

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

05/30/2009

Date

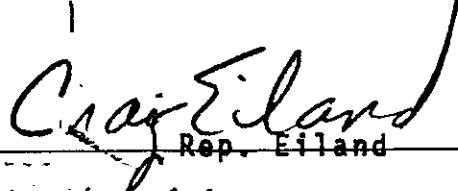
Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

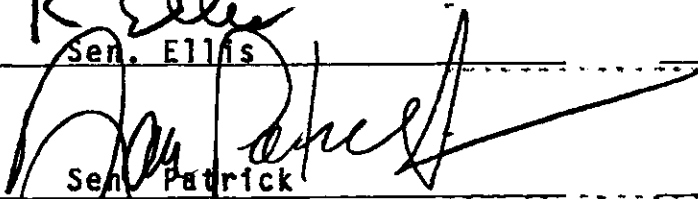
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 4102 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

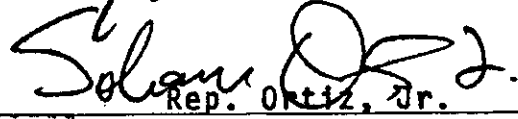

Sen. Carona


Rep. Eiland


Sen. Ellis


Rep. McCall

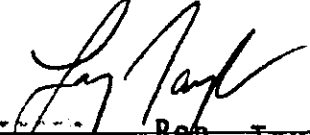

Sen. Patrick


Rep. Ortiz, Jr.


Sen. Shapiro


Rep. Ritter


Sen. Williams


Rep. Taylor

On the part of the Senate

On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 4102

A BILL TO BE ENTITLED

AN ACT

1

2 relating to the disaster contingency fund and relief for school
3 districts located in a disaster area.

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

5 SECTION 1. Section 418.073(c), Government Code, as added by
6 Chapter 1250 (H.B. 2694), Acts of the 80th Legislature, Regular
7 Session, 2007, is amended to read as follows:

8 (c) A state or ~~[agency,~~ local government ~~[, or other~~
9 ~~eligible]~~ entity that participates in disaster preparation or
10 disaster recovery may request and receive funding from the disaster
11 contingency fund to pay for [+

12 ~~[(1) extraordinary]~~ costs incurred by the state or
13 local government entity in preparing for or recovering from
14 ~~[implementing preventive measures taken before or during an~~
15 ~~emergency, and~~

16 ~~[(2) costs incurred in repairing damage suffered~~
17 ~~during]~~ a disaster ~~[for which,~~

18 ~~[(A) the presiding officer of a municipal or~~
19 ~~county government has declared a local state of disaster for~~
20 ~~affected areas within the jurisdiction of the municipality or~~
21 ~~county, and~~

22 ~~[(B) the governor has also declared a state of~~
23 ~~disaster for the affected county or counties].~~

24 SECTION 2. Section 418.073, Government Code, is amended by

1 adding Subsections (f), (g), and (h) to read as follows:

2 (f) A state or local government entity or other eligible
3 entity that receives funding from the disaster contingency fund to
4 pay for costs associated with disaster recovery and that
5 subsequently receives reimbursement from the federal government,
6 an insurer, or another source for those same costs shall reimburse
7 the disaster contingency fund for the reimbursed amounts. In
8 developing rules and procedures under Subsection (d) the governor's
9 division of emergency management shall prescribe accounting and
10 other procedures necessary to efficiently and effectively
11 implement this subsection.

12 (g) Money in the disaster contingency fund may be used to
13 pay for a disaster risk financing instrument using a parametric
14 index based on affected population to leverage available funds and
15 receive proceeds greater than appropriated amounts to pay for
16 extraordinary expenses.

17 (h) Money in the disaster contingency fund may be used to
18 provide to a local government entity that is suffering financial
19 hardship as a result of a disaster declared under this chapter funds
20 for the purpose of providing local matching funds for Federal
21 Emergency Management Agency qualifying projects.

22 SECTION 3. Subchapter D, Chapter 41, Education Code, is
23 amended by adding Section 41.0931 to read as follows:

24 Sec. 41.0931. DISASTER REMEDIATION COSTS. (a) This
25 section applies only to a district all or part of which is located
26 in an area declared a disaster area by the governor under Chapter
27 418, Government Code, and that incurs disaster remediation costs as

1 a result of the disaster.

2 (b) Subject to Subsection (c), for the two-year period
3 following the date of the governor's initial proclamation or
4 executive order declaring a state of disaster, the total amount
5 required to be paid by a district for attendance credits under
6 Section 41.093 is reduced by the amount of any disaster remediation
7 costs that the district pays during that period and does not
8 anticipate recovering through insurance proceeds, federal disaster
9 relief payments, or another similar source of reimbursement.

10 (b-1) For purposes of determining the reduction under this
11 section to which a district is entitled for the 2009-2010 school
12 year, disaster remediation costs paid by the district after
13 September 1, 2008, are included if the costs meet all other
14 requirements imposed by this section. This subsection expires
15 September 1, 2010.

16 (c) To receive a reduction under this section, a district
17 must provide the commissioner with acceptable documentation of
18 disaster remediation costs paid by the district.

19 (d) The commissioner shall adopt rules necessary to
20 implement this section, including rules defining "disaster
21 remediation costs" for purposes of this section and specifying the
22 type of documentation required under Subsection (c).

23 (e) Notwithstanding any other provision of this section,
24 the commissioner may permit a district to use funds available to the
25 district as a result of a reduction under this section to pay the
26 costs of replacing a facility instead of repairing the facility.
27 The commissioner shall ensure that a district that elects to

1 replace a facility does not receive a reduction that exceeds the
2 lesser of:

3 (1) the amount that would be available to the district
4 if the facility were repaired; or

5 (2) the amount necessary to replace the facility.

6 SECTION 4. Subchapter A, Chapter 42, Education Code, is
7 amended by adding Section 42.0051 to read as follows:

8 Sec. 42.0051. AVERAGE DAILY ATTENDANCE FOR DISTRICTS IN
9 DISASTER AREA. (a) From funds specifically appropriated for the
10 purpose or other funds available to the commissioner for that
11 purpose, the commissioner shall adjust the average daily attendance
12 of a school district all or part of which is located in an area
13 declared a disaster area by the governor under Chapter 418,
14 Government Code, if the district experiences a decline in average
15 daily attendance that is reasonably attributable to the impact of
16 the disaster.

17 (b) The adjustment must be sufficient to ensure that the
18 district receives funding comparable to the funding that the
19 district would have received if the decline in average daily
20 attendance reasonably attributable to the impact of the disaster
21 had not occurred.

22 (c) The commissioner shall make the adjustment required by
23 this section for the two-year period following the date of the
24 governor's initial proclamation or executive order declaring the
25 state of disaster.

26 (d) Section 42.005(b)(2) does not apply to a district that
27 receives an adjustment under this section.

1 (e) A district that receives an adjustment under this
2 section may not receive any additional adjustment under Section
3 42.005(d) for the decline in average daily attendance on which the
4 adjustment under this section is based.

5 (f) For purposes of this title, a district's adjusted
6 average daily attendance under this section is considered to be the
7 district's average daily attendance as determined under Section
8 42.005.

9 SECTION 5. Subchapter E, Chapter 42, Education Code, is
10 amended by adding Sections 42.2523 and 42.2524 to read as follows:

11 Sec. 42.2523. ADJUSTMENT FOR PROPERTY VALUE AFFECTED BY
12 STATE OF DISASTER. (a) For purposes of Chapters 41 and 46 and this
13 chapter, the commissioner shall adjust the taxable value of
14 property of a school district all or part of which is located in an
15 area declared a disaster area by the governor under Chapter 418,
16 Government Code, as necessary to ensure that the district receives
17 funding based as soon as possible on property values as affected by
18 the disaster.

19 (b) The commissioner may fund adjustments under this
20 section using funds specifically appropriated for the purpose or
21 other funds available to the commissioner for that purpose.

22 (c) Any additional funding to which a school district is
23 entitled as a result of the adjustment required by this section is
24 in addition to the amount of funding to which the district is
25 entitled under Section 42.2516(b).

26 (d) A decision of the commissioner under this section is
27 final and may not be appealed.

1 Sec. 42.2524. REIMBURSEMENT FOR DISASTER REMEDIATION
2 COSTS. (a) This section applies only to a school district all or
3 part of which is located in an area declared a disaster area by the
4 governor under Chapter 418, Government Code, and that incurs
5 disaster remediation costs as a result of the disaster.

6 (b) During the two-year period following the date of the
7 governor's initial proclamation or executive order declaring a
8 state of disaster, a district may apply to the commissioner for
9 reimbursement of disaster remediation costs that the district pays
10 during that period and does not anticipate recovering through
11 insurance proceeds, federal disaster relief payments, or another
12 similar source of reimbursement.

13 (b-1) A district may seek reimbursement of disaster
14 remediation costs paid by the district on or after September 1,
15 2008. This subsection expires September 1, 2011.

16 (c) The commissioner may provide reimbursement under this
17 section only if funds are available for that purpose as follows:

18 (1) reimbursement for a school district not required
19 to take action under Chapter 41 may be provided from:

20 (A) amounts appropriated for that purpose,
21 including amounts appropriated for those districts for that purpose
22 to the disaster contingency fund established under Section 418.073,
23 Government Code; or

24 (B) Foundation School Program funds available
25 for that purpose, based on a determination by the commissioner that
26 the amount appropriated for the Foundation School Program,
27 including the facilities component as provided by Chapter 46,

1 exceeds the amount to which districts are entitled under this
2 chapter and Chapter 46; and

3 (2) reimbursement for a school district required to
4 take action under Chapter 41 may be provided from funds described by
5 Subdivision (1)(B) if funds remain available after fully
6 reimbursing each school district described by Subdivision (1) for
7 its disaster remediation costs.

8 (d) If the amount of money available for purposes of
9 reimbursing school districts not required to take action under
10 Chapter 41 is not sufficient to fully reimburse each district's
11 disaster remediation costs, the commissioner shall reduce the
12 amount of assistance provided to each of those districts
13 proportionately. If the amount of money available for purposes of
14 reimbursing school districts required to take action under Chapter
15 41 is not sufficient to fully reimburse each district's disaster
16 remediation costs, the commissioner shall reduce the amount of
17 assistance provided to each of those districts proportionately.

18 (e) A district seeking reimbursement under this section
19 must provide the commissioner with adequate documentation of the
20 costs for which the district seeks reimbursement.

21 (f) A district required to take action under Chapter 41:

22 (1) may, at its discretion, receive assistance
23 provided under this section either as a payment of state aid under
24 this chapter or as a reduction in the total amount required to be
25 paid by the district for attendance credits under Section 41.093;
26 and

27 (2) may not obtain reimbursement under this section

1 for the payment of any disaster remediation costs that resulted in a
2 reduction under Section 41.0931 of the district's cost of
3 attendance credits.

4 (g) Amounts provided to a district under this section are in
5 addition to the amount to which the district is entitled under
6 Section 42.2516.

7 (h) The commissioner shall adopt rules necessary to
8 implement this section, including rules defining "disaster
9 remediation costs" for purposes of this section and specifying the
10 type of documentation required under Subsection (e).

11 (i) Notwithstanding any other provision of this section,
12 the commissioner may permit a district to use amounts provided to a
13 district under this section to pay the costs of replacing a facility
14 instead of repairing the facility. The commissioner shall ensure
15 that a district that elects to replace a facility does not receive
16 an amount under this section that exceeds the lesser of:

17 (1) the amount that would be provided to the district
18 if the facility were repaired; or

19 (2) the amount necessary to replace the facility.

20 (j) This section does not require the commissioner to
21 provide any requested reimbursement. A decision of the
22 commissioner regarding reimbursement is final and may not be
23 appealed.

24 SECTION 6. Section 44.0312, Education Code, is amended by
25 adding Subsection (c) to read as follows:

26 (c) Notwithstanding any other provision of this code, in the
27 event of a catastrophe, emergency, or natural disaster affecting a

1 school district, the board of trustees of the district may delegate
2 to the superintendent or designated person the authority to
3 contract for the replacement, construction, or repair of school
4 equipment or facilities under this subchapter if emergency
5 replacement, construction, or repair is necessary for the health
6 and safety of district students and staff.

7 SECTION 7. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.

House Bill 4102
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 418.073(c), Government Code, as added by Chapter 1250 (H.B. 2694), Acts of the 80th Legislature, Regular Session, 2007, is amended to authorize a state or local government entity or other eligible entity that participates in *disaster recovery* to request and receive funding from the disaster contingency fund to pay for costs incurred *in recovering* from a disaster declared a local state of disaster by the presiding officer of a municipal or county government and a state of disaster by the governor.

SECTION 2. Section 418.073, Government Code, is amended by adding Subsections (f), (g), and (h).

(f)-(g)

(h) Authorizes money in the disaster contingency fund to be used to provide to a local government entity that is suffering financial hardship as a result of a disaster declared for the purpose of providing local matching funds for Federal Emergency Management Agency qualifying projects or preventing default on outstanding bonds or meeting other financial requirements.

SENATE VERSION

SECTION 1. Same as House version.

SECTION 2. Same as House version.

(f)-(g) Same as House version.

(h) Same as House version, except omits the authorized use of money in the fund for the purpose of preventing default of outstanding bonds or meeting other financial requirements.

CONFERENCE

SECTION 1. Same as House version except omits an eligible entity that is not a state or local government entity from the entities authorized to request and receive funding from the disaster contingency fund, specifies that such entities participate in *disaster preparation or recovery*, and provides that the funds are to pay for costs incurred by the state or local government entity *in preparing for or recovering* from a disaster. Omits the condition that the disaster has been declared a local state of disaster by the presiding officer of a municipal or county government and a state of disaster by the governor.

(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)

SECTION 2. Same as House version.

(f)-(g) Same as House version.

(h) Same as Senate version.

House Bill 4102
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

Same as House version.

CONFERENCE

SECTION 3. Subchapter D, Chapter 41, Education Code, is amended by adding Section 41.0931 to read as follows:

Sec. 41.0931. DISASTER REMEDIATION COSTS.

(a) This section applies only to a district all or part of which is located in an area declared a disaster area by the governor under Chapter 418, Government Code, and that incurs disaster remediation costs as a result of the disaster.

(b) Subject to Subsection (c), for the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster, the total amount required to be paid by a district for attendance credits under Section 41.093 is reduced by the amount of any disaster remediation costs that the district pays during that period and does not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source of reimbursement.

(b-1) For purposes of determining the reduction under this section to which a district is entitled for the 2009-2010 school year, disaster remediation costs paid by the district after September 1, 2008, are included if the costs meet all other requirements imposed by this section. This subsection expires September 1, 2010.

(c) To receive a reduction under this section, a district must provide the commissioner with acceptable documentation of disaster remediation costs paid by the district.

(d) The commissioner shall adopt rules necessary to implement this section, including rules defining "disaster

House Bill 4102
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION __. Subchapter A, Chapter 42, Education Code, is amended by adding Section 42.0051, AVERAGE DAILY ATTENDANCE FOR DISTRICTS IN DISASTER AREA.

remediation costs" for purposes of this section and specifying the type of documentation required under Subsection (c).

(e) Notwithstanding any other provision of this section, the commissioner may permit a district to use funds available to the district as a result of a reduction under this section to pay the costs of replacing a facility instead of repairing the facility. The commissioner shall ensure that a district that elects to replace a facility does not receive a reduction that exceeds the lesser of:

(1) the amount that would be available to the district if the facility were repaired; or

(2) the amount necessary to replace the facility.

SECTION 4. Same as Senate version.

No equivalent provision.

(a) Requires the commissioner of education to adjust the average daily attendance (ADA) of a school district all or part of which is located in an area declared a disaster area by the governor if the district experiences a decline in ADA that is reasonably attributable to the impact of the disaster.

(a) Same as Senate version except adds the condition that the commissioner adjust the ADA from funds specifically appropriated for the purpose or other funds available to the commissioner for that purpose.

No equivalent provision.

(b) Requires such an adjustment to be sufficient to ensure that the district receives funding comparable to the funding that the district would have received if the decline in ADA reasonably attributable to the impact of

(b) Same as Senate version.

House Bill 4102
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

the disaster had not occurred.

No equivalent provision.

(c) Requires the commissioner to make the required adjustment for the two-year period following the date of the governor's initial proclamation or executive order declaring the state of disaster.

(c) Same as Senate version.

No equivalent provision.

(d) Exempts a district receiving such an adjustment from existing law capping the funding for a school district that experiences a decline of two percent or more in ADA on the basis of an ADA not to exceed 98 percent of the district's actual ADA in the preceding year.

(d) Same as Senate version.

No equivalent provision.

(e) Prohibits a district that receives an adjustment for a decline in ADA because of a declared disaster from receiving any additional adjustment permissible because of a disaster, flood, extreme weather condition, fuel curtailment, or other calamity that has a significant effect on the district's attendance.

(e) Same as Senate version.

No equivalent provision.

(f) Establishes that, for purposes of this title, a district's adjusted ADA under this section is considered to be the district's ADA for Foundation School Program purposes.

(f) Same as Senate version.

No equivalent provision.

SECTION __. Subchapter E, Chapter 42, Education Code, is amended by adding Sections 42.2523 and 42.2524.

SECTION 5. Same as Senate version except as follows:

No equivalent provision.

Sec. 42.2523. ADJUSTMENT FOR PROPERTY VALUE AFFECTED BY STATE OF DISASTER.

Same as Senate version.

House Bill 4102
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision.	(a) Requires the commissioner, for purposes of provisions relating to the equalized wealth level and the instructional facilities and existing debt allotments, to adjust the taxable value of property of a school district all or part of which is located in an area declared a disaster area by the governor as necessary to ensure that the district receives funding based as soon as possible on property values as affected by the disaster.	(a) Same as Senate version.
No equivalent provision.	Same as House version.	(b) Authorizes the commissioner to fund adjustments using funds specifically appropriated for the purpose or other funds available to the commissioner for that purpose.
No equivalent provision.	(b) Provides that any additional funding to which a school district is entitled as a result of such an adjustment is in addition to the amount of funding to which the district is entitled under the hold harmless provision providing additional state aid to offset the loss of local tax revenue attributable to the reduction in a district's tax rate by the state compression percentage.	(c) Same as Senate version.
No equivalent provision.	(c) Establishes that a decision of the commissioner concerning this adjustment is final and may not be appealed.	(d) Same as Senate version.
No equivalent provision.	Sec. 42.2524. REIMBURSEMENT FOR DISASTER REMEDIATION COSTS	Same as Senate version.
No equivalent provision.	(a) Makes this section applicable only to a school district	(a) Same as Senate version.

House Bill 4102
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

all or part of which is located in an area declared a disaster area by the governor and that incurs disaster remediation costs as a result of the disaster.

No equivalent provision.

(b) Authorizes such a district, during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster, to apply to the commissioner for reimbursement of disaster remediation costs that the district pays during that period and does not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source of reimbursement.

(b) Same as Senate version.

No equivalent provision.

(b-1) Authorizes a district to seek reimbursement of disaster remediation costs paid by the district on or after September 1, 2008. Establishes that this subsection expires September 1, 2011.

(b-1) Same as Senate version.

No equivalent provision.

(c) Authorizes the commissioner to provide reimbursement costs under this section only if funds are specifically appropriated for that purpose or if Foundation School Program funds are available for that purpose, based on a determination by the commissioner that the amount appropriated for the program, including the facilities component, exceeds the amount to which districts are entitled under provisions relating to the program formulas and through the instructional facilities and existing debt allotments

(c) Authorizes the commissioner to provide reimbursement costs under this section only if funds are available for that purpose as follows. Authorizes reimbursement for a school district not required to take action under Chapter 41 from amounts appropriated for that purpose, including amounts appropriated for those districts for that purpose to the disaster contingency fund or from Foundation School Program funds available for that purpose, based on a determination by the commissioner that the amount appropriated for the Foundation School Program, including the facilities component, exceeds the amount to which districts are

House Bill 4102
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No equivalent provision.

(d) Requires a district seeking reimbursement under this section to provide the commissioner with adequate documentation of the costs for which the district seeks reimbursement.

entitled under this chapter and Chapter 46. Authorizes reimbursement for a school district required to take action under Chapter 41 to be provided from those Foundation School Program funds if funds remain available after fully reimbursing each school district that is required to take action under those provisions for its disaster remediation costs.

(e) Same as Senate version.

No equivalent provision.

(e) Requires the commissioner, if the amount of money available for *reimbursement of disaster remediation costs* is not sufficient to fully reimburse each district's disaster remediation costs, to reduce the amount of assistance provided to each district proportionately.

(d) Same as Senate version, except requires the commissioner to reduce the amount of assistance, if the amount of money available for *purposes of reimbursing school districts not required to take action under Chapter 41* is not sufficient to fully reimburse each district's disaster remediation costs. Adds a provision requiring the commissioner, if the amount of money available for purposes of reimbursing school districts required to take action under Chapter 41 is not sufficient to fully reimburse each district's disaster remediation costs, to reduce the amount of assistance provided to each of those districts proportionately.

No equivalent provision.

(f) Establishes that a district that is required to purchase attendance credits under Chapter 41 is eligible to receive assistance under this section in the same manner as any other district. Authorizes such a district, at its discretion,

(f) Authorizes a district required to take action under Chapter 41 to receive assistance under this section either as a payment of state aid or as a reduction in the total amount required to be paid by the district for attendance

House Bill 4102
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

to receive assistance either as a payment of state aid or as a reduction in the total amount required to be paid by the district for attendance credits.

credits at its discretion and prohibits such a district from obtaining reimbursement for the payment of any disaster remediation costs that resulted in a reduction under Section 41.0931 listed above of the district's cost of attendance credits.

No equivalent provision.

(g) Provides that amounts provided to a district for disaster remediation costs under this section are in addition to the amount of funding to which the district is entitled under the hold harmless provisions described above relating to the tax rate reduction by the state compression percentage.

(g) Same as Senate version.

No equivalent provision.

(h) Requires the commissioner to adopt rules necessary to implement this section, including rules defining "disaster remediation costs" and specifying the type of documentation required under Subsection (d), as added above.

(h) Same as Senate version.

No equivalent provision.

(i) Authorizes the commissioner to permit a district to use the amount provided to it to pay the costs of replacing a facility instead of repairing the facility. Requires the commissioner to ensure that a district that elects to replace a facility does not receive an amount for reimbursement that exceeds the lesser of the amount that would be provided to the district if the facility were repaired or the amount necessary to replace the facility.

(i) Same as Senate version.

No equivalent provision.

(j) Establishes that this section does not require the commissioner to provide any requested reimbursement,

(j) Same as Senate version.

House Bill 4102
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

and that a decision of the commissioner regarding reimbursement is final and may not be appealed.

No equivalent provision.

SECTION __. Section 44.0312, Education Code, is amended by adding Subsection (c) to authorize the board of trustees of a school district, in the event of a catastrophe, emergency, or natural disaster affecting the district, to delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

SECTION 6. Same as Senate version.

No equivalent provision.

SECTION __. Specifies that this Act does not make an appropriation and that certain provisions are not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

Same as House version.

SECTION 3. Effective date.

SECTION 3. Same as House version.

SECTION 7. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
 Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: **HB4102** by Eiland (Relating to the disaster contingency fund and relief for school districts located in a disaster area.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4102, Conference Committee Report: a negative impact of (\$88,878,539) through the biennium ending August 31, 2011.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$82,602,359)
2011	(\$6,276,180)
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Foundation School Fund</i> 193	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2010	(\$82,552,359)	(\$50,000)
2011	(\$6,276,180)	\$0
2012	\$0	\$0
2013	\$0	\$0
2014	\$0	\$0

Fiscal Analysis

The bill would make special provisions for school districts located in a declared disaster area that have incurred disaster remediation costs. For the two-year period following the date of the governor's initial declaration, the amount of attendance credits that must be purchased under Section 41.093, Education Code would be reduced by the amount of any disaster remediation costs paid by the district during that period for which the district does not anticipate reimbursement through insurance proceeds, federal disaster relief, or other sources. For the purposes of reducing recapture costs in 2009–2010, disaster remediation costs paid by the district after September 1, 2008, would be included.

The bill would require the commissioner to adjust the average daily attendance (ADA) of a school district located within a declared disaster area, if the district experienced a decline in ADA that was

reasonably attributable to the disaster. The adjustment would have to be sufficient to provide funding comparable to that the district would have received if the decline in ADA attributable to the disaster had not occurred. This adjustment would have to be made for the two-year period following the date of the initial declaration of a state of disaster.

The bill would also require the commissioner to adjust the taxable value of property of a school district located within a declared disaster area as was necessary to ensure that the district received funding based as soon as possible on property values as affected by the disaster.

The bill would further provide a reimbursement of disaster remediation costs for a school district located within a declared disaster area for which the district does not anticipate other reimbursement. During the two-year period following the date of the initial declaration of a state of disaster, a district could apply to the commissioner for reimbursement of disaster remediation costs paid during that period for which the district does not anticipate reimbursement through other sources. A district could also seek reimbursement of disaster remediation costs paid on or after September 1, 2008. The commissioner could provide reimbursement from amounts appropriated for that purpose or from the Foundation School Program (FSP) if the commissioner determined that there were surplus appropriations for the FSP.

The bill would authorize a local board of trustees to delegate the authority to contract for replacement, construction, or repair of school equipment or facilities, if emergency replacement, construction, or repair were necessary for the health and safety of district students and staff.

The bill would allow a state or local government entity that participates in disaster preparation or disaster recovery to request and receive funding from the disaster contingency fund to pay for costs incurred by the state or local government entity in preparing for or recovering from a disaster. If state or local government entities receive reimbursement from the federal government, then the entities would be required to reimburse the disaster contingency fund by the amount received from the federal government. The bill would also require the Governor's Division of Emergency Management (GDEM) to prescribe accounting and other procedures necessary to implement the provisions of the bill. Money in the disaster contingency fund may be used to pay for a disaster risk financing instrument to leverage available funds and receive proceeds greater than appropriated amounts to pay for extraordinary expenses. Money in the fund also may be used to provide local matching funds for Federal Emergency Management Agency projects.

The bill would take effect immediately upon receiving a two-thirds majority vote in each house; otherwise, the bill would take effect September 1, 2009.

Methodology

According to the Texas Education Agency (TEA), current estimates indicate that school districts affected by Hurricane Ike incurred approximately \$350 million in damages. TEA further assumes that, based on experiences with Hurricane Rita, approximately 20 percent, or \$70 million, of those costs would not be covered by insurance or other disaster relief assistance.

Based on the provisions of the bill, districts would be eligible to apply for disaster remediation funds in one of two ways: (1) for districts subject to wealth equalization, remediation compensation may come in the form of reduced recapture payments, and (2) districts not receiving reimbursement through reduced recapture payments may receive state aid to the extent that appropriations were provided or surplus funds were available in the Foundation School Program (FSP). For the purposes of this fiscal note, it is assumed that surplus FSP funds would be available, and therefore would be used as disaster remediation payments instead of offsetting other state costs or lapsing to the Treasury.

In estimating how much of state remediation costs would flow through the various provisions of the bill, it is assumed that the four coastal districts that TEA has identified as hardest hit by Hurricane Ike in 2008, Galveston, High Island, Bridge City, and Sabine Pass ISDs, would lose 20 percent of their pre-hurricane attendance in fiscal year 2010 and 30 percent of their tax year 2009 property values. Under the current law school finance system, the attendance decline would cause a district's wealth per weighted student (WADA), the basis for wealth equalization obligations under Chapter 41 Education

Code, to increase in the same year. However, due to the use of lagged property values in the state funding system, the tax year 2009 property value decline would not lower wealth per WADA until fiscal year 2011. The cost for the recapture adjustment under Section 1 of the bill is estimated to be \$14,916,971. The remaining amount of the estimated \$70 million in potentially eligible remediation costs would then flow through the reimbursement mechanism in Section 3 of the bill.

In addition to these costs, the bill would provide relief to disaster-affected districts through adjustments to counts of students in average daily attendance (ADA) and property values. TEA estimates the cost for adjustments to ADA or property values for the coastal districts identified above at \$12,552,359 for fiscal year 2010. Assuming that average daily attendance in the identified districts would recover somewhat in fiscal year 2011, costs for the second year of the ADA adjustment provided under the bill are estimated to be approximately \$6,276,180.

For the purpose of this estimate, identified state costs are assumed to be limited to costs resulting from application of the bill's provisions to Galveston, High Island, Bridge City and Sabine Pass ISDs. However, the bill would render eligible for relief any school district in a designated disaster area and that incurs qualifying disaster remediation costs. Currently, there are 570 school districts in a county designated by the Governor as a disaster area. Should more districts than the four assumed by the agency have incurred qualifying disaster remediation costs, experienced declining attendance or experienced property value decline, state costs due to the provisions of the bill could increase significantly.

TEA estimates that accounting for the provisions of the bill in the current Foundation School Program management and payment system would require approximately \$50,000 in software modification costs in fiscal year 2010.

Implementing the provisions of the bill that affect the Government Code would result in an indeterminate fiscal impact to the state due to the unknown nature of any future disaster.

Local Government Impact

Districts might incur some administrative costs to prepare applications for funds, but the TEA does not expect these costs to be significant. School districts would receive additional revenue through adjustments and additional funding under the Foundation School Program to offset costs associated with disaster remediation for which the district does not anticipate reimbursement through insurance proceeds, federal disaster relief, or other sources. If authorized by the commissioner of education, a school district would be permitted to use the funding provided under this bill to pay the costs of replacing a facility instead of repairing a facility. In such circumstances, funding would be limited to the lesser of the amount that would be available to the district if the facility were repaired or the amount necessary to replace the facility.

Source Agencies: 701 Central Education Agency

LBB Staff: JOB, SD, KJG, JSp, JGM

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 4102 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

Craig Eckland
(name)

5/30/09
(date)