

## **BILL ANALYSIS**

Senate Research Center

S.B. 176  
By: Middleton  
Education  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Senate Bill 176 would empower parents to direct their child's education by allowing parents to choose the educational opportunity that best suits their child, with money following the child. The bill creates a framework which allows the comptroller to certify nonprofit certified educational assistance organizations to operate the program and distribute funds from an education savings account created for the child to the educational opportunity of their choice. This bill would provide a 100% match of the state's average maintenance and operation expenditure per child to any student participating in the program. In addition to tuition, funds from the education savings account can be spent on many other education-related expenses, including: curriculum, tutoring, transportation, and educational therapies. The comptroller is authorized to audit the fund to prevent fraud and refer any suspected cases to the attorney general for investigation and prosecution. S.B. 176 also includes numerous protections to protect the autonomy of program participants, vendors, and educational service providers.

As proposed, S.B. 176 amends current law relating to the establishment of the Texas Parental Empowerment Program and an insurance premium tax credit for contributions made for purposes of that program.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 3 (Sections 29.359 and 29.372, Education Code) and SECTION 5 (Sections 230.052 and 230.054, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Provides that this Act may be cited as the Texas Parental Empowerment Act of 2023.

SECTION 2. Provides that the legislature finds that:

- (1) parents should be empowered to direct the education of their child;
- (2) there is not one best educational option for all Texas school children;
- (3) children belong to their parents, not the government;
- (4) the best education for Texas school children is one directed by their parents, with all educational options made available and accessible, wherein money follows the child to the educational option that best meets their unique educational needs;
- (5) in *Espinoza v. Montana Department of Revenue* (2020) and in *Carson v. Makin* (2022), the United States Supreme Court found that state prohibitions on the use of generally available state tuition assistance programs for religious schools violates the Free Exercise Clause of the First Amendment of the United States Constitution; and
- (6) this Act is intended to further provide for the general diffusion of knowledge and to empower parents of students in this state to direct the education of their children.

SECTION 3. Amends Chapter 29, Education Code, by adding Subchapter J, as follows:

SUBCHAPTER J. TEXAS PARENTAL EMPOWERMENT PROGRAM

Sec. 29.351. DEFINITIONS. Defines "account," "certified educational assistance organization," "child with a disability," "institution of higher education," "private or independent institution of higher education," "non-enrolled student," "parent," "program," and "program participant."

Sec. 29.352. PURPOSE. Provides that the purpose of the Texas Parental Empowerment Program (program) is to provide students with additional educational options in order to achieve a general diffusion of knowledge and to empower parents of students in this state to direct the education of their children.

Sec. 29.353. ESTABLISHMENT OF PROGRAM. Requires the Comptroller of Public Accounts of the State of Texas (comptroller) to establish the program to provide funding for approved education-related expenses of eligible children admitted into the program.

Sec. 29.354. TEXAS PARENTAL EMPOWERMENT FUND. (a) Provides that the program fund (fund) is an account in the general revenue fund to be administered by the comptroller.

(b) Provides that the fund is composed of money transferred to the fund under Section 29.361A(a), general revenue transferred to the fund, money appropriated to the fund, gifts, grants, and donations received under Section 29.371, contributions to the fund for which an entity receives a credit against the entity's state premium tax liability under Chapter 230, Insurance Code, and any other money available for purposes of the program.

(c) Authorizes money in the fund to be appropriated only to the comptroller for purposes of making payments to program participants and administering the program under this subchapter.

Sec. 29.355. SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATIONS. (a) Authorizes an organization to apply to the comptroller for certification as a certified educational assistance organization during an application period established by the comptroller.

(b) Requires the organization, to be eligible for certification, to:

(1) have the ability to perform the duties and functions required of a certified educational assistance organization under this subchapter as provided by the organization's charter;

(2) be exempt from federal tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code;

(3) be in good standing with the state; and

(4) be able to administer the program, including the ability to accept, process, and track applications for the program and verify that program funding is used only for approved education-related expenses.

(c) Requires the comptroller to certify at least one but no more than three educational assistance organizations to assist in administering the program, including by verifying a child's eligibility for the program and the use of funds in a program participant's account only for purposes approved under Section 29.360.

Sec. 29.356. ELIGIBLE CHILD. (a) Provides that a child is eligible to participate in the program if the child is enrolled in a school district, including a public charter school, and was enrolled in that district or public charter school during the entire preceding school year, is entering kindergarten for the first time, or is currently participating in the program established by this chapter, and participated in the program during the preceding school year.

(b) Provides that a child who is currently not enrolled in a public school, but is otherwise eligible to enroll in public school under Section 25.001 (Admission), is eligible for the program, subject to available funding described by Section 29.361A.

(c) Authorizes a child who establishes eligibility under this section to participate in the program until the earliest of the following dates: the date on which the child graduates from high school, except as provided by Section 29.363; the date on which the child is no longer eligible to attend a public school under Section 25.001; the date on which the child enrolls in a public school, including an open-enrollment charter school; or the date on which the child is declared ineligible for the program by the comptroller under this subchapter.

Sec. 29.357. APPLICATION TO PROGRAM. (a) Authorizes a parent of an eligible child to apply to a certified educational assistance organization to enroll the child in the program for the following school year. Requires the parent to provide any information requested by the organization for purposes of verifying the child's eligibility for the program.

(b) Requires each certified educational assistance organization to create an application form for the program and make the application form readily available to interested parents through various sources, including the organization's Internet website. Requires the organization to ensure that the application form is capable of being submitted to the organization electronically.

(c) Requires each certified educational assistance organization to post on the organization's Internet website and provide to each parent who submits an application form to the organization a publication that describes the operation of the program, including expenses allowed under the program under Section 29.360, the organization's expense reporting requirements, and a description of the responsibilities of program participants and the duties of the organization under this subchapter.

(d) Requires a certified educational assistance organization, subject to the availability of funding, to admit into the program each child for whom the organization received an application under this section if the organization verifies that the child is eligible to participate in the program. Requires the organization, if available funding is insufficient to admit each eligible child into the program, to prioritize admitting children in the following order: children who participated in the program in the preceding school year; siblings of children who participated in the program in the preceding school year; and children with a disability, as defined by Section 29.351(3).

Sec. 29.358. PARTICIPATION IN PROGRAM. (a) Requires a parent of an eligible child, to receive funding under the program, to agree to spend money received through the program only for expenses allowed under Section 29.360 and to notify the parent's certified educational assistance organization not later than 30 days after the date on which the child enrolls in a public school, including an open-enrollment charter school, graduates from high school, or is no longer eligible to enroll in a public school under Section 25.001.

(b) Provides that the parent of a child participating in the program is the trustee of the child's account.

(c) Requires each certified educational assistance organization to provide annually to each program participant for whom the organization is responsible the publication provided under Section 29.357(c). Authorizes the publication to be provided electronically.

Sec. 29.359. APPROVED PROVIDERS; PARENTAL REVIEW COMMITTEE. (a) Requires the comptroller by rule to establish a parental review committee to review applications for preapproval of education service providers and vendors of educational products for participation in the program. Requires the committee to create a process for program participants to request the preapproval of education service providers and vendors of educational products for participation in the program. Requires the comptroller to post on the comptroller's Internet website and provide to each certified educational assistance organization the list of preapproved providers and vendors.

(b) Provides that the committee is made up of nine parents of school-aged children, appointed as follows:

(1) three members appointed by the governor: one parent of a child enrolled in public school, one parent of a child enrolled in a private school, one parent of a non-enrolled child;

(2) three members appointed by the lieutenant governor: one parent of a child enrolled in public school; one parent of a child enrolled in a private school; one parent of a non-enrolled child; and

(3) three members appointed by the speaker of the house of representatives: one parent of a child enrolled in public school, one parent of a child enrolled in a private school, one parent of a non-enrolled child.

(c) Prohibits any person required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, for the purpose of lobbying a member of the legislature and any person employed by a nonprofit state association or organization that primarily represents political subdivisions and hires or contracts with a person required to register as a lobbyist under Chapter 305, Government Code, from serving on the parental review committee.

(d) Requires the committee to approve an educational service provider or vendor of educational products for participation in the program no later than 30 days after receipt of a complete application, if the provider or vendor:

(1) for a private school, executes a notarized affidavit, with supporting documents, concerning the school's qualification to serve program participants, including evidence of:

(A) annual administration of a nationally norm-referenced assessment instrument;

(B) valid certificate of occupancy;

(C) policy statements regarding:

(i) admissions;

(ii) curriculum;

(iii) safety;

(iv) student to teacher ratios; and

(v) assessments;

(D) the school's agreement that program participants are eligible to apply for scholarships offered by the school to the same extent as other children; and

(E) accreditation by an organization recognized by the Texas Education Agency (TEA) or accreditation by Texas Private School Accreditation Commission;

(2) for a private tutor, therapist, or teaching service:

(A) executes a notarized affidavit, with supporting documents, concerning the tutor's, therapist's, or service's qualification to serve program participants, including evidence that the tutor or therapist or each employee of the service who intends to provide services to a program participant:

(i) is certified under Subchapter B (Certification of Educators), Chapter 21;

(ii) holds a relevant license or accreditation issued by a state, regional, or national licensing or accreditation organization; or

(iii) is employed in a teaching or tutoring capacity at an institution of higher education or private or independent institution of higher education; and

(B) the tutor or therapist or each employee of the teaching service who intends to provide educational services to a program participant either:

(i) completes a national criminal history record information review; or

(ii) provides to the comptroller documentation indicating that the tutor, therapist, or employee, as applicable, has completed a national criminal history record information review within a period established by comptroller rule;

(3) for an online educational course or program provider, executes a notarized affidavit, with supporting documents, concerning the provider's qualification to serve program participants; or

(4) for any provider or vendor not described by Subdivision (1), (2), or (3), presents any necessary supporting documents concerning the provider's or vendor's qualification to serve program participants.

(e) Requires the comptroller to review the national criminal history record information or documentation for each private tutor, therapist, or teaching service who submits an application. Requires the tutor, therapist, or service to provide the comptroller with any information requested by the comptroller to enable the comptroller to complete the review. Requires the comptroller to report the findings of the review to the parental review committee.

(f) Requires each certified educational assistance organization to post on the organization's Internet website the list of preapproved education service providers and vendors of educational products provided under Subsection (a).

Sec. 29.360. APPROVED EDUCATION-RELATED EXPENSES. (a) Authorizes money received under the program, subject to Subsection (b), to be used only for the following expenses incurred by a program participant at a preapproved education service provider or vendor:

(1) tuition and fees at a private school, at an institution of higher education or a private or independent institution of higher education, for an online educational course or program, a provider or vendor approved under Subsection (b)(4);

(2) the purchase of textbooks or other instructional materials or uniforms required by a school, institution, course, or program described by Subdivision (1) in which the child is enrolled;

(3) fees for services provided by a private tutor or teaching service;

(4) fees for educational therapies or services provided by a practitioner or provider, only for fees or portions of fees that are not covered by any federal, state, or local government benefits such as Medicaid or the Children's Health Insurance Program (CHIP) or by any private insurance that the child is enrolled in at the time of receiving the therapies or services;

(5) fees for services provided by a public school, including individual classes and extracurricular programs;

(6) curriculum for instruction described by Section 29.916(a)(1) (relating to the definition of a home-schooled student);

(7) fees for a nationally standardized norm-referenced achievement test, an advanced placement examination, or any exams related to admissions to an institution of higher education;

(8) transportation services between the residence of the program participant and an education service provider, not to exceed \$1,000 per school year; or

(9) computer hardware and technological devices primarily used for an educational purpose, not to exceed 10% of the amount deposited to a program participant's account, including calculators, personal computers, laptops, tablet devices, microscopes, telescopes, and printers.

(b) Prohibits money received under the program from being used to pay any person who is related to the program participant within the third degree of consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, or a member of the program participant's household.

(c) Provides that a finding that a program participant used money distributed under the program to pay for an expense not allowed under Subsection (a) does not affect the validity of any payment made by the participant for an expense that is allowed under that subsection.

Sec. 29.361. AMOUNT OF PAYMENT; FINANCING. (a) Requires the comptroller to establish and maintain an account for each program participant.

(b) Requires that a payment from the state to the program participant's account each year that the child participates in the program be made in the amount that is equal to the state average maintenance and operations expenditures per student in

average daily attendance for the preceding state fiscal year, as specified in Section 29.316A.

(c) Provides that any money remaining in a program participant's account at the end of a fiscal year is carried forward to the next fiscal year unless another provision of this subchapter mandates the closure of the account.

(d) Authorizes the parent of a child participating in the program to make payments for the expenses of educational programs, services, and products not covered by money in the program participant's account.

(e) Prohibits a payment under this section from being financed using federal money.

(f) Requires the comptroller, not later than November 1 of each even-numbered year, to submit to the legislature an estimate of the total amount of funding required for the program for the following state fiscal biennium.

Sec. 29.361A. SOURCES OF FUNDING. (a) Requires the comptroller, for students eligible to participate under Section 29.356(a), to transfer an amount that is equal to the state average maintenance and operations expenditures per student in average daily attendance for the preceding state fiscal year from the foundation school fund to be deposited in the account of a program participant, described by Section 29.365(a).

(b) Requires the comptroller, for students eligible to participate under Section 29.356(b), to deposit an amount equal to the state average maintenance and operations expenditures per student in average daily attendance for the preceding state fiscal year from funds described by Sections 29.354(b)(2), (3), (4), (5), and (6).

(c) Provides that nothing in this section authorizes the use of federal funds for this program.

Sec. 29.362. ADMINISTRATION OF ACCOUNTS. (a) Requires the comptroller to make payments as necessary to each program participant's account on or before the first day of the month.

(b) Prohibits the comptroller from deducting any amount from each quarterly payment to a program participant's account to cover the comptroller's cost of administering the program.

(c) Authorizes the comptroller to use funds made available for the program to cover the comptroller's cost of administering the program.

(d) Requires the comptroller to disburse to each certified educational assistance organization, as necessary, an amount from the total amount of money appropriated for purposes of this subchapter to cover the organization's cost of administering the program. Prohibits the total amount disbursed to certified educational assistance organizations under this subsection for a fiscal year from exceeding five percent of the amount appropriated for purposes of this subchapter for that fiscal year.

(e) Requires each certified educational assistance organization, before each payment is made under Subsection (a), to compare the list of program participants for whom the organization is responsible with public school enrollment lists maintained by TEA and to notify the comptroller if the organization determines that a program participant is enrolled in a public school, including an open-enrollment charter school.

(f) Provides that the child's account is closed, except as provided by Section 29.363, on the date on which a child who participated in the program is no longer eligible to participate in the program under Section 29.356(c), and any remaining money is returned to the state for deposit in the program fund to be used for program participants described by Section 29.356(b).

Sec. 29.363. APPLICATION FOR PROGRAM EXTENSION. (a) Requires each certified educational assistance organization to develop a form pursuant to this section.

(b) Authorizes a program participant to submit an application form to the program participant's organization requesting an extension on the use of funds remaining in the program participant's account for an approved purpose, including:

(1) fees and tuition for occupational licensing and certification, occupational licensing and certification courses, enrollment in institutions of higher education, including career schools and colleges as defined by Section 132.001 (Definitions); and

(2) the purchase of textbooks or other instructional materials or uniforms required by a school, institution, course, or program described by Subdivision (1) in which the program participant is expected to be enrolled.

(c) Requires the certified educational assistance organization to approve an extension of the program participants account if the program participant has submitted the application form to the organization no later than 30 days before the program participant graduates high school or receives an equivalent degree, the program participant has provided the organization with documentation regarding the intended use of the funds remaining in the program participant's account, and the intended use of the funds remaining in the use of the participant's account are an approved purpose pursuant to Subsection (b).

(d) Requires each certified educational assistance organization to notify the comptroller of the program participants for which the organization has approved the application for program extension no later than 30 days after the program participant has submitted the application for program extension.

(e) Requires the certified educational assistance organization to notify the program participant in writing no later than 30 days after the program participant has submitted the application that their application for program extension has been approved. Requires the organization, if the application for program extension has been denied, to notify the program participant in writing no later than 30 days after the program participant has submitted the application that their application has been denied. Requires that the notification of denial specify grounds for denial.

(f) Provides that an extension of the program participant's account does not entitle the program participant to additional deposits by the comptroller to the program participant's account, as described by Section 29.362.

(g) Requires that only the funds remaining in the program participant's account on the day the program participant graduates high school or receives an equivalent degree be made available to the program participant, pursuant to this section.

Sec. 29.364. RANDOM AUDITING. (a) Authorizes the comptroller to contract with a private entity to randomly audit accounts and the certified educational assistance organizations as necessary to ensure compliance with applicable law and the requirements of the program.



(b) Authorizes the comptroller or private entity, in conducting an audit, to require that a program participant or certified educational assistance organization provide additional information and documentation regarding any payment made under the program.

(c) Requires the private entity to report to the comptroller any violation of this subchapter or other relevant law found by the entity during an audit conducted under this section.

Sec. 29.365. SUSPENSION OF ACCOUNT. (a) Requires the comptroller to suspend the account of a program who fails to comply with applicable law or requirement of the program.

(b) Requires the comptroller, on suspension of an account under Subsection (a), to notify the program participant in writing that the account has been suspended and that no additional payments are authorized to be made from the account. Requires that the notification specify the grounds for the suspension and state that the participant has 10 business days to respond and is required to take any corrective action required by the comptroller within the timeframe required by the comptroller.

(c) Requires the comptroller, on the expiration of the 10-day period under Subsection (b), to order permanent closure of the suspended account and declare the program participant ineligible for the program, order temporary reinstatement of the account, conditioned on the performance of a specified action by the participant, or order full reinstatement of the account.

(d) Authorizes the comptroller to recover money distributed under the program that was used for expenses not allowed under Section 29.360 from the program participant or the entity that received the money if the participant's account is suspended or closed under this section.

Sec. 29.366. TUITION AND FEES; REFUND PROHIBITED. (a) Prohibits an education service provider from charging a child participating in the program an amount greater than the standard amount charged for that service by the provider.

(b) Prohibits an education service provider or a vendor of educational products receiving money distributed under the program from in any manner rebating, refunding, or crediting to or sharing with a program participant, or any person on behalf of a participant, any program money paid or owed by the participant to the provider or vendor.

Sec. 29.367. REFERRAL TO ATTORNEY GENERAL. (a) Authorizes the comptroller or a certified educational assistance organization, if the comptroller or organization obtains evidence of fraudulent use of an account, to refer the case to the attorney general for investigation.

(b) Provides that the attorney general, with consent of the appropriate local county or district attorney, has concurrent jurisdiction with the consenting local prosecutor to prosecute an offense referred to the attorney general under Subsection (a).

Sec. 29.368. SPECIAL EDUCATION NOTICE. (a) Requires each certified educational assistance organization to post on the organization's Internet website and provide to each parent who submits an application for the program on behalf of a child with a disability a notice that:

(1) states that a private school is not subject to laws regarding the provision of educational services in the same manner as a public school, and a child with a disability attending a private school may not receive the

services a child with a disability attending a public school is entitled to receive under federal and state law; and

(2) provides information regarding rights to which a child with a disability is entitled under federal and state law if the child attends a public school, including:

(A) rights provided under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), including:

(i) an individualized education program;

(ii) educational services provided in the least restrictive environment;

(iii) instruction from certified teachers;

(iv) due process hearings to ensure proper and full implementation of an individualized education program;

(v) transition and planning services; and

(vi) supplementary aids and services;

(B) rights provided under Subchapter A (Special Education Program); and

(C) other rights provided under federal or state law.

(b) Requires a private school in which a child with a disability who is participating in the program enrolls to provide to the child's parent a copy of the notice required under Subsection (a).

**Sec. 29.369. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR AUTONOMY.**

(a) Provides that an education service provider or vendor of educational products that receives money distributed under the program is not an agent of the state or federal government.

(b) Provides that the program does not expand the regulatory authority of the state to impose any additional regulation on an education service provider or vendor of educational products except those reasonably necessary to prevent fraudulent use of program funds.

(c) Provides that no school district or municipality has the regulatory authority to impose any regulation on an education service provider, vendor of educational products, or program participants.

(d) Prohibits an education service provider from being required to modify the provider's sincerely held religious beliefs, statement of beliefs, creed, practices, admissions policies, curriculum, performance standards, or assessments, as applicable, to receive money distributed under the program.

(e) Prohibits the curriculum or assessment requirements, performance standards, practices, or creed of the education program provided to non-enrolled students from being required to be changed in order for the non-enrolled student to participate in the program.

(f) Prohibits anything in this subchapter, with respect to a non-enrolled student's education program, from being construed to permit an agency of this state, a public school district, or any other governmental body to exercise control,

regulatory authority, or supervision over a non-enrolled student or parent or person standing in parental relation to a non-enrolled student beyond the control, regulatory authority, or supervision in effect on January 1, 2023.

(g) Provides that a state agency or officer, in any proceeding challenging a rule adopted by the agency or officer under this subchapter, has the burden of proof to establish that the rule is necessary to implement or enforce the program as provided by this subchapter and does not impose an undue burden on a program participant or an education service provider or vendor of educational products that receives or seeks to receive money distributed under the program.

Sec. 29.370. STUDENT RECORDS AND INFORMATION. (a) Requires the school district or open-enrollment charter school that a child would otherwise attend, on request by the parent of the child participating or seeking to participate in the program, to provide a copy of the child's school records possessed by the district or school, if any, to the child's parent or, if applicable, the private school the child attends.

(b) Requires TEA to provide to each certified educational assistance organization any information available to TEA requested by the organization regarding a child who participates or seeks to participate in the program. Prohibits an organization from retaining information provided under this subsection beyond the period necessary to determine a child's eligibility to participate in the program.

Sec. 29.371. GIFTS, GRANTS, AND DONATIONS. Authorizes the comptroller to solicit and accept gifts, grants, and donations from any public or private source for any expense related to the administration of the program, including the initial implementation of the program.

Sec. 29.372. RULES; PROCEDURES. (a) Requires the comptroller to adopt rules and procedures only as necessary to implement, administer, and enforce this subchapter, in accordance with Section 29.359.

(b) Provides that a rule adopted under Subsection (a) is binding on an organization that applies for certification as an educational assistance organization and a state or local government entity, including a political subdivision, as necessary to implement, administer, and enforce this subchapter.

Sec. 29.373. PARENTAL AND STUDENT RIGHT TO INTERVENE IN CIVIL ACTION. (a) Authorizes a program participant to intervene in any civil action challenging the constitutionality of the program or the insurance premium tax credit under Chapter 230, Insurance Code.

(b) Authorizes a court in which a civil action described by Subsection (a) is filed to require that all program participants wishing to intervene in the action file a joint brief. Prohibits a program participant from being required to join a brief filed on behalf of the state or a state agency.

SECTION 4. Amends Section 411.109, Government Code, by adding Subsection (c), as follows:

(c) Entitles the comptroller to obtain a criminal history record information evaluation maintained by the Department of Public Safety of the State of Texas about a person who is a private tutor, a therapist, or an employee of a teaching service who intends to provide educational services to a child participating in the program established under Subchapter J, Chapter 29 (Educational Programs), Education Code, and is seeking approval to receive money distributed under that program.

SECTION 5. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 230, as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO TEXAS PARENTAL EMPOWERMENT PROGRAM

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. Defines "fund" and "state premium tax liability."

## SUBCHAPTER B. CREDIT

Sec. 230.051. CREDIT. Authorizes an entity to apply for a credit against the entity's state premium tax liability in the amount and under the conditions provided by this chapter. Requires the comptroller to award credits as provided by Section 230.053.

Sec. 230.052. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a) Provides that the amount of an entity's credit, subject to Subsections (b) and (c), is equal to the amount contributed to the fund during the period covered by the tax report or 100 percent of the entity's state premium tax liability for the report.

(b) Prohibits the total amount of credits that is authorized to be awarded under this chapter, for the 2024 state fiscal year, from exceeding \$200 million. Provides that the total amount of credits that is authorized to be awarded for each subsequent state fiscal year is:

(1) the same total amount of credits available under this subsection for the previous state fiscal year, if Subdivision (2) does not apply; or

(2) 125 percent of the total amount of credits available under this subsection for the previous state fiscal year, if the total amount of credits awarded in the previous state fiscal year was at least 90 percent of the total amount of credits available under this subsection for that fiscal year.

(c) Requires the comptroller by rule to prescribe procedures by which the comptroller is authorized to allocate credits under this chapter. Requires that the procedures provide that credits are allocated first to entities that received preliminary approval for a credit under Section 230.0525 and that apply under Section 230.053. Requires that the procedures provide that any remaining credits are allocated to entities that apply under Section 230.053 on a first-come, first-served basis, based on the date the contribution was initially made.

(d) Authorizes the comptroller to require an entity to notify the comptroller of the amount the entity intends or expects to apply for under this chapter before the beginning of a state fiscal year or at any other time required by the comptroller.

Sec. 230.0525. PRELIMINARY APPROVAL FOR CREDIT. (a) Authorizes an entity, before making a contribution to the fund, to apply to the comptroller for preliminary approval of a credit under this chapter for the contribution.

(b) Requires an entity to apply for preliminary approval on a form provided by the comptroller that includes the amount the entity expects to contribute and any other information the comptroller requires.

(c) Requires the comptroller to grant preliminary approval for credits under this chapter on a first-come, first-served basis, based on the date the comptroller receives the application for preliminary approval.

(d) Requires the comptroller to grant preliminary approval for a credit under this chapter for a state fiscal year if the sum of the amount of the credit and the total amount of all other credits preliminarily approved under this chapter does not exceed the amount provided by Section 230.052(b).

(e) Provides that final award of a credit preliminarily approved under this section remains subject to the limitations under Section 230.052(a) and all other requirements of this chapter.

Sec. 230.053. APPLICATION FOR CREDIT. (a) Requires an entity to apply for a credit under this chapter on or with the tax report covering the period in which the contribution was made.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires an entity to use this form in applying for the credit.

(c) Authorizes the comptroller, subject to Section 230.052(c), to award a credit to an entity that applies for the credit under Subsection (a) if the entity is eligible for the credit and the credit is available under Section 230.052(b). Provides that the comptroller has broad discretion in determining whether to grant or deny an application for a credit.

(d) Requires the comptroller to notify an entity in writing of the comptroller's decision to grant or deny the application under Subsection (a). Requires the comptroller, if the comptroller denies an entity's application, to include in the notice of denial the reasons for the comptroller's decision.

(e) Authorizes an entity, if the comptroller denies an entity's application under Subsection (a), to request in writing a reconsideration of the application not later than the 10th day after the date the notice under Subsection (d) is received. Provides that if the entity does not request a reconsideration of the application on or before that date, the comptroller's decision is final.

(f) Authorizes an entity that requests a reconsideration under Subsection (e) to submit to the comptroller, not later than the 30th day after the date the request for reconsideration is submitted, additional information and documents to support the entity's request for reconsideration.

(g) Provides that the comptroller's reconsideration of an application under this section is not a contested case under Chapter 2001 (Administrative Procedure), Government Code. Provides that the comptroller's decision on a request for reconsideration of an application is final and is not appealable.

(h) Provides that this section does not create a cause of action to contest a decision of the comptroller to deny an application for a credit under this chapter.

Sec. 230.054. RULES; PROCEDURES. Requires the comptroller to adopt rules and procedures to implement, administer, and enforce this chapter.

Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. Prohibits an entity from conveying, assigning, or transferring the credit allowed under this chapter to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

Sec. 230.056. NOTICE OF AVAILABILITY OF CREDIT. Requires the comptroller to provide notice of the availability of the credit under this chapter on the comptroller's Internet website, in the instructions for insurance premium tax report forms, and in any notice sent to an entity concerning the requirement to file an insurance premium tax report.

SECTION 6. Amends Chapter 30, Civil Practice and Remedies Code, by adding Section 30.023, as follows:

Sec. 30.023. AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING CERTAIN EDUCATION LAWS. (a) Provides that any person, including an entity,

attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that empowers parents to direct their child's education, including money following the child to any educational option the parent elects and the use of a insurance premium tax credit program to fund in whole or in part a parental empowerment program, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party, notwithstanding any other law.

(b) Provides that a party, for purposes of this section, is considered a prevailing party if a state or federal court dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal, or enters judgment in the party's favor on any such claim or cause of action.

(c) Authorizes a prevailing party under this section, regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, to bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by Subsection (b) becomes final on the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(d) Provides that it is not a defense to an action brought under Subsection (c) that a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action, the court in the underlying action declined to recognize or enforce the requirements of this section, or the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 7. Provides that Subchapter J, Chapter 29, Education Code, as added by this Act, applies beginning with the 2024–2025 school year.

SECTION 8. Authorizes an entity to apply for a credit under Chapter 230, Insurance Code, as added by this Act, only for a contribution made on or after the effective date of this Act.

SECTION 9. Requires the comptroller, not later than February 15, 2024, to adopt rules as provided by Section 230.054, Insurance Code, as added by this Act.

SECTION 10. Makes application of Chapter 230, Insurance Code, as added by this Act, prospective.

SECTION 11. (a) Provides that the constitutionality and other validity under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act, or Chapter 230, Insurance Code, as added by this Act, may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, except that this section does not authorize an award of attorney's fees against this state and Section 37.009 (Conference; Hearing; Review), Civil Practice and Remedies Code, does not apply to an action filed under this section. Provides that this section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller.

(b) Provides that an appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or

otherwise determining that all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act, or Chapter 230, Insurance Code, as added by this Act, is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) Authorizes an interlocutory appeal, if the judgment or order is interlocutory, to be taken from the judgement or order and is an accelerated appeal.

(d) Authorizes a district court in Travis County to grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act, or Chapter 230, Insurance Code, as added by this Act.

(e) Provides that there is a direct appeal to the Supreme Court of Texas (supreme court) from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act, or Chapter 230, Insurance Code, as added by this Act.

(f) Provides that the direct appeal is an accelerated appeal.

(g) Provides that this section exercises the authority granted by Section 3-b (Direct Appeal from Order Granting or Denying Injunction), Article V, Texas Constitution.

(h) Provides that the filing of a direct appeal under this section will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction granted in accordance with this section pending final determination by the supreme court, unless the supreme court makes specific findings that the applicant seeking such injunctive relief has pleaded and proved that the applicant has a probable right to the relief it seeks on final hearing and the applicant will suffer a probable injury that is imminent and irreparable, and that the applicant has no other adequate legal remedy.

(i) Provides that an appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 12. Severability clause.

SECTION 13. Effective date: January 1, 2024.