumed that approximately five percent of the students enrolled at each new campus would be students who had previously dropped out of school and had not been generating Foundation School Program state aid. The estimated additional state cost associated with these students' attendance would be estimated to be \$387,500 in FY13. Although the authority to create new campuses would expire September 1, 2013, the campuses opening under the bill's provisions would be assumed to continue operating. For the purpose of this estimate, it is assumed that the student population served each year by the campuses initiated in FY13 would continue to consist of 95% of students who had been generating Foundation School Program funding at that school or another public school district or charter school and about 5 percent who had previously dropped out of school and had not been generating Foundation School Program state aid. As a result, the cost for additional Foundation School Program entitlement would be expected to remain at the FY13 level with no significant increases in cost expected over time.

The Texas Education Agency (TEA) assumes that the SBOE would continue to exercise careful deliberation in issuing new licenses such that 10 licenses would be issued for traditional charter schools each year and another two licenses for schools that focused on students with disabilities, including autism, would be issued. In addition, the estimated 165 charter holders that currently exist could add charter campuses without the approval of the SBOE. The TEA estimates that 35 campuses a year would be established, even with the commissioner's exercising authority to disapprove of new campuses. The Agency further assumes, in view of the unlimited authority to grant charters under Section 12.10111(b)(2), Education Code, that 10 additional charters would be granted under this provision.

The establishment of new license holders, charter holders, and charter campuses would require additional staff at the TEA to perform the administrative functions that are required to support the

addition of newly licensed charter schools and new charter campuses and to design and maintain an application process for those seeking a license for a school with a focus on students with disabilities, as well as charter school funding, monitoring, and audits. As additional charter schools and campuses were created, more audit and funding staff would be needed, as well as additional staff for assessment, accountability, accreditation, and monitoring and interventions. In total, the TEA estimates that the provisions of the bill would require 11 additional full-time equivalents beginning in FY 2013. Total funding for these positions, including salary, benefits and other operating costs, is estimated at \$1,045,380 in FY 2013; however, it is assumed that \$476,529 of this amount would be covered by collected license application fee revenue, and another \$138,070 could be covered by existing federal administrative funds, leaving a General Revenue cost of \$430,781. These positions would increase to 20 in FY 2016, with General Revenue costs increasing to \$1,095,247.

According to the TEA, the agency would require one new Program Specialist V full-time equivalent (FTE) in FY 2013 in its Discretionary Grants Division to support the addition of new schools by flowing funds to new charter schools through the federal public charter schools start-up grant. The TEA's Formula Grants Administration Division would require one new Contract Specialist IV FTE in FY 2013 to support the addition of new charter schools.

The TEA's Fiscal Accountability and Federal Reporting Unit would require one new Grant Coordinator III FTE in FY 2015 to support the addition of new licensed charter schools. The TEA's Financial Audits Division would require new FTEs to comply with its financial and attendance auditing and investigation and monitoring responsibilities. The Financial Audits Division also has to review all the new charter license applicants and provide the successful applicants with training. In FY 2013, two Auditor VI FTEs would be needed to review license applications and provide training and technical assistance. Two additional Auditor V FTEs would be added in FY 2015 as the number of licensed charter schools increased. Estimated travel costs per trip, assuming the majority of trips were made by car, would be \$1,355 for two staff members. The TEA estimates auditors would make six visits in FY 2015 with an annual travel cost of \$8,130. Costs for travel would grow as the number of charter schools and charter campuses grew. The TEA estimates auditors would make 12 visits in FY 2016 with an estimated cost of \$16,260.

The Program Monitoring and Interventions Division would require one Program Specialist VII FTE and one Program Specialist VI in FY 2015 and two additional Program Specialist VI FTEs in FY 2016, when there would be 88 new licensed charter schools and 140 new charter campuses. Travel costs are estimated at \$27,100 in FY 2016 for 20 visits.

The Individuals with Disabilities Education Act (IDEA) Coordination Division would require one Program Specialist VII FTE beginning in FY 2013 to work with licensed charter schools that focused on students with disabilities.

The Charter School Administration Division would require one new Program Specialist VI FTE beginning in FY 2013 and two additional Program Specialist VI FTEs beginning in FY 2014 to accommodate the increased number of licensed charters and coordinate the new fee collection and administrative penalty requirements.

The Student Assessment, Performance Reporting, Accountability Research, and Performance-Based Monitoring Divisions would each require an additional Program Specialist VII FTE position in FY 2013 to provide technical assistance in each of these areas as soon as the new provisions went into effect to increase the number of charter schools and campuses.

One Attorney VI FTEs would be required beginning in FY 2013 to work on charter school legal issues.

For purposes of estimating fees to cover the administrative costs for charter applications, it was assumed that the administrative costs for three Program Specialist VI positions in the Charter School Division, two Auditor VI positions in Financial Audits, and one Attorney VI positions would be required for the review of applications and investigation of new license holders. The TEA receives approximately 30 open-enrollment charter school applications. Assuming a similar number of applications for licenses, the associated average annual administrative costs are estimated at \$476,529.

The estimated application fee would be \$15,885 per license applicant, for a total of \$476,550 in application fees, assuming approximately 30 applications annually. It was assumed that one position in Formula Funding and the IDEA position would be funded from federal funds.

Technology

The Texas Education Agency estimates that 1.75 contract FTEs in fiscal year 2012 and 0.5 contract FTEs in each subsequent fiscal year would be required to implement changes to the Educational Materials Online (EMAT) system at an estimated cost of \$282,650 in fiscal year 2012 and \$49,730 in each subsequent fiscal year.

Significant systems development costs would also be incurred to implement the PSF bond guarantee program for charter schools. Initial system development costs of \$154,000 would be estimated in FY12, with ongoing maintenance and licensing costs of approximately \$54,000 annually in FY13 and beyond.

Local Government Impact

The provisions of this bill would fundamentally change the way school districts order instructional materials. School districts would order instructional materials based on the availability of funds in the district's instructional materials account instead of based on enrollment figures. There would be additional flexibility on how the funds were expended as long as the expenditures were for allowable expenses. School districts would be required to annually certify that the district's IMA had been used only for allowable expenses.

Charter holders operating additional campuses would realize additional Foundation School Program revenue based on student attendance at the new campuses.

School districts that experience reduced enrollment due to increased enrollment in charter schools could experience reduced revenues.

Source Agencies: 701 Central Education Agency

LBB Staff: JOB, LXH, JGM, JSc, SD