LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 20, 2017

TO: Honorable Larry Taylor, Chair, Senate Committee on Education

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB3** by Taylor, Larry (Relating to the establishment of an education savings account program and a tax credit scholarship and educational expense assistance program.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB3, As Introduced: a negative impact of ($330,054,881) through the biennium ending August 31, 2019 under Scenario 1; or a negative impact of ($89,661,944) through the biennium ending August 31, 2019, under Scenario 2.

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

Scenario 1 recognizes the payment schedule specified in the bill.

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *General Revenue Fund* 1	Probable Savings/(Cost) from *Foundation School Fund* 193	Probable Revenue Gain/(Loss) from *General Revenue Fund* 1	Probable Revenue Gain/(Loss) from *Foundation School Fund* 193
2018	($5,368,912)	($12,313,413)	$0	$0
2019	($593,220,110)	$380,847,554	($75,000,000)	($25,000,000)
2020	($826,581,125)	$732,680,488	($82,500,000)	($27,500,000)
2021	($1,161,805,938)	$966,116,627	($90,750,000)	($30,250,000)
2022	($1,497,030,752)	$1,254,864,110	($99,825,000)	($33,275,000)

Fiscal Year	Change in Number of State Employees from FY 2017
2018	27.0
2019	36.0
2020	42.0
2021	46.0
2022	50.0

Scenario 2 recognizes a payment schedule that provides for school year payments and savings to correspond to the state fiscal year.

Fiscal Year	Probable Savings/(Cost) from *General Revenue Fund* 1	Probable Savings/(Cost) from *Foundation School Fund* 193	Probable Revenue Gain/(Loss) from *General Revenue Fund* 1	Probable Revenue Gain/(Loss) from *Foundation School Fund* 193
2018	($5,368,912)	$37,434,710	$0	$0
2019	($407,550,108)	$385,822,366	($75,000,000)	($25,000,000)
2020	($742,774,921)	$677,957,552	($82,500,000)	($27,500,000)
2021	($1,077,999,735)	$966,116,627	($90,750,000)	($30,250,000)
2022	($1,413,224,549)	$1,254,864,110	($99,825,000)	($33,275,000)

Fiscal Year	Change in Number of State Employees from FY 2017
2018	27.0
2019	36.0
2020	42.0
2021	46.0
2022	50.0

Fiscal Analysis

The bill creates two distinct programs to be administered by the Comptroller of Public Accounts: the Education Savings Account Program and a tax credit for contributions to certain educational assistance organizations. The programs may, under certain circumstances, be accessed simultaneously.

Article I: The Education Savings Account Program

The bill would create the Education Savings Account Program, to be administered by the Comptroller of Public Accounts (CPA), to provide funding for certain-education related expenses of eligible children who are not otherwise enrolled in a public school. The bill would set the eligibility criteria as a child who was born on or after September 1, 2012, or attended a public school during the entire preceding academic year. The bill would require the CPA to deposit into the child's account an amount equal to 60 percent of the state average maintenance and operations (M&O) expenditure per student in average daily attendance (ADA) in the preceding year, if the child is a member of a household with a total annual income that exceeds 200 percent of the income guidelines necessary to qualify for the national free or reduced-price lunch program; 75 percent of the state average M&O expenditure per ADA in the preceding year, if the child is a member of a household with a total annual income that is at or below 200 percent of the income guidelines necessary to qualify for the national free or reduced-price lunch program; or 90 percent of the state average M&O expenditure per ADA in the preceding year if the child has a disability. In the first year of a child participating in the program, the bill would entitle the school district the child would otherwise attend an amount equal to 50 percent of the difference between the state average M&O expenditure in the preceding year and the amount the child's parent receives under the program.

The bill would prohibit the use of federal funds or the Available School Fund to finance the program.

The bill would authorize the CPA to contract with one or more financial institutions to establish and manage an account or each child participating in the program.

The bill would authorize the CPA to deduct an amount, not to exceed five percent, from each program participant's account to cover the cost of administering the program, and require the CPA to contract with a private entity to randomly audit accounts as necessary to ensure compliance with applicable law and the requirements of the program.

The bill would authorize the CPA to refer to the Attorney General for investigation any evidence of fraudulent use of an account.

The bill would require the CPA to notify the Commissioner of Education and the Legislative Budget Board no later than October 1 of each year of the number of students likely to participate in the program, disaggregated by school district or open-enrollment charter school the eligible student would otherwise attend. The bill would require the CPA to notify the Commissioner of Education and the Legislative Budget Board of actual participation information by March 1 of each year.

The bill would require the Commissioner of Education to adjust enrollment estimates and entitlement for each school district based on information provided by the Comptroller under the provisions of this bill.

Article II: Tax Credit Scholarship and Educational Assistance Program

The bill would create a tax credit for contributions to a certified education assistance organization which are used to provide scholarships or educational expense assistance to eligible children. The bill would authorize the CPA to certify educational assistance organizations that meet certain requirements. The bill would require nonpublic schools with students receiving funding from educational assistance organizations to be accredited by the Texas Education Agency (TEA) or by an organization recognized by the Texas Private School Accreditation Commission; annually administer a nationally norm-referenced assessment instrument; obtain a valid certificate of occupancy; and develop policy statements regarding admissions, curriculum, safety, food service inspection, and student-teacher ratios.

To be eligible to receive a scholarship from an educational assistance organization, a student would be required to be in foster care, in institutional care, have a parent who is on active duty in the military, or have a household income not greater than 200 percent of the income guidelines necessary to qualify for the national free or reduced price lunch program. The student must also have been enrolled in a public school during the preceding year, be starting school in the state for the first time, be a sibling of a student who is eligible, or if the student attends a nonpublic school, qualify as a student who is not counted toward a public school's average daily attendance during the year in which the student receives the scholarship or educational expense assistance to attend the school. The student would also qualify if they were previously eligible. The bill would also allow a student to receive a scholarship if the student is in kindergarten through grade 12 and eligible under Section 29.003 of the Education Code to participate in a school district's special education program and has an individualized education program.

The bill would prohibit a student from receiving a scholarship from a certified educational assistance organization and from participating in the Education Savings Account Program in the same year unless the student is in foster care, in institutional care, has a parent who is on active duty in the military, qualifies through a special educational program, or has a household income not greater than 175 percent of the income guidelines necessary to qualify for the national free or reduced price lunch program. The maximum scholarship provided to a student who participates in both programs may not exceed the difference between the full tuition amount for the student's nonpublic school and the award under the Education Savings Account Program and a transportation allowance, not to exceed $500.

The bill would require a student who receives a scholarship from an educational assistance organization to be included in the weighted average daily attendance of the school district the student would otherwise attend for purposes of determining the district's equalized wealth level under Chapter 41 of the Education Code in the first year the student is participating in the program.

The bill would limit the scholarship to no more than 75 percent of the state average M&O expenditure per ADA in the preceding year, or 50 percent of the state average M&O expenditure per ADA in the preceding year if the child is a member of a household with a total annual income that is greater than 175 percent of the income guidelines necessry to qualify for the national free or reduced-price lunch program and the child is not eligible to participate in the program through a special education program.

The bill would set the maximum educational expense assistance at $500 per student for fiscal year 2018 and would authorize increases in the amount of 5 percent per year.

The bill authorizes a taxable entity to receive a tax credit for money contributed to a certified educational assistance organization, up to 50 percent of the taxable entity's tax liability under the insurance premium tax.

The bill would limit the total amount of tax credits available under the provisions of the bill for the insurance premium tax to $100 million in fiscal year 2018, and would set the subsequent year's limit at 110 percent of the total amount of tax credits awarded in the previous year.

The bill would require the CPA to administer the tax credits provided under this bill. The Education Savings Account Program would apply beginning with the 2018-19 school year. The tax credit for contributions to certified education assistance organizations would take effect January 1, 2018.

Methodology

Scenario 1:

The bill creates two distinct programs to be administered by the Comptroller of Public Accounts: the Education Savings Account Program and a tax credit for contributions to certain educational assistance organizations.

Education Savings Account Program Assumptions:

The state average per-pupil M&O expenditure based on the most recent audited actual financial data submitted to the Public Education Information Management System (PEIMS) for fiscal year 2015 is $9,727. Sixty percent of this amount (the estimated value of the award for a family with an income above 200 percent of the free or reduced-price lunch program) would be $5,836; 75 percent of this amount would be $7,295 (the estimated value of the award for a family with an income at or below 200 percent of the free or reduced-price lunch program); 90 percent of this amount would be $8,754 (the estimated value of the award for a child with a disability).

In fiscal year 2015, the same year that expenditure data is available, the statewide average Foundation School Program (FSP) entitlement per student in ADA was $8,065. Based on the available data, the state would save the difference between the statewide FSP entitlement and the amount of the award.

Based on information provided by TEA, it is assumed that 8.7 percent of students that enroll in the program would receive the highest award due to a disability, 77.6 percent of the students in the program would have an income at or below 200 percent of the free and reduced-price lunch program level, and 13.7 percent of students would have a family income that exceeds 200 percent of the free and reduced price lunch program level.

Estimated Fiscal Impact of Education Savings Account Program:

TEA assumes that students attending private school as a result of the Education Savings Account Program could grow by approximately 25,000 students per year (approximately 10 percent of current capacity). Using these assumptions, 25,000 students would utilize the program in fiscal year 2019 (the first year the program would be available), and participation would grow to 100,000 students by fiscal year 2022. Based on the demographic and award assumptions provided for above, the total statewide awards for these students would be $180.6 million in the 2018-19 school year, $361.2 million in the 2019-20 school year, $541.7 million in the 2020-21 school year, and $722.3 million in the 2021-22 school year.

The bill provides that the first payment to families should be made no later than September 15, 2018, and subsequent payments should be made every November, February, May, and August. As a result, in the first year of the program, fiscal year 2019, there would be five payments, and each subsequent fiscal year would have four payments. The cost to the state of the awards would be $270.9 million in fiscal year 2019, $406.3 million in fiscal year 2020, $586.9 million in fiscal year 2021, and $767.5 million in fiscal year 2022. For the same population, there would be a savings to the FSP from these students leaving the public school system. Based on the statewide FSP entitlement, the savings per student would $8,065, for a total savings to the FSP of $201.6 million in fiscal year 2019, $403.3 million in fiscal year 2020, $604.9 million in fiscal year 2021, and $806.5 million in fiscal year 2022.

Based on information provided by TEA, this analysis assumes that an additional 20,000 students currently enrolled in the public school system would choose instead to home school in fiscal year 2019, with an additional 10,000 students each subsequent year. Based on the demographic and award assumptions provided for above, the total statewide awards for these students would be $144.5 million in the 2018-19 school year, $216.7 million in the 2019-20 school year, $288.9 million in the 2020-21 school year, and $361.2 million in the 2021-22 school year. As a result of the payment timeline provided for above, the cost to the state of the awards would be $198.6 million in fiscal year 2019, $234.7 million in fiscal year 2020, $307.0 million in fiscal year 2021, and $379.2 million in fiscal year 2022. For the same population, there would be a savings to the FSP from these students leaving the public school system. Based on the statewide FSP entitlement, the savings per student would be $8,065, for a total savings to the FSP of $161.3 million in fiscal year 2019, $242.0 million in fiscal year 2020, $322.6 million in fiscal year 2021, and $403.3 million in fiscal year 2022.

Under the provisions of the bill, any child entering kindergarten in the 2018-19 school year would be eligible for the Education Savings Account Program. Assuming at least a portion of those students would have home schooled or enrolled in private school, there would be no offsetting savings to the FSP associated with these students. TEA notes that this large population would be particularly likely to participate in the program. For purposes of this analysis, it is assumed that 50 percent of students who absent the provisions of this bill would have entered private kindergarten or be home schooled would also enroll in the program. Based on an assumed cohort of 22,821 students enrolled in private kindergarten or home schooling, the total statewide awards for these students would be $82.4 million in the 2018-19 school year, $164.8 million in the 2019-20 school year, $247.3 million in the 2020-21 school year, and $329.7 million in the 2021-22 school year. However, as a result of the payment timeline provided for above, the cost to the state of the awards would be $123.6 million in fiscal year 2019, $185.4 million in fiscal year 2020, $267.9 million in the 2021 fiscal year, and $350.3 million in the 2022 fiscal year.

The bill would provide a school district the student would otherwise attend 50 percent of the difference between the amount the child's parent receives and the statewide average M&O expenditure per student in ADA in the preceding year. Based on the participation rates described above, a total of 67,821 students would be first time participants in the Education Savings Account Program in fiscal year 2019, while there would be 59,217 new participants in subsequent years. Based on demographic and award assumptions provided for above, the statewide cost of these grants to schools would be $30.6 million in fiscal year 2019, and $26.7 million in subsequent years.

Tax Credit Scholarship and Educational Expense Assistance Program Assumptions:

Regarding the tax credits program for contributions to certain educational assistance organizations administered by the Comptroller of Public Accounts, the bill stipulates that the tax credits awarded under bill may not exceed $100 million in total for fiscal year 2018, and the limit on tax credits is increased by 10 percent per year. The Comptroller anticipates no revenue loss in 2018 because credits based on donations made on or after January 1, 2018 would be taken on reports due in 2019 or later. The Comptroller anticipates a total of $100 million in tax revenue loss due to the tax credits in fiscal year 2019, $110 million in fiscal year 2020, $121 million in fiscal year 2021, and $133.1 million in fiscal year 2022. Statute states that 75 percent of the insurance premium tax revenue is deposited to the General Revenue Fund and 25 percent of the tax revenue is deposited to the Foundation School Fund. As a result, the Comptroller indicated that there would be a decrease of $75 million in tax revenue deposited to the General Revenue Fund, and a decrease of $25 million in tax revenue deposited to the Foundation School Fund No. 193 in fiscal year 2019. These amounts would increase by 10 percent per year.

The bill would authorize the educational assistance organization that administers the scholarships and awards of the tax credit program to keep up to 10 percent of the annual revenue from contributions for the administration of the program. Based on this provision and additional information provided by TEA, this analysis assumes that in fiscal year 2018, the first year of implementation, 10 percent of the funding would be utilized to administer the program ($10 million), half of the remaining funding provided (or $45 million) would be provided as scholarships to students not also participating in the Education Savings Account Program, 25 percent of the funding (or $22.5 million) would be provided to students who are participating in both programs, and 25 percent of the funding (or $22.5 million) would be as educational expense assistance.

Based on a state average M&O expenditure per student in ADA of $9,727 for fiscal year 2015, the most recent year with data available, the awards for students not also participating in the Education Savings Account Program would be: 1) $4,864 for a student whose family income exceeded 175 percent of the income guidelines for the national free or reduced-price lunch program, or 2) $7,295 for a family whose income does not exceed those limits. Since the award for the Education Savings Account Program is higher for anyone whose family income exceeds 175 percent of the income guidelines for the national free or reduced-price lunch program, this analysis assumes the students receiving the scholarships would have a family income that does not exceed 175 percent of the income guidelines for the national free or reduced-price lunch program.

Estimated Fiscal Impact of Tax Credit Scholarship and Educational Expense Assistance Program:

Based on a total of $45 million to be provided as scholarships to students not also participating in the Education Savings Account Program, the total number of students benefitting under this program would be 6,168 in fiscal year 2018, and would grow by 10 percent per year.

Statutory provisions in Chapter 42 of the Education Code stipulate that the basis for payments of state aid in the FSP are estimates of student enrollment provided to the legislature by the TEA on October 1 and March 1. Statute further provides for a process by which the state settles up with school districts based on actual enrollment in the subsequent school year. The bill would require the Commissioner of Education to adjust enrollment estimates based on updated information provided by the Comptroller for the Education Savings Account Program, but not based on the tax credit program. As such, for purposes of this estimate, it is assumed that for the 2018-19 biennium, for the tax credit program, districts would continue to be paid based on the estimates of student counts TEA submitted to the Legislative Budget Board in March 2017. As a result, the savings accrued for the second semester of the 2017-18 school year would be realized in fiscal year 2019 through the settle-up process, and the savings accrued in the 2018-19 school year would be realized in fiscal year 2020. Beginning with the 2019-20 school year, payments would be based on student estimates provided in March 2019 that would take into account the reduced attendance associated with the scholarship program. As such, the savings for the 2019-20 school year would be realized in fiscal year 2020. Because both the school year 2018-19 FSP savings and the 2019-20 school year savings would be realized in fiscal year 2020, savings for that year would be substantially larger than the other years. For the 2020-21 school year and the 2021-22 school year, savings would continue to be realized in fiscal years 2021 and 2022, respectively.

For the students participating in the tax credit program only, there would be a savings to the FSP from these students leaving the public school system. Based on the statewide FSP entitlement, and on the payment schedule laid out above, the savings to the FSP would be $49.7 million in fiscal year 2019, $114.9 million in fiscal year 2020, $66.2 million in fiscal year 2021, and $72.8 million in fiscal year 2021.

For students participating in both the Education Savings Account Program and the tax credit program, based on information provided by TEA, the estimated additional scholarship provided through the tax credit is assumed to be $2,000. Based on the assumption that $22.5 million would be provided in scholarships to these students, the number of students participating in both programs is 11,250 in fiscal year 2018, 12,375 in fiscal year 2019, growing to 16,471 in fiscal year 2022. There would be no additional savings to the students participating in both the Education Savings Account Program and the tax credit program because the savings to the FSP have already been included in the Education Savings Account Program analysis.

The bill provides that a student who receives a scholarship under the tax credit program should be included in the weighted average daily attendance of the school district the student would otherwise attend for purposes of determining the district's equalized wealth level under Chapter 41 of the Education Code for the first year the student is in the program. Based on information provided by TEA, 12 percent of students attend a recapture district statewide, and the average cost for a credit of recapture is $5,891. Based on the participation rates laid out above for students who only participate in the tax credit program and those that participate in both programs, the anticipated cost to the state of less recapture revenue would be $12.3 million in fiscal year 2018, $1.2 million in fiscal year 2019, $1.4 million in fiscal year 2020, $1.5 million in fiscal year 2021, and $1.6 million in fiscal year 2022.

Administrative Costs:

The provisions of the bill authorize the CPA to deduct up to 5 percent of the total awards under the Education Savings Account Program to implement the provisions of the bill. This analysis assumes that any CPA administrative costs would not be in addition to amounts indicated above for fiscal years 2019 and beyond, when the program is operating. CPA has indicated administrative costs in fiscal year 2018 though, which would be an additional cost to General Revenue, because there would be no Education Savings Account Program awards from which to deduct the funds.

In total, CPA indicates administrative costs associated with implementing the provisions of the bill to be $5.3 million in fiscal year 2018, $4.5 million in fiscal year 2019, $4.7 million in fiscal year 2020, $5.3 million in fiscal year 2021, and $5.9 million in fiscal year 2022. The Comptroller also indicates an additional 26 FTEs would be required in fiscal year 2018, 35 FTEs would be required in fiscal year 2019, increasing to 49 FTEs in fiscal year 2022 to implement the provisions of the bill. Administrative costs would include $4.0 million over a five year period related to technology costs to establish an online enrollment system, website development and maintenance, to develop interfaces with outside entities, and for the purchase and customization of a record keeping system.

TEA indicates administrative costs related to adjusting school district funding under Chapter 41 and 42 of the Education Code related to both programs. These costs are anticipated to be $102,912 and one FTE in fiscal year 2018, and $94,912 and one FTE in subsequent years.

Scenario 2:

The bill provides that, related to the Education Savings Account Program, the first payment to families should be made no later than September 15, 2018, and subsequent payments should be made every November, February, May, and August. As a result, in the first year of the program, fiscal year 2019, there would be five payments, and each subsequent fiscal year would have four payments. Since the state fiscal year begins on September 1 of each year, the first three payments of fiscal year 2020 would apply to the 2019-20 school year, while the August payment would apply to the 2020-21 school year. Based on the provisions of the bill, the savings to the Foundation School Program in fiscal year 2020 would only relate to the 2019-20 school year. As a result, the growing participation in the program has the cost of the awards growing faster than the savings.

Scenario 2 under this fiscal note reflects the fiscal impact of the bill if the awards under the Education Savings Account Program in a given fiscal year matched the FSP-related savings in that same year.

Section 1.02 of the bill also provides that the Commissioner of Education shall adjust enrollment estimates for purposes of FSP entitlement for the Education Savings Account Program, but gives the Commissioner no such authority for the tax credit program. Scenario 2 also shows the effect of providing the Commissioner of Education the authority to adjust enrollment estimates for purposes of the FSP entitlement for both programs.

Technology

The Comptroller indicates technology costs would total $4.0 million over a five year period to establish an online enrollment system, website development and maintenance, to develop interfaces with outside entities, and for the purchase and customization of a record keeping system.

Local Government Impact

Collectively, school districts would experience a net loss of revenue from students exiting to attend nonpublic schools. Revenue implications would vary by district depending upon the number of students exiting and the application of wealth equalization provisions under Chapter 41 to the district.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 701 Texas Education Agency

LBB Staff: UP, THo, AM, AH, RC, LCO, JSm