

BILL ANALYSIS

C.S.H.B. 277
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Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, students who are interested in taking courses that are not offered due to the lack of interest by students as a whole are constrained to taking the courses that are offered, regardless if their interests are in another subject. In some cases, certain districts lack the personnel or resources to even offer basic courses required or recommended for admission into some institutions of higher learning.

This bill establishes a state virtual school network to provide the opportunity for students to enroll in high-quality electronic courses and programs, taught by a certified public school teacher, in which a student is not required to be located on the physical premises of the school district or open-enrollment charter school (charter school). Sets forth the operational, administrative, and funding requirements of the network.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Education in SECTION 1 and to the State Board of Education in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 277 adds Chapter 30A to the Education Code to create the state virtual school network.

Subchapter A of Chapter 30A defines terms, including "Administering authority", "Board", "Course", "Electronic course", "Electronic diagnostic assessment", "Electronic professional development course", and "Provider school district or school". It addresses student eligibility, limiting it to those who are younger than 21 years of age on September 1 of the school year, have not graduated from high school, and are otherwise eligible to enroll in a public school in Texas. It limits full-time enrollment in courses provided through the virtual school network only to a student who was enrolled in a public school in Texas in the preceding year or to a student who is a dependent of a member of the U.S. military, was previously enrolled in high school in this state, and does not reside in this state due to a military deployment or transfer. C.S.H.B. 277 states that this chapter does not require a school district, open-enrollment charter school, provider school district or school, or the state to provide a student with home computer equipment or Internet access for a course provided through the state virtual school network, or prohibit a school district or open-enrollment charter school from doing so. It also provides that the chapter does not affect the provision of a course or program to a student while the student is located on the school district's or charter school's physical premises, except that the district or charter school may choose to participate in providing an electronic course or program under this chapter to a student located on the district's or charter school's physical premises. It provides that this chapter does not affect the provision of distance learning courses offered under other law, and does not create or authorize the creation of a telecommunications or information services network.

Subchapter B of Chapter 30A provides for the network to be administered by the Commissioner of Education (commissioner), who shall ensure that high-quality education is provided through the network. The commissioner is granted rulemaking authority as necessary to implement this chapter. The commissioner shall prepare or provide for preparation of the network's biennial budget request, have exclusive jurisdiction over the network's assets, administer and spend appropriations, prepare and file reports for each fiscal year with specified officials, employ a limited number of administrative personnel or contract with a regional education service center to operate the network, and, to the extent permitted by applicable privacy laws, include the

results of assessments instruments administered to students enrolled in electronic courses in the annual report, and make performance information for such students available to school districts, open-enrollment charter schools, and the public.

The bill also requires the commissioner to designate an agency employee or group of agency employees to act as the administering authority for the state virtual school network.

The bill provides that the commissioner shall investigate alternate funding models for the network and for student attendance in electronic courses provided through the network, and report the results to the Legislature by a specified date in accordance with certain objectives specified in the bill. This reporting requirement has an expiration date.

The bill prohibits the administering authority from providing educational services directly to a student.

The bill requires each contract between a school district or charter school and the administering authority to provide for cancellation without penalty if legislative authorization for the district or school to offer an electronic course through the network is revoked, to be submitted to the commissioner, and to be public information.

Subchapter C of Chapter 30A sets out how electronic courses and programs are provided under the network by school districts and charter schools.

STATE ROLE

- The State Board of Education (SBOE) must establish criteria for electronic courses. The bill includes certain requirements relating to the criteria, and provides that the criteria must include the Texas Essential Knowledge and Skills (TEKS), and may not include, among other items, requirements that are developmentally inappropriate.
- The Commissioner by rule may establish additional quality-related criteria for electronic courses and provide for a period of public comment regarding the criteria.
- Using that criteria, the administering authority must establish a schedule for an annual submission and approval process, publish the criteria for electronic courses, evaluate the courses and programs to be offered through the state virtual school network, place them on an approved list, and provide public access to the list and a detailed description of the approved courses and programs.
- To ensure a full range of courses, including Advanced Placement courses, the administering authority shall create a list of subjects and courses for which the SBOE has identified TEKS or designated content requirements. The bill then requires that the administering authority enter into agreements with entities that own the rights to electronic courses to lease, obtain a license for, or purchase the courses for the purpose of offering the courses through the state virtual school network. The bill provides that the administering authority may develop or authorize the development of additional electronic courses that are needed to complete high school graduation requirements and are otherwise not available through the state virtual school network.
- The criteria must be in place at least six months before the criteria is used for evaluation. A course must be the equivalent in instructional rigor and scope to a course that is provided in a traditional classroom setting that meets the state-required minimum number of days and length of school day.
- A course offered through the network must be in a specific subject that is part of the required curriculum and must be aligned with TEKS.
- The administering authority shall establish the cost of providing an electronic course or program, which may not exceed \$400 per student per course or \$4,800 per full-time student.
- A school district, open-enrollment charter school, or entity that owns the rights to an electronic course that submits an electronic course or program for approval must pay a fee in an amount established by the commissioner sufficient to recover reasonable costs of evaluation and approval. The administering authority is required to waive the fee if the course that is submitted for approval by a school district or open-enrollment charter school was developed independently by the district or school. The bill then sets forth criteria by which to determine if a course was developed independently by a district or school.

- A provider school district or charter school or entity that owns the rights to an electronic course may appeal to the commissioner the administering authority's refusal to approve an electronic course. The commissioner may overrule the administering authority and place the course or program on the approved list, and this decision is final and may not be appealed.

PROVIDER ROLE

- The bill allows the provider district or charter school to offer the electronic courses and programs to students within the state, and outside the state provided that certain eligibility requirements specified in the bill are met..
- A school district is eligible to act as a provider district only if the district is rated academically acceptable or higher.
- An open-enrollment charter school is eligible to act as a provider school only if the school is rated recognized or higher. It may serve as a provider school only to any student within the district in which it is located or within its service area, whichever is smaller or to another student in the state through an agreement with the administering authority.

STUDENT OPTIONS

- A student who is enrolled in a school district or charter school in this state as a full-time student may take one or more electronic courses through the network.
- A student who resides in this state but who is not enrolled in a school district or charter school in this state as a full-time student may enroll in up to two electronic courses per semester provided through the network through the attendance zone in which the student resides. The student is not considered to be a public school student, and is not entitled to enroll in courses other than those offered through the network, or entitled to other rights, privileges, activities, or service available to public school students, other than course credit..
- A district or charter school may not require a student to enroll in an electronic course.

The administering authority must create and maintain on the network's website an “informed choice” report in accordance with commissioner rules and containing a description of specific information.

The commissioner by rule must adopt procedures for verifying attendance of a student enrolled in an electronic course, and the rules may modify the application of specific provisions of the Education Code regarding compulsory school attendance, exemptions and excused absences, and any other law inconsistent with provision of electronic courses.

Chapter 39, Education Code (PUBLIC SCHOOL SYSTEM ACCOUNTABILITY) applies to an electronic course in the same manner the chapter applies to any other course offered by the district or school. Students enrolled in electronic courses must take assessment instruments , administered by a proctor, that are administered to students instructed in the traditional classroom setting. Results of assessments administered to students enrolled in an electronic course must be reported separately from the results of assessments administered to other students.

Each teacher of an electronic course must be certified to teach that course and grade level and have successfully completed the appropriate professional development course offered through the state virtual school network. The state virtual school network shall provide or authorize providers of electronic professional development courses to provide professional development for teachers who are teaching electronic courses, and may offer professional development for certain other teachers as specified in the bill. The commissioner by rule shall establish criteria for quality of such a course. The commissioner by rule shall allow regional education service centers to participate in the state virtual school network and may establish procedures for providing additional resources, which the administering authority may only provide if the commissioner receives an appropriation, gift, or grant sufficient to cover costs.

Subchapter D provides that, except as otherwise authorized, the state shall pay the network’s operating costs and that such costs may not be charged to a school district or open-enrollment charter school. Costs of providing electronic professional development courses may be paid by appropriated state funds or, where allowable, federal funds. State funds received under this C.S.H.B. 277 80(R)

chapter are in addition to amounts districts or schools are entitled to receive under certain specified provisions of the Education Code. State funds may not be used in a manner that violates the Texas Constitution's prohibition on appropriations for sectarian purposes. The Commissioner may accept grants and federal funds for purposes of this chapter.

A district or charter school in which a student is enrolled is entitled to receive state and local funding for the student in an amount equal to the cost of providing the electronic course, plus 20 percent. A district or charter school may receive payment for the student based on successful completion of a course or successful progress on or completion of modules of the course. A provider district or charter school, the administering authority, and the district or charter school in which the student is enrolled shall enter into an agreement related to the payment of the cost of the student's enrollment according to terms specified in the bill. The agreement must permit the school district or charter school in which the student is enrolled as a full-time student to retain an amount as specified in the bill and identify the services to be provided to the student. The administering authority, with the approval of the commissioner, is required to adopt a standard agreement to be used unless permission is requested to modify it and the commissioner authorizes the modification.

A school district or open-enrollment charter school may apply for additional funding for an accelerated student who is enrolled in more than the course load taken by a student in the equivalent grade in other districts or charter schools. The commissioner by rule shall limit the total amount of funding for which an accelerated student is eligible. The Legislature in the appropriations act may limit the amount of funding and number of hours or courses eligible for funding.

A school district or open-enrollment charter school may charge a fee for enrollment in an electronic course provided through the network to a student who resides in this state and is enrolled in a school district or open-enrollment charter school as a full time student and is enrolled in a course load greater than that normally taken by students in the equivalent grade level in other school districts or open-enrollment charter schools, and does not qualify for accelerated student funding. The fee may not exceed the lesser of the cost of providing the course or \$400.

A school district or open-enrollment charter school is required to charge a fee for enrollment in an electronic course to a student who resides in this state and is not enrolled in a school district or an open-enrollment charter school as a full-time student. The fee may not exceed the lesser of the cost of providing the course or \$400. Except as provided by these two situations, the virtual school network may not charge a fee to students for electronic courses provided through the network.

The bill amends Chapter 26, Education Code to define the procedure to be followed by a school district or open-enrollment charter school with respect to informing students and parents about courses that are offered through the virtual school network. It also prohibits a school district or charter school in which a student is enrolled as a full-time student from unreasonably denying a parent or student request to enroll in an electronic course. A district or charter school is not considered to have unreasonably denied a request if it can demonstrate that the course does not meet state standards or the standards of the district or school that are of equivalent rigor as the district's or school's standards for the same course provided in a traditional classroom setting; a student attempts to enroll in a course load inconsistent with the student's high school graduation plan or could negatively affect student performance on a state assessment instrument; or the request is at a time not consistent with the school district or charter school's enrollment period. The bill also states that the school district or open-enrollment charter school is required to make all reasonable efforts to accommodate the enrollment of a student in an electronic course under special circumstances. Parents may appeal to the Commissioner a school district or open enrollment charter school's denial of a request to enroll their student, and the Commissioner's decision is final and may not be appealed.

The bill provides that the commissioner shall ensure that the state virtual school network begins operations in a manner that allows students to enroll in electronic courses offered through the network beginning with the 2008-2009 school year.

The bill provides that the state virtual school network shall provide electronic courses only for grades 9, 10, 11, and 12 in the 2008-2009 school year, and only for grades 6, 7, 8, 9, 10, 11, and 12 in the 2009-1010 school year. In the 2010-2011 school year and in subsequent school years, the network is required to provide electronic courses for all grades.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Note: Unless otherwise specified, all statutory references are to the Education Code.

C.S.H.B. 277 amends the definitions in the original bill, including adding a definition of "administering authority"; revising the definition of electronic courses to clarify that the bill is referring to courses offered via the Internet and these courses include extensive interaction between students and the teacher and between students, striking the definition of "program," and making other modifications.

The substitute added that a student who is enrolled in a Texas school district as a full-time student may take one or more courses through the state virtual school network. Military students who have moved out of state will be allowed to establish residency through their home district. The original bill did not have provisions regarding student eligibility to enroll in courses provided through the network.

The substitute added a provision that a school district, open-enrollment charter school, provider school district or school, or the state is not required to provide a student with home computer equipment or Internet access for a course provided through the state virtual school network. However, this provision does not prohibit a school district or open-enrollment charter school from doing so. This was not in the original bill.

In the bill as filed, the SBOE was designated to govern the network. In the committee substitute, the SBOE establishes criteria for coverage of the TEKS by courses delivered over the network and the Commissioner is responsible for the day-to-day governance and administration of the network and will adopt rules as necessary to implement the legislation. There is an added provision that the Commissioner shall ensure equitable access by students to courses provided through the network. The substitute makes conforming changes in various provisions of the bill to effect this change in governance, and those changes are reflected in references to the Commissioner in this document.

Under the substitute, the Commissioner, has exclusive jurisdiction over all of the assets of the network whereas in the original, the SBOE had exclusive jurisdiction over all of the physical assets of the network. Under the original bill, the SBOE must employ or contract with TEA to employ a limited number of administrative employees to operate the network or contract with a regional education service center to operate the network. Under the substitute, the commissioner must employ a limited number of administrative employees to act as the administrative authority for the network, and makes conforming changes in various provisions of the bill to effect the change in administration of the program. The substitute also directs the Commissioner to contract with a regional education service center to operate the network.

The original bill required a report each fiscal year that included, among other things, an evaluation of the performance under Chapter 39 of provider school districts and schools. The substitute removes that provision and substitutes language that the report must include the results of assessment instruments administered to students enrolled in electronic courses under the chapter. It retains other requirements, and adds a provision that the commissioner must investigate alternative models for funding the operation of the network and for student attendance in electronic courses provided through the network and submit a report to each member of the Legislature no later than December 1, 2008 that recommends alternative funding models for the network to ensure the quality of electronic courses provided through the network, increase access through the network to more courses, enable more students to take courses

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through the network, sustain the network's operation, and increase the network's ability to accommodate greater numbers of students and provide greater numbers of courses.

The original stated that the state virtual school network may not develop its own curriculum, courses, or programs; or provide educational services directly to students. In the substitute, this language was amended to state that the administering authority may not provide educational services directly to students.

The substitute removes the language that prohibits the network from developing its own curriculum, courses, or programs and allows the administering authority to develop or authorize the development of courses needed to complete high school graduation requirements and are not otherwise available through the network.

Language regarding contracts was modified in the substitute so that contracts are between a school district or charter school and the administering authority, rather than between a school district or charter school and a virtual school service provider, in order to allow greater efficiencies and economies of scale.

The substitute changed language stating that provider districts may serve as a provider school only to another student in the state through an agreement with the enrolling school under Section 30A.153. Instead, provider districts may serve another student in the state through an agreement with the administering authority under Section 30A.153.

In the substitute, a requirement was added that the administering authority publish the criteria required by Section 30A.103 for electronic courses that may be offered through the network. The administering authority has been made responsible for providing information about courses offered through the network on one central website, including descriptions of each approved course as well as additional information identified through commissioner rules, such as course requirements and school year calendar, etc. The original did not require that those criteria be published.

The original required the SBOE to note each course for which an electronic course is not available, determine the level of interest of students and parents in such courses, make the interest level publicly available, and if the SBOE determines sufficient interest exists, it may solicit provider school districts or schools to offer such a course.

The substitute eliminates those requirements. Instead, it requires that the administering authority shall enter into agreements with entities that own the rights to electronic courses to lease, obtain a license for, or purchase the courses for the purpose of offering the courses through the network. The administering authority may develop or authorize the development of additional courses that are needed to complete high school graduation requirements and are not otherwise available through the network.

The original bill required the SBOE to review and consider quality-related criteria established in this state for existing virtual or distance learning courses or programs and stated that the criteria for electronic courses may not include requirements or prohibitions on particular kinds of technology. The substitute removes this language. The substitute adds that the criteria must be consistent with Section 30A.104 titled Course Eligibility in General that was titled Minimum Number of Instructional Hours in the original. C.S.H.B. 277 allows the commissioner to establish by rule additional quality related criteria for electronic courses and provide for a period of public comment regarding the criteria.

The original bill specified that an electronic course offered through the network must meet specified minimum number of instructional hours. The substitute removed this requirement and added eligibility requirements for a course to be offered through the network, including alignment with the essential knowledge and skills, equivalent rigor and scope, a semester of 90 instructional days, and a school day that meets the minimum length of a school day required under §25.082.

The substitute provides that the administering authority, rather than the SBOE, must establish a schedule for an annual submission and approval of electronic courses, and perform the process of

approval of the courses. The substitute removes language limiting the courses they can approve to those offered by a school district or charter school.

The original required the SBOE to waive the fee a school district or open-enrollment charter school must pay to recover the reasonable costs to the SBOE in reviewing and approving electronic courses and programs if the school district or open-enrollment charter school applies for approval of an electronic course or program that was developed under Section 29.909, Subchapter D, Chapter 32, as added by Chapter 834, Acts of the 78th Legislature, Regular Session, 2003, or any other pilot project for the provision of electronic courses or programs established before January 1, 2007, or the electronic course or program was developed independently by the district or school.

The substitute states that the administering authority must waive the fee if a school district or open-enrollment charter school applies for approval of an electronic course was developed independently by the district or school.

C.S.H.B. 277 changes the process for appeal, removing language requiring it to happen before an evaluation begins, and adding that an entity that owns the rights to an electronic course may appeal. It also removes language allowing an appeal on the grounds that the criteria is not objective or does not otherwise comply with the chapter. In the substitute, Section 30A.103 requires the criteria to be published prior to evaluation of courses.

The original allowed a provider school district or school to offer electronic courses and programs to students in this state or outside this state and the substitute restricts them to offering courses to students who reside in this state or who reside outside this state and who meet the eligibility requirements of Section 30A.002(b).

The substitute adds that a student who resides in this state but is not enrolled in a school district or open-enrollment charter school in this state as a full-time student must obtain access to a course provided through the network through the school district or open-enrollment charter school attendance zone in which the student resides, is not entitled enroll in a course offered by a school district or open-enrollment charter school other than an electronic course provided through the network, and is not entitled to any right, privilege, activities, or services available to a student enrolled in a public school, other than the right to receive the appropriate unit of credit for completing the electronic course.

C.S.H.B. 277 places the responsibility of creating and maintaining an "informed choice report" with the administering authority rather than the provider districts or charter schools and requires that the informed choice report be on the network's website, rather than on the district's or school's website with links to those reports on the TEA website. The original specified 15 required elements of the informed choice report; whereas the substitute eliminated these detailed elements and requires that the informed choice report include information such as course requirements and the school calendar for the course, including any options for continued participation outside the standard school year calendar.

The substitute changes the responsibility of adopting by rule procedures for verifying student attendance from that of the SBOE to that of the Commissioner of Education. The substitute adds that the commissioner shall by rule adopt procedures for reporting attendance.

The substitute adds the requirement that each student enrolled under Chapter 30A in an electronic course offered through the network must take any assessment instrument under Section 39.023 that is administered to students who are provided instruction in the course material in the traditional classroom setting and that the administration of the assessment instrument must be supervised by a proctor.

C.S.H.B. 277 requires that the teacher of an electronic course must additionally have successfully completed the appropriate professional development course provided by the network or authorize providers of electronic professional development courses as described in Section 30A.112(a) before teaching an electronic course offered through the network. The original is permissive in stating that the network may provide or authorize providers of electronic professional development courses or programs to provide professional development for teachers

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who are teaching electronic courses or programs. The substitute makes this provision mandatory.

The substitute adds a provision that state funds received by a school district or open-enrollment charter school under Chapter 30A are in addition to any amounts to which the district or school is entitled to receive or retain under Chapter 12, 41, or 42 and are not subject to reduction under any provision of those chapters.

C.S.H.B. 277 allows a district or charter school to receive payment for the student based on successful completion of a course or successful progress on or completion of modules of the course, but not based on hours of contact with the student as in the original bill. The substitute also requires the school district or open-enrollment charter school in which a student is enrolled and the administering authority, rather than the provider school district or school as in the original bill, to enter into an agreement related to the payment of the cost of a student's enrollment.

The substitute changes "provider district" to "school district" in the Section dealing with districts applying for additional funding for accelerated students. The substitute also changes rulemaking authority from SBOE to the commissioner in regards to limiting the total amount of funding for which an accelerated student is eligible.

C.S.H.B. 277 also changes the fee structure for students. The original language stipulated that the fee charged to a student who resides in the state but is not enrolled in a school district or open-enrollment charter school as a full-time student may not exceed \$50 per course in which the student enrolls through the network. The substitute requires the school district or open-enrollment charter school to charge a fee to such a student and the fee may not exceed the lesser of the cost of providing the course or \$400. The substitute, but not the original, also stipulates that the fee charged to a student who is enrolled in a school district or open-enrollment charter school as a full-time student, is enrolled in a course load greater than that normally taken in the equivalent grade level in other school districts or open-enrollment charter schools and does not qualify for accelerated funding under Chapter 30A.154 may not exceed the lesser of the cost of providing the course or \$400. The substitute provides that except under those two circumstances, the network may not charge a fee to students.

The substitute adds a provision that at the time and in the manner that a school district or open-enrollment charter school informs students and parents about courses that are offered in the district's or school's traditional classroom setting, the district or school shall notify students and parents of the option to enroll in an electronic course offered through the network.

C.S.H.B. 277 states that a district or open-enrollment charter school is not considered to have unreasonably denied a request to enroll in an electronic course if it can demonstrate that the course or program does not meet certain standards of the district or school that are of equivalent rigor and scope as the district's or school's standards for the same course provided in a traditional classroom setting. In the original bill, the district or charter school was only required to determine that it did not meet state standards or the standards of the district or school.

The substitute also adds that the school district or open-enrollment charter school is required to make all reasonable efforts to accommodate the enrollment of a student in an electronic course under special circumstances.

The original provided that the SBOE ensure that the network begin operations in a manner that allows students to enroll in electronic courses beginning with the 2008-2009 school year whereas the substitute adds a new provision that the network must provide electronic courses for only grades 9, 10, 11, and 12 for the 2008-2009 school year, only for grades 6-12 for the 2009-2010 school year, and for all grades in 2010-2011 and subsequent school years.