Senate Committee on Education K-16
January 28, 2025

The committee met to take up SB 2 (Creighton) relating to the establishment of an education savings account program. This report covers the bill layout and provides an overview of testimony and questions from invited witnesses. After nearly 8 hours of discussion, SB 2 was reported to the full Senate for floor deliberation with 9 ayes and 2 nays.

This report is intended to give you an overview and highlight the various topics taken up. It is not a verbatim transcript of the discussions but is based upon what was audible or understandable to the observer.

Opening Comments

- Members made opening comments and introduced their staff
- Creighton cautions this is not legislation in a vacuum, many other issues like teacher pay and safety will be taken up later
- Committee rules adopted, higher education will no longer be a standing committee

SB 2 (Creighton) relating to the establishment of an education savings account program

- Creighton lays out bill
- Passed legislation on this issue four times in 2023
- Agree the future of Texas begins in the classroom, after you consider dinner table with the family, and faith, and instruction from parents first
- One size fits all education does not work for many in education
- This bill will serve more students with more funding – 100k students
- Fraud language clarified or expanded
- No reimbursement in this program, parents do not get the funds, it is not a voucher, this is an Education Savings Account
- Fully universal eligibility – beyond $200 million population, there is $800 million for certain free and reduced lunch students and those needing special education
- If applicants do not exceed revenue, then everyone is approved
- Approval will be by lottery
- If all students in Texas received an ESA it would be a $53 billion cost, logistics on this would be unfathomable to consider
- Funds do not come from public education, there is another bill that is a historic lift for education
- Teacher Bill of Rights will come up again, it was killed in the House but many other states used it across the nation, the bill will come back this session
- If more than 100k apply they will then go to a priority set that addresses the most vulnerable Texans
- Students accepted into ESA will receive at minimum of $2k, this is for home school families that can help cover costs (tutoring, transportation, curriculum)
- $10k for students in ESA going to private school and $11.5k to go to a private school if a student has a disability designation from a public school

- Parents can spend money on assessment calls, tutoring, transportation, etc
- Norm reference test will be required annually, no strings will be passed along to home school families or private schools, therefore no requirement of STAAR
- Norm referenced tests are currently in both public and private school world
- Used to have a hold harmless for small public schools in the previous versions, heard those districts did not care about it so they pulled out that provision
    - No other plan in the country has a hold harmless
    - The provision was rejected by teacher groups and others, therefore it is gone
- Superintendents, teachers organizations and others rejected funding offers to address teacher pay
- Addressed some narratives that don't have anything to do with the policy in the bill
- Request to keep decorum and respect time limitations, testimony last session made it clear there are incredible misunderstandings on the bill
    - Notes in DC they don't have public testify, it is only invited
- Noted no one came to talk about outcomes when they brought up the discussion and would like to see more participants this time
- Menendez – how did you choose 500% to be at low end of poverty?
    - Last session had 300-500%, don't have a lot of flexibility outside of the references and this number addresses teachers and firemen so they are prioritized first along with disability
- Menendez – free lunch is 130% of poverty, doesn't feel like bill choosing 500% so high is really addressing poverty
- Menendez – not sure $10k will cover more than tuition, like uniforms, books, etc and is curious what are the families are really eligible for
    - Private philanthropy and others will be testifying and presenting staggering numbers to address this concern of if $10k is enough, they had the amount at $8k last session but costs go up and they made adjustments and added a bump for students with disability
- Menendez – will the same level of investment be made into public education, fiscal note on bill says the program will triple in size but not seeing same level of investment in public schools
    - Put $39 billion into public education, have LBB present if more details are needed
- Paxton – from what we started with when we first began, how far has this come?
    - Refers to Bettencourt who talked about tax credit many sessions ago, so maybe back to 2015
    - Thinks Texas will have best plan and boldest launch in America
- Paxton – is bill tied to pay raise or funding for public schools
    - Media did not report on this accurately, bills were kept separate last session but House kept signaling to kill the bills separate so based on that signal they provided all the language in one bill and House killed that, working off different signals last session
- Paxton – asked about microschools
    - Still need to be registered with TEA or whatever framework provides but would not be able to access higher dollars
- Paxton – asked about provider and vendor autonomy, confirms bill does not allow for government interference in religious beliefs
    - Compelling interest can only be invoked if there is a serious health and safety issue, but the provision already exists in code, not about interference in religious beliefs

- Paxton – asked about existing former public school students and would pre-K students be eligible?
    - This program is still 10x what Florida launched with
    - Pre-k students are included
- Middleton – asked for Creighton to expand on how the bill is universal?
    - ESA eligible to home school, private school, public school students so fully universal population
    - Also have $800 million to serve the most vulnerable
- Middleton – don't recall ever 100% of funding that allows for sign up on day one
    - Texas is number 33 on school choice, wants to launch the best program possible and Middelton is correct
    - Cautions they will get a request to include all students but it is a $53 billion impossibility
- Bettencourt – will we hear today data points of success of states that already launched programs like these? Sizing the program for success with this bill language
    - Yes
- Bettencourt – points out problem with fraud was a concern before
    - Yes with fraud, and implementation without a framework in place, will be best in class with both of these
    - Examples with home school curriculum, need to make sure expenses are legitimate
- Bettencourt – bill does not restrict a private school or vendor curriculum?
    - No
- Bettencourt – attempting to bring best practices to the bill language, bill is not a voucher but a savings account and destination of money needs not to end up in fraudulent hands
    - Have to have certain perimeters that allow for background checks and preapproval of providers of vendors
- Parker – recognizes horrible inflationary effects and will be addressing over session, but unique element in ESA and wants Creighton to address hold harmless
    - They tried to put in hold harmless language last time but were told… no thanks
- Parker – recognize horrible inflationary spending from the last session where we will see an impact on the people; inquires about unique element on previous hold harmless provision
    - With signals from the House that certain schools could not survive the loss of 1-2 students; in this past this provision would support the school when the child leaves; this was then rejected by public schools
- Parker – asked about reassurance for homeschool families
    - We have provisions in the bill to protect home school curriculum and not testing opposed; The Texas Home School coalition has worked to protect this legislation
- King – This is a question and response to emails received; have you considered restricting ESA programs to US Citizens or lawful residents?
    - Creighton – Yes, only Alabama they say there is a threat to this bill if it is not clearly stated that it must be a legal American citizen
- Hinojosa, A. – looking at data; modeled it off other programs in the US and learned about what did not work in other states do you have data on the families who actually would take advantage of these ESAS?

  - From 75 school choice programs in 32 states there is an average of 2.74% of public-school students who are using an ESA if they have such a program; we are behind that with 1.7%. of students
- Hinojosa – percent of the states using these ESAs where public school system has not fallen apart
  - There have been no examples where these ESAs have threatened public schools across the country; this is a manufactured narrative
- Hinojosa – Is there a data program on how successful these ESAs have been for other students?
  - Still relatively new; not tied to individual identities, but by group where you see who is succeeding and in what are
- West – Believes this bill will pass, but says the question is how do you make it a better bill
- West – The Comptroller will be in charge of screening the ESOs, therefore rules will come from the Comptroller who will then determine the qualifications of the ESOs
  - That is correct; clarifies ESOs meaning education assistance organizations being the support providers to prop up the program to serve families alone
- West - in Texas, we have had data breaches over the last couple of years; 3.5M Texans had their SS number leaked; what are we doing to make certain their information is safe?
  - We have been consistent with providers and vendors on the services provided to ensure anti-fraud and added cyber security provisions to the bill to ensure protection
  - Provided an example from Page 4; Cyber security requirements for organizations to protect individuals in the program
- West - $156k is 500% of FPL, this bill language does not prioritize the lowest income or kids coming from academic failing groups
  - This is the amount up to 500%, its not just D and F failing schools but bullying and fentanyl and learning environment across the state
- West – ask if he is putting bullying on same platform as low academics
  - Knows a parent whose child has committed suicide because of bullying, will not tell parents one hardship is more than another
- West – seems like something could help prioritize factors
- West – administration question, do legislators view audit if one is conducted, not just results but audit
  - Yes, will see result of data and yes audit will be available as long as privacy is upheld
- West – just wants to see audit, not students' information
- West and Creighton discuss requirements on if public school attendance is required
  - Agrees, for the 80% would need to have gone to public school
  - If already in private school can get in at 20%
- Hagenbuch – concern about open records and asked about 3% to administer
  - Not about opening books but records to the ESA program
  - Yes, important to have a well run system so administration of program is important, expands on how that impacts success of launching
- Menendez – could students be denied or dismissed based on disability and if so, what would be the recourse?

  - Private schools cover a wide of array of services and support, acceptance and rejection can't be based on race
- Menendez – is there a reason why 504 students are not included on the list of disabilities?
  - We did include dyslexia on a separate list pertaining to public schools; 504 is very broad; opening to working on being specific and opening it up to more students
- Menendez – Foster kids in Texas tend to be a significant amount of individual in these groups; they do not have parents so, is there a way we could group them together to give them a chance that the state cares about them and set aside dollars for them?
  - We have worked so hard and serving foster kids is an extremely high priorities and since this is growing, we can continue to grow and expand
- King – is presumption that parents will not place children in private school unless school can meet the needs? Do you expect a school community may open up that specifically targeting special needs?
  - Yes, it is education freedom, parents will make better choices than government
  - Yes, anticipating that and expects more testimony will come later today on this

Invited Testimony

Robet Enlow, EdChoice

- Gives background on EdChoice origins
- 188 studies show students obtain better results with school choice
- Almost all researchers agree that states with school choice see increase in tests
- In answer to West questions, says the amount in SB 2 is very generous
- West – asked about criticisms and what are they
  - The time it takes for vendors to be paid or for a parent or vendor to get into program
- West - what about data we've seen with a primarily minority county and the private school student body is overwhelmingly Anglo
  - Evidence shows that when you have a choice program, you have more integrated schools
- West - would like to see that data
  - Enlow - Can share this with you, integration effect was one of the reasons Friedman argued for choice
- Paxton – asked about oversight of programs
  - Every state does it differently
- Paxton - what kind of functions do the EAOs carry out?
  - You'll hear from Utah, every single expenditure is approved; you will know where all funds are going due to the platform; doubt you have this same level of transparency in other programs
- Paxton - do schools have to report to EAOs?
  - Every state does it differently, e.g. Florida has student testing
- Creighton - you mentioned performance growth for low-income students, can you speak to growth in special needs children?
  - Studies by Jay Greene in Florida show positive outcomes for special needs children
- Creighton – concisely discuss students with special needs growth and performance

  - Not a lot of students, but ones that are out there show positive gains
  - Details several states that have specific programs for special needs
  - Says Senator has does a great job to develop robust program and accountability
- Creighton – do you feel school choice programs would grow if there was overreach?
  - Absolutely not
- Bettencourt – to know if anything was missed in this rollout bill?
  - Anything to make it easy for families and for schools and vendors to get involved

Nathan Cunneen, Texas American Federation for Children

- Supports the bill, discusses personal experience with school choice
- Says proposal maximizes freedom for family and students while providing common sense guardrails
- This program will not infringe on the freedom of private schools and home schools
- Greatest form of accountability is that parents can move to school that is right for their family
- Urges them to pass SB 2
- Answers West question to another testifier on if the amount is enough, some years they needed friends and family to help but everything helps and some are struggling to pay out of pocket already
- West – asked about criticisms and what are they
  - Criticisms send to be sensationalist and overlook data
  - Notes students in private schools does not mean by default they are wealthy
- West - What about data we've seen with a primarily minority county and the private school student body is overwhelmingly Anglo
  - Another example of zoning in on specific instances, county-level data will show huge variance, but overall seeing an integration effect & primarily low-income students
- Paxton - What kind of functions do the EAOs carry out?
  - In the bill there are a number of things each EAO is required to do; Comptroller will define parameters, will need to be a tech platform to enable
  - Most exciting are parent navigation entities that can help parents partake in school choice programs
- Bettencourt –anything missed in this rollout bill?
  - His scholarship when he was a child was not enough, allow for $10k dollar amount to grow for inflation
- Menendez – do you mean every child should attend private school?
  - Support all options, but want each child to have opportunity to get education that is right for them and school choice allowed for him to try different options
- Menendez – concern that this bill does not guarantee that private school has to accept you; notes by federal law schools must accept students if they live in attendance boundaries
  - Misnomer to assume public schools take any students, for example there are enrollment zones in public schools

Russel Withers, General Counsel at Texas Conservative Coalition Research Institute

- Supports the bill, likes that is a clean bill without hold harmless or school funding
- Can discuss false arguments and the positives of the program
- TCCRI has already supported public school even though there may be policy differences

- More than half of the children in this state are not testing at grade level
- Highlights one of Florida's programs, Arizona's programs and notes they are one of several options and do not encompass all public school
- SB 2 is 1% of total state expenditure on public education
- Public schools improve when choice enters the picture
- West – Is $10k enough to have a substantial program? Thinking of a parent with multiple children
    - Think it is, will pay tuition at a lot of schools and give parents a lot of options
- West - No concerns this would go back to a separate but equal
    - Would take credible accusation that schools are discriminating on the basis of race seriously, data shows vouchers have positive integration effects
- Answering Creighton, a program like this may be innovative in that more schools pop up that didn't exist before
- Creighton – speaks about an email misconstruing his work, prevention helps address sexual predator concern
- Bettencourt –anything missing in this rollout?
    - Why not build in growth?

Arif Panju, Institute of Justice

- Has successfully defended school choice programs around the U.S.
- SB 2 fully complies with U.S. and Texas Constitution
- Reviews cases where they defended school choice
- Middleton – discusses Blaine amendment but it was overturned in Espinoza
    - Goes back to Free Exercise clause
- Middleton – system of public schools is required in Texas Constitution but it doesn't say government run schools
    - Not a restriction on legislature but it is a mandate, Texas Supreme Court in 1930 held this
- Middelton – points out state used to fund religious academies
- Bettencourt – anything was missing in rollout?
    - Been mindful of what has worked and not, continue to be innovative

Matt Ticzkus, Texas Private Schools Association

- Supports the bill, appreciates work of public schools, see them as partners
- Support that every child has an option to get a great education
- School choice works, based on history and data in other states
- Better than 80% of studies showing positive impact, less than 6% had negative impact and it was because the program was overregulated
- Autonomy and religious liberty language in bill is exceptionally strong
- One change requested, would like to request attendance in public school in the previous year be left out
- In response to later discussion says accreditation typically lasts 5-7 years
- King – asked about norm reference tests?
    - Different from STAAR which is pass/fail, there are about 20 different ones all over

Norton Rainey, Ace Scholarships

- Have delivered more than 100k scholarships to families
- Believe no child should be trapped in their school because of a zip code
- School choice is about progress not partisanship
- Survey's show majority of Texans, including rural communities want school choice
- ESAs are tailored to students unique needs
- Tells story of parent who said their student died due to drug abuse at public school in Ft. Worth, while the other student in the same household thrives because of school choice
- In response to later discussion, $10k will go a long way and providers will be innovative
- Menendez – what about areas that don't have private school option?
    - There are home school options, ESA bill gives flexibility
- Middelton – schools all over that are good but parents can't send children there because they can't afford it, this org is exhibit A of how we can all work together
- Hagenbuch – asked about audit and privacy
    - Had a relationship with Utah managing ESA program and took role seriously to be good stewards of funds
- West – do you have a conflict of interest or should programs have a conflict of interest policy?
    - Let family choose the school that is right for them

Cary Mollinedo, Texas Autism Academy Cofounder

- Serves students on autism spectrum
- 178k students estimated in public schools
- Gave student success story, one commonality is children at their school had attended public school at one time or another and are at least two grade levels behind
- Texas public schools have proved they are not equipped to educate students with autism
- This bill will empower parents to make the best decision for their children and address some of their financial strain

Jennifer Allmon, Texas Catholic Conference of Bishops

- Supports SB 2
- Cost is a primary obstacle in parents being able to choose the school that meets their needs
- Bill is improved from last session
- Still some concern parents are left out, so would like to see some protections for parents who are struggling to pay when the bill comes to the floor
- Sec 29.358b leaves out critical accreditation language and would like to see it returned
- Regarding the $2k flexibility, appreciates that portion of the bill as it allows for innovation
- Strong elements in SB 2 for implementation, thanks them for July 1st start date of payments going into the account
- Catholic schools in Texas are growing and are ready to serve
- Ready to be early adopters and implementers of the bill, will help poor families access the program
- Average HS tuition is under $12k and ES tuition is under $8k but costs to educate is closer to $15k but parents also receive assistance – 84% of current student body on tuition assistance

- Bettencourt – given bill language, what would be most effective way to address parents struggling
    - Will reach out to families so they know how to access programs if interested
    - Will also leverage assistance dollars so those families who get ESA, their assistance can go to another family
- Menendez – does bill prioritize the poor?
    - Better than before, if they were drafting would have done it differently but also feel if there were too many levels and complexities then the program would be hard to administer
    - This mechanism in the bill is acceptable to them
- Menendez – confirmed accreditation request
    - Would like to see it back in pre-approved provider section, others can get started in the $2k range but if schools want the larger amount believes accountability is needed and that accreditation provides that
- King – asked about accreditation process
    - Reviews the process, which includes compliance to state and federal statutes, makes sure the school has financial stability, norm reference tests, must meet or exceed TEA standards but still allows flexibility
- King – asked about norm reference tests?
    - Says STAAR is criterion test on specific example, argues strength of norm reference tests and notes schools all over are paying to conduct these tests like the NWEA/MAP test
- West – asked about rate they use for poverty rate?
    - Around 185% of FPL she believes

Dr. Rick Scarborough, Recover America

- Amazed that anyone would be in opposition to the bill but feels defeat has lead to this bold vision
- Do not let special interest subvert what you are trying to accomplish
- Creighton – for those backed special interest, those who say its not good enough, what would you say?
    - Never let perfection get in the way of what is doable
- Campbell – can you point out any specifics in the bill that would keep it from being bipartisan?
    - Likely bias by reading bill, but says bill is not perfect
- Campbell – any statement you want to leave with committee?
    - Don't back down
- West – provides perspective, parents should have right to participate and provide direction in child's education; the question is are public schools getting same resources and when looking at history of vouchers need to make sure not developing a system born in racism (doesn't think that is going on with SB2 but need to be cautious of history)
- West and witness continue to discuss racial concerns
- Campbell – ask if West has seen racial disparity in voucher programs that negatively impacts marginalized students
    - West – yes, sees the issue with school choice vouchers and will provide information to the committee

- Hinojosa, A – do you think this would diversify public schools even greater if SB 2 would pass?
    - It can, depends on area

Dave Welch, Texas Pastor Council

- Support SB 2, parental empowerment
- Urban areas serving minority students are often the ones that fail students
- Lots of churches in these areas
- Bettencourt – familiar with work, facts are public school system is majority minority and school system will continue to move that way in the future, this ESA is a solution to help those families who need a way out and need another option from failing schools
    - Church schools across the area are integrated, lots of diversity
    - Limited regulation and limited government provides flexibility and innovation
    - Will see with the ESAs innovation and empowerment with the legislation
- West – how do you make sure the quality of education is sufficient when starting these schools?
    - Bill language goes along way, need to also trust parents
- Hinojosa, A – do you think this would diversify public schools even greater if SB 2 would pass?
    - Empowers those areas and those communities to put together program that will reflect their needs

LBB staff

- Bettencourt – if bill has set limit, it will govern in the future?
    - Yes
- Bettencourt – assumption in out years was $3 billion
    - FY 28 about $3billion
- Bettencourt – what is uptake assumption?
    - 50% of current homeschool and private schools and growing but 5%
- Bettencourt – were you provided data it should be lower like in the mid 30s?
    - TEA did provide details, but they made assumption as they have previously and did point out assumptions in the fiscal note
- Bettencourt – would like to see the LBB calculate out a more balanced number because that is not what other states have seen, would like TEA estimate
    - TEA estimate varied by year and great over time – 20% starting, then 30% and moved up by 5%
    - Bettencourt – tremendous difference than growing by 5% at 50% and would live to get revision

<u>Public testimony begins shortly before 5p with approximately 130 witnesses signed up to speak</u>