

By: Ellis

S.B. No. 440

A BILL TO BE ENTITLED

AN ACT

relating to transferring the statutorily assigned functions and activities of the State Board of Education to the Texas Education Agency.

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

SECTION 1. Sections 7.102(a) and (d), Education Code, are amended to read as follows:

(a) The board may perform, as provided by this code, only those duties [~~relating to school districts or regional education service centers~~] assigned to the board by the constitution of this state [~~or by this subchapter or another provision of this code~~].

(d) The board may adopt rules [~~relating to school districts or regional education service centers~~] only as required to carry out the specific duties assigned to the board by the constitution [~~or under Subsection (c)~~].

SECTION 2. Sections 7.108(a) and (c), Education Code, are amended to read as follows:

(a) A person interested in selling bonds of any type [~~or a person engaged in manufacturing, shipping, selling, or advertising textbooks or otherwise connected with the textbook business~~] commits an offense if the person makes or authorizes a political contribution to or takes part in, directly or indirectly, the campaign of any person seeking election to or serving on the board.

(c) In this section, "political"+

1 ~~[(1) "Political]~~ contribution" has the meaning
2 assigned by Section 251.001, Election Code.

3 ~~[(2) "Textbook" has the meaning assigned by Section~~
4 ~~31.002.]~~

5 SECTION 3. Section 7.109, Education Code, is transferred to
6 Subchapter B, Chapter 7, Education Code, renumbered as Section
7 7.034, Education Code, and amended to read as follows:

8 Sec. 7.034 ~~[7.109]~~. DESIGNATION AS STATE BOARD FOR CAREER
9 AND TECHNOLOGY EDUCATION. (a) The agency ~~[board]~~ is also the
10 State Board for Career and Technology Education.

11 (b) The commissioner is the executive officer through whom
12 the State Board for Career and Technology Education shall carry out
13 its policies and enforce its rules.

14 (c) The State Board for Career and Technology Education may
15 contract with the Texas Higher Education Coordinating Board or any
16 other state agency to assume the leadership role and administrative
17 responsibility of the State Board for Career and Technology
18 Education for state level administration of technical-vocational
19 education programs in public community colleges, public technical
20 institutes, and other eligible public postsecondary institutions
21 in this state.

22 (d) The State Board for Career and Technology Education may
23 allocate funds appropriated to the board by the legislature or
24 federal funds received by the board under the Carl D. Perkins Career
25 and Technical ~~[Vocational]~~ Education Act of 2006 (20 U.S.C. Section
26 2301 et seq.) or other federal law to an institution or program
27 approved by the agency ~~[State Board of Education]~~, the Texas Higher

1 Education Coordinating Board, or another state agency specified by
2 law.

3 SECTION 4. Section 7.111, Education Code, is transferred to
4 Subchapter B, Chapter 7, Education Code, renumbered as Section
5 7.035, Education Code, and amended to read as follows:

6 Sec. 7.035 [~~7.111~~]. HIGH SCHOOL EQUIVALENCY EXAMINATIONS.

7 (a) The agency [~~board~~] shall provide for the administration of
8 high school equivalency examinations, including administration by
9 the adjutant general's department for students described by
10 Subdivision (2)(C). A person who does not have a high school
11 diploma may take the examination in accordance with rules adopted
12 by the commissioner [~~board~~] if the person is:

13 (1) over 17 years of age;

14 (2) 16 years of age or older and:

15 (A) is enrolled in a Job Corps training program
16 under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801
17 et seq.) [~~and its subsequent amendment~~];

18 (B) a public agency providing supervision of the
19 person or having custody of the person under a court order
20 recommends that the person take the examination; or

21 (C) is enrolled in the adjutant general's
22 department's Seaborne Challenge Corps; or

23 (3) required to take the examination under a justice
24 or municipal court order issued under Article 45.054(a)(1)(C), Code
25 of Criminal Procedure.

26 (b) The commissioner [~~board~~] by rule shall establish and
27 require payment of a fee as a condition to the issuance of a high

1 school equivalency certificate and a copy of the scores of the
2 examinations. The fee must be reasonable and designed to cover the
3 administrative costs of issuing the certificate and a copy of the
4 scores. The agency [~~board~~] may not require a waiting period between
5 the date a person withdraws from school and the date the person
6 takes the examination unless the period relates to the time between
7 administrations of the examination.

8 SECTION 5. Section 7.112, Education Code, is amended by
9 adding Subsection (d) to read as follows:

10 (d) This section expires January 31, 2012.

11 SECTION 6. Section 7.113, Education Code, is transferred to
12 Subchapter B, Chapter 7, Education Code, renumbered as Section
13 7.036, Education Code, and amended to read as follows:

14 Sec. 7.036 [~~7.113~~]. EMPLOYERS FOR EDUCATION EXCELLENCE
15 AWARD. (a) The agency [~~board~~] shall create the Employers for
16 Education Excellence Award to honor employers that implement a
17 policy to encourage and support employees who actively participate
18 in activities of schools.

19 (b) An employer that meets the criteria described by this
20 section may apply for consideration to receive the award.

21 (c) The agency [~~board~~] shall establish the following levels
22 of recognition for employers:

23 (1) bronze for an employer that implements a policy to
24 encourage and support employees who attend parent-teacher
25 conferences;

26 (2) silver for an employer that:

27 (A) meets the requirements of bronze; and

1 (B) implements a policy to encourage and support
2 employees who volunteer in school activities; and

3 (3) gold for an employer that:

4 (A) meets the requirements of silver; and

5 (B) implements a policy to encourage and support
6 employees who participate in student mentoring programs in schools.

7 (d) The commissioner ~~[board]~~ shall establish criteria to
8 certify businesses to receive the Employers for Education
9 Excellence Award at the appropriate level of recognition. The
10 commissioner shall review the applications submitted by employers
11 under Subsection (b) and select ~~[make recommendations to the board~~
12 ~~regarding]~~ businesses that should be recognized and the level at
13 which a business should be recognized. ~~[The board may approve or~~
14 ~~modify the commissioner's recommendation.]~~

15 (e) The agency ~~[board]~~ shall honor the recipient of an
16 Employers for Education Excellence Award by presenting the
17 recipient with a suitable certificate that includes the business's
18 level of recognition and other appropriate information.

19 SECTION 7. Section 11.351, Education Code, is amended to
20 read as follows:

21 Sec. 11.351. AUTHORITY TO ESTABLISH SPECIAL-PURPOSE SCHOOL
22 DISTRICT. (a) On the recommendation of the commissioner and after
23 consulting with the school districts involved and obtaining the
24 approval of a majority of those districts in each affected county in
25 which a proposed school district is located, the agency ~~[State~~
26 ~~Board of Education]~~ may establish a special-purpose school district
27 for the education of students in special situations whose

1 educational needs are not adequately met by regular school
2 districts. The agency [~~board~~] may impose duties or limitations on
3 the school district as necessary for the special purpose of the
4 district. The agency [~~board~~] shall exercise the powers as provided
5 by this section relating to the districts established under this
6 section.

7 (b) The agency [~~State Board of Education~~] shall grant to the
8 districts the right to share in the available school fund
9 apportionment and other privileges as are granted to independent
10 and common school districts.

11 SECTION 8. Section 12.012(a), Education Code, is amended to
12 read as follows:

13 (a) A home-rule school district is subject to federal and
14 state laws and rules governing school districts, except that a
15 home-rule school district is subject to:

16 (1) this code only to the extent that the
17 applicability to a home-rule school district of a provision of this
18 code is specifically provided;

19 (2) a rule adopted under this code by the [~~State Board~~
20 ~~of Education or the~~] commissioner only if the code provision
21 authorizing the rule specifically applies to a home-rule school
22 district; and

23 (3) all requirements of federal law and applicable
24 court orders relating to eligibility for and the provision of
25 special education and bilingual programs.

26 SECTION 9. Section 12.112, Education Code, is amended to
27 read as follows:

1 Sec. 12.112. FORM. A charter for an open-enrollment
2 charter school shall be in the form of a written contract signed by
3 the commissioner [~~chair of the State Board of Education~~] and the
4 chief operating officer of the school.

5 SECTION 10. Section 21.042, Education Code, is amended to
6 read as follows:

7 Sec. 21.042. APPROVAL OF RULES. The State Board for
8 Educator Certification must submit a written copy of each rule it
9 proposes to adopt to the commissioner [~~State Board of Education for~~
10 ~~review~~]. The commissioner [~~State Board of Education~~] may reject a
11 proposed rule [~~by a vote of at least two-thirds of the members of~~
12 ~~the board present and voting~~]. If the commissioner [~~State Board of~~
13 ~~Education~~] fails to reject a proposal before the 90th day after the
14 date on which the commissioner [~~it~~] receives the proposal, the
15 proposal takes effect as a rule of the State Board for Educator
16 Certification as provided by Chapter 2001, Government Code. The
17 commissioner [~~State Board of Education~~] may not modify a rule
18 proposed by the State Board for Educator Certification.

19 SECTION 11. Section 29.909(d), Education Code, is amended
20 to read as follows:

21 (d) A school district seeking to participate in the program
22 must submit a written application to the commissioner not later
23 than July 1 preceding the school year the district proposes to begin
24 participation in the program, or an earlier date set by the
25 commissioner. The application must include:

- 26 (1) a proposed budget for the program;
27 (2) a method to be used to verify student attendance;

1 (3) any requested waiver of a requirement,
2 restriction, or prohibition imposed by this code or by a rule of the
3 [~~State Board of Education or the~~] commissioner, and the period for
4 which any requested waiver is proposed to be in effect; and

5 (4) the information required under Subsection (f).

6 SECTION 12. Section 31.003, Education Code, is amended to
7 read as follows:

8 Sec. 31.003. RULES. The commissioner [~~State Board of~~
9 ~~Education~~] may adopt rules, consistent with this chapter, for the
10 adoption, requisition, distribution, care, use, and disposal of
11 textbooks.

12 SECTION 13. Section 31.021(b), Education Code, is amended
13 to read as follows:

14 (b) The State Board of Education shall annually set aside
15 out of the available school fund of the state an amount sufficient
16 for the agency [~~board~~], school districts, and open-enrollment
17 charter schools to purchase and distribute the necessary textbooks
18 for the use of the students of this state for the following school
19 year. The board shall determine the amount of the available school
20 fund to set aside for the state textbook fund based on:

21 (1) a report by the commissioner issued on July 1 or,
22 if that date is a Saturday or Sunday, on the following Monday,
23 stating the amount of unobligated money in the fund;

24 (2) the commissioner's estimate, based on textbooks
25 selected under Section 31.101 and on attendance reports submitted
26 under Section 31.103 by school districts and open-enrollment
27 charter schools, of the amount of funds, in addition to funds

1 reported under Subdivision (1), that will be necessary for purchase
2 and distribution of textbooks for the following school year; and

3 (3) any amount the board determines should be set
4 aside for emergency purposes caused by unexpected increases in
5 attendance.

6 SECTION 14. Section 31.022, Education Code, is amended to
7 read as follows:

8 Sec. 31.022. TEXTBOOK REVIEW AND ADOPTION. (a) The agency
9 [~~State Board of Education~~] shall adopt a review and adoption cycle
10 for textbooks for elementary grade levels, including
11 prekindergarten, and secondary grade levels, for each subject in
12 the required curriculum under Section 28.002.

13 (b) The agency [~~board~~] shall organize the cycle for subjects
14 in the foundation curriculum so that not more than one-sixth of the
15 textbooks for subjects in the foundation curriculum are reviewed
16 each year. The commissioner [~~board~~] shall adopt rules to provide
17 for a full and complete investigation of textbooks for each subject
18 in the foundation curriculum at least every six years. The adoption
19 of textbooks for a subject in the foundation curriculum may be
20 extended beyond the six-year period only if the content of
21 textbooks for a subject is sufficiently current.

22 (c) The commissioner [~~board~~] shall adopt rules to provide
23 for a full and complete investigation of textbooks for each subject
24 in the enrichment curriculum on a cycle the agency [~~board~~]
25 considers appropriate.

26 (d) At least 24 months before the beginning of the school
27 year for which textbooks for a particular subject and grade level

1 will be purchased under the review and adoption cycle adopted by the
2 agency [~~board~~], the agency [~~board~~] shall publish notice of the
3 review and adoption cycle for those textbooks.

4 (e) The agency [~~board~~] shall designate a request for
5 production of textbooks in a subject area and grade level by the
6 school year in which the textbooks are intended to be made available
7 in classrooms and not by the school year in which the agency [~~board~~]
8 makes the request for production.

9 SECTION 15. Section 31.0221(a), Education Code, is amended
10 to read as follows:

11 (a) The commissioner [~~State Board of Education~~] shall adopt
12 rules for the midcycle review and adoption of a textbook for a
13 subject for which textbooks are not currently under review by the
14 agency [~~board~~] under Section 31.022. The rules must require:

15 (1) the publisher of the textbook to pay a fee to the
16 agency [~~board~~] to cover the cost of the midcycle review and adoption
17 of the textbook;

18 (2) the publisher of the textbook to enter into a
19 contract with the agency [~~board~~] concerning the textbook for a term
20 that ends at the same time as any contract entered into by the
21 agency [~~board~~] for another textbook for the same subject and grade
22 level; and

23 (3) a commitment from the publisher to provide the
24 textbook to school districts in the manner specified by the
25 publisher, which may include:

26 (A) providing the textbook to any district in a
27 regional education service center area identified by the publisher;

1 or

2 (B) providing a certain maximum number of
3 textbooks specified by the publisher.

4 SECTION 16. Section 31.0222, Education Code, is amended to
5 read as follows:

6 Sec. 31.0222. BUDGET-BALANCED CYCLE. In determining the
7 review and adoption cycle of textbooks under Section 31.022, the
8 agency [~~State Board of Education~~] shall:

9 (1) consult with the Legislative Budget Board and the
10 governor's office of budget, planning, and policy before approving
11 and publishing any notice or amendment of a cycle;

12 (2) review and consider:

13 (A) historic average funding levels for
14 textbooks purchased in previous bienniums;

15 (B) expected average costs of future textbook
16 purchases;

17 (C) anticipated student enrollment in future
18 years;

19 (D) scheduled revisions to curriculum; and

20 (E) the impact on the state budget of the
21 adoption of textbooks in all or some grade levels in a subject area;
22 and

23 (3) limit the cycle to subject areas for which
24 textbooks can be purchased with the funding anticipated to be
25 available in the state textbook fund for the school year in which
26 the textbooks are to be adopted.

27 SECTION 17. Section 31.023(a), Education Code, is amended

to read as follows:

(a) For each subject and grade level, the agency [~~State Board of Education~~] shall adopt two lists of textbooks. The conforming list includes each textbook submitted for the subject and grade level that meets applicable physical specifications adopted by the agency [~~State Board of Education~~] and contains material covering each element of the essential knowledge and skills of the subject and grade level in the student version of the textbook, as well as in the teacher version of the textbook, as determined by the agency [~~State Board of Education~~] under Section 28.002 and adopted under Section 31.024. The nonconforming list includes each textbook submitted for the subject and grade level that:

(1) meets applicable physical specifications adopted by the agency [~~State Board of Education~~];

(2) contains material covering at least half, but not all, of the elements of the essential knowledge and skills of the subject and grade level in the student version of the textbook, as well as in the teacher version of the textbook; and

(3) is adopted under Section 31.024.

SECTION 18. Section 31.024, Education Code, is amended to read as follows:

Sec. 31.024. ADOPTION BY AGENCY [~~STATE BOARD OF EDUCATION~~].

(a) The agency [~~By majority vote, the State Board of Education~~] shall:

(1) place each submitted textbook on a conforming or nonconforming list; or

1 (2) reject a textbook submitted for placement on a
2 conforming or nonconforming list.

3 (b) Not later than December 1 of the year preceding the
4 school year for which the textbooks for a particular subject and
5 grade level will be purchased under the cycle adopted by the agency
6 [~~board~~] under Section 31.022, the agency [~~board~~] shall provide the
7 lists of adopted textbooks to each school district. Each
8 nonconforming list must include the reasons an adopted textbook is
9 not eligible for the conforming list.

10 SECTION 19. Section 31.025(a), Education Code, is amended
11 to read as follows:

12 (a) The agency [~~State Board of Education~~] shall set a limit
13 on the cost that may be paid from the state textbook fund for a
14 textbook placed on the conforming or nonconforming list for a
15 particular subject and grade level. The agency [~~board~~] may not
16 reject a textbook for placement on the conforming or nonconforming
17 list because the textbook's price exceeds the limit established
18 under this subsection.

19 SECTION 20. Sections 31.026(a) and (b), Education Code, are
20 amended to read as follows:

21 (a) The agency [~~State Board of Education~~] shall execute a
22 contract:

23 (1) for the purchase of each adopted textbook other
24 than an electronic textbook; and

25 (2) for the purchase or licensing of each adopted
26 electronic textbook.

27 (b) A contract must require the publisher to provide the

1 number of textbooks required by school districts in this state for
2 the term of the contract, which must coincide with the agency's
3 ~~[board's]~~ adoption cycle.

4 SECTION 21. Sections 31.028(a), (b), and (c), Education
5 Code, are amended to read as follows:

6 (a) The agency ~~[State Board of Education]~~ may purchase
7 special textbooks for the education of blind and visually impaired
8 students in public schools. In addition, for a teacher who is blind
9 or visually impaired, the agency ~~[board]~~ shall provide a teacher's
10 edition in Braille or large type, as requested by the teacher, for
11 each textbook the teacher uses in the instruction of students. The
12 teacher edition must be available at the same time the student
13 textbooks become available.

14 (b) The publisher of an adopted textbook shall provide the
15 agency with computerized textbook files for the production of
16 Braille textbooks or other versions of textbooks to be used by
17 students with disabilities, on request of the agency ~~[State Board
18 of Education]~~. A publisher shall arrange computerized textbook
19 files in one of several optional formats specified by the agency
20 ~~[State Board of Education]~~.

21 (c) The agency ~~[board]~~ may also enter into agreements
22 providing for the acceptance, requisition, and distribution of
23 special textbooks and instructional aids pursuant to 20 U.S.C.
24 Section 101 et seq. for use by students enrolled in:

- 25 (1) public schools; or
26 (2) private nonprofit schools, if state funds, other
27 than for administrative costs, are not involved.

SECTION 22. Section 31.029, Education Code, is amended to read as follows:

Sec. 31.029. BILINGUAL TEXTBOOKS. The agency [~~board~~] shall purchase or otherwise acquire textbooks for use in bilingual education classes.

SECTION 23. Section 31.030, Education Code, is amended to read as follows:

Sec. 31.030. USED TEXTBOOKS. The commissioner [~~State Board of Education~~] shall adopt rules to ensure that used textbooks sold to school districts and open-enrollment charter schools are not sample copies that contain factual errors. The rules may provide for the imposition of an administrative penalty in accordance with Section 31.151 against a seller of used textbooks who knowingly violates this section.

SECTION 24. Sections 31.035(a), (b), and (f), Education Code, are amended to read as follows:

(a) Notwithstanding any other provision of this subchapter, the agency [~~State Board of Education~~] may adopt supplemental textbooks that are not on the conforming or nonconforming list under Section 31.023. The agency [~~State Board of Education~~] may adopt a supplemental textbook under this section only if the textbook:

(1) contains material covering one or more primary focal points or primary topics of a subject in the required curriculum under Section 28.002, as determined by the agency [~~State Board of Education~~];

(2) is not designed to serve as the sole textbook for a

1 full course;

2 (3) meets applicable physical specifications adopted
3 by the agency [~~State Board of Education~~]; and

4 (4) is free from factual errors.

5 (b) The agency [~~State Board of Education~~] shall identify the
6 essential knowledge and skills identified under Section 28.002 that
7 are covered by a supplemental textbook adopted by the agency
8 [~~board~~] under this section.

9 (f) A school district or open-enrollment charter school
10 that requisitions supplemental textbooks under Subsection (d)(2)
11 shall certify to the agency that the supplemental textbooks, in
12 combination with any other textbooks or supplemental textbooks used
13 by the district or school, cover the essential knowledge and skills
14 identified under Section 28.002 by the agency [~~State Board of~~
15 ~~Education~~] for the subject and grade level for which the district or
16 school is requisitioning the supplemental textbooks.

17 SECTION 25. Sections 31.101(a) and (d), Education Code, are
18 amended to read as follows:

19 (a) Each year, during a period established by the agency
20 [~~State Board of Education~~], the board of trustees of each school
21 district and the governing body of each open-enrollment charter
22 school shall:

23 (1) for a subject in the foundation curriculum, notify
24 the agency [~~State Board of Education~~] of the textbooks selected by
25 the board of trustees or governing body for the following school
26 year from among the textbooks on the appropriate conforming or
27 nonconforming list; or

(2) for a subject in the enrichment curriculum:

(A) notify the agency [~~State Board of Education~~] of each textbook selected by the board of trustees or governing body for the following school year from among the textbooks on the appropriate conforming or nonconforming list; or

(B) notify the agency [~~State Board of Education~~] that the board of trustees or governing body has selected a textbook that is not on the conforming or nonconforming list.

(d) For a textbook that is not on the conforming or nonconforming list, a school district or open-enrollment charter school must use the textbook for the period of the review and adoption cycle the agency [~~State Board of Education~~] has established for the subject and grade level for which the textbook is used.

SECTION 26. Section 31.103(b), Education Code, is amended to read as follows:

(b) A requisition for textbooks for the following school year shall be based on the maximum attendance reports under Subsection (a), plus an additional 10 percent, except as otherwise provided. A school district or open-enrollment charter school shall make a requisition for a textbook on the conforming or nonconforming list through the commissioner to the state depository designated by the publisher or as provided by commissioner [~~State Board of Education~~] rule, as applicable, not later than June 1 of each year. The designated state depository or, if the publisher or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B), the publisher or manufacturer

1 shall fill a requisition approved by the agency at any other time in
2 the case of an emergency. As made necessary by available funds, the
3 commissioner shall reduce the additional percentage of attendance
4 for which a district or school may requisition textbooks. The
5 commissioner may, on application of a district or school that is
6 experiencing high enrollment growth, increase the additional
7 percentage of attendance for which the district or school may
8 requisition textbooks.

9 SECTION 27. Section 31.1031, Education Code, is amended to
10 read as follows:

11 Sec. 31.1031. SHORTAGE OF REQUISITIONED TEXTBOOKS. If a
12 school district or open-enrollment charter school does not have a
13 sufficient number of copies of a textbook used by the district or
14 school for use during the following school year, and a sufficient
15 number of additional copies will not be available from the
16 depository or the publisher within the time specified by Section
17 31.151(a)(8), the district or school is entitled to:

18 (1) be reimbursed from the state textbook fund, at a
19 rate and in the manner provided by commissioner [~~State Board of~~
20 ~~Education~~] rule, for the purchase of a sufficient number of used
21 adopted textbooks; or

22 (2) return currently used textbooks to the
23 commissioner in exchange for sufficient copies, if available, of
24 other textbooks on the conforming or nonconforming list to be used
25 during the following school year.

26 SECTION 28. Sections 31.151(a), (b), and (c), Education
27 Code, are amended to read as follows:

1 (a) A publisher or manufacturer of textbooks:

2 (1) shall furnish any textbook the publisher or
3 manufacturer offers in this state, at a price that does not exceed
4 the lowest price at which the publisher offers that textbook for
5 adoption or sale to any state, public school, or school district in
6 the United States;

7 (2) shall automatically reduce the price of a textbook
8 sold for use in a school district or open-enrollment charter school
9 to the extent that the price is reduced elsewhere in the United
10 States;

11 (3) shall provide any textbook or ancillary item free
12 of charge in this state to the same extent that the publisher or
13 manufacturer provides the textbook or ancillary item free of charge
14 to any state, public school, or school district in the United
15 States;

16 (4) shall guarantee that each copy of a textbook sold
17 in this state is at least equal in quality to copies of that
18 textbook sold elsewhere in the United States and is free from
19 factual error;

20 (5) may not become associated or connected with,
21 directly or indirectly, any combination in restraint of trade in
22 textbooks or enter into any understanding or combination to control
23 prices or restrict competition in the sale of textbooks for use in
24 this state;

25 (6) shall:

26 (A) maintain a depository in this state or
27 arrange with a depository in this state to receive and fill orders

1 for textbooks, other than on-line textbooks or on-line textbook
2 components, consistent with commissioner [~~State Board of~~
3 ~~Education~~] rules; or

4 (B) deliver textbooks to a school district or
5 open-enrollment charter school without a delivery charge to the
6 school district, open-enrollment charter school, or state, if:

7 (i) the publisher or manufacturer does not
8 maintain or arrange with a depository in this state under Paragraph
9 (A) and the publisher's or manufacturer's textbooks and related
10 products are warehoused or otherwise stored less than 300 miles
11 from a border of this state; or

12 (ii) the textbooks are on-line textbooks or
13 on-line textbook components;

14 (7) shall, at the time an order for textbooks is
15 acknowledged, provide to school districts or open-enrollment
16 charter schools an accurate shipping date for textbooks that are
17 back-ordered;

18 (8) shall guarantee delivery of textbooks at least 10
19 business days before the opening day of school of the year for which
20 the textbooks are ordered if the textbooks are ordered by a date
21 specified in the sales contract; and

22 (9) shall submit to the agency [~~State Board of~~
23 ~~Education~~] an affidavit certifying any textbook the publisher or
24 manufacturer offers in this state to be free of factual errors at
25 the time the publisher executes the contract required by Section
26 31.026.

27 (b) The commissioner [~~State Board of Education~~] may impose a

1 reasonable administrative penalty against a publisher or
2 manufacturer who knowingly violates Subsection (a). The
3 commissioner [~~board~~] shall provide for a hearing to be held to
4 determine whether a penalty is to be imposed and, if so, the amount
5 of the penalty. The commissioner [~~board~~] shall base the amount of
6 the penalty on:

- 7 (1) the seriousness of the violation;
- 8 (2) any history of a previous violation;
- 9 (3) the amount necessary to deter a future violation;
- 10 (4) any effort to correct the violation; and
- 11 (5) any other matter justice requires.

12 (c) A hearing under Subsection (b) shall be held according
13 to rules adopted by the commissioner [~~State Board of Education~~].

14 SECTION 29. Section 31.201, Education Code, is amended to
15 read as follows:

16 Sec. 31.201. DISPOSITION OF TEXTBOOKS. (a) The
17 commissioner [~~, with the approval of the State Board of Education,~~]
18 may provide for the disposition of:

19 (1) textbooks, other than electronic textbooks, that
20 are no longer in acceptable condition to be used for instructional
21 purposes; or

22 (2) discontinued textbooks, other than electronic
23 textbooks.

24 (b) The commissioner, as provided by rules adopted by the
25 commissioner [~~State Board of Education~~], shall make available on
26 request copies of discontinued textbooks, other than electronic
27 textbooks, for use in libraries maintained in municipal and county

jails and facilities of the institutional division of the Texas Department of Criminal Justice and other state agencies.

(c) The commissioner [~~State Board of Education~~] shall adopt rules under which a school district or open-enrollment charter school may donate discontinued textbooks, other than electronic textbooks, to a student, to an adult education program, or to a nonprofit organization.

SECTION 30. Sections 32.034(a), (c), (d), and (e), Education Code, are amended to read as follows:

(a) The commissioner[~~, as provided by State Board of Education policy,~~] may enter into an interagency contract with a public institution of higher education or a consortium of public institutions of higher education in this state to sponsor a center for educational technology under this section.

(c) The membership of the center shall consist of public school educators, regional education service centers, institutions of higher education, nonprofit organizations, and private sector representatives. The commissioner [~~State Board of Education~~] shall establish membership policies for the center.

(d) The board of directors of the center is composed of the commissioner or the commissioner's representative and other persons [~~shall be~~] appointed by the commissioner, as follows [~~State Board of Education and shall consist of~~]:

(1) representatives of the center, including members of the public education system; and

(2) a representative of each sponsoring institution of higher education[~~, and~~

1 ~~[(3) the commissioner or the commissioner's~~
2 ~~representative].~~

3 (e) The board of directors shall:

4 (1) employ a director for the center;

5 (2) establish priorities for the center's activities;

6 and

7 (3) report annually on the operation, projects, and
8 fiscal affairs of the center to the commissioner if the
9 commissioner does not serve on the board and to ~~[State Board of~~
10 ~~Education and]~~ the membership of the center.

11 SECTION 31. Sections 33.084(a) and (e), Education Code, are
12 amended to read as follows:

13 (a) The interscholastic league advisory council is composed
14 of:

15 (1) the commissioner ~~[two members of the State Board~~
16 ~~of Education appointed by the chair of the board];~~

17 (2) a member of the house of representatives appointed
18 by the speaker of the house;

19 (3) a member of the senate appointed by the lieutenant
20 governor;

21 (4) two members of the legislative council of the
22 University Interscholastic League appointed by the chairman of the
23 council;

24 (5) two public school board members appointed by the
25 commissioner; and

26 (6) four ~~[three]~~ members of the public appointed by
27 the commissioner.

1 (e) The advisory council shall review the rules of the
2 University Interscholastic League and shall make recommendations
3 relating to the rules to the governor, the legislature, the
4 legislative council of the University Interscholastic League, and
5 the commissioner [~~State Board of Education~~].

6 SECTION 32. Section 37.216(a), Education Code, is amended
7 to read as follows:

8 (a) Not later than September 1 of each year, the board shall
9 provide a report to the governor, the legislature, [~~the State Board~~
10 ~~of Education,~~] and the agency.

11 SECTION 33. Section 39.026, Education Code, is amended to
12 read as follows:

13 Sec. 39.026. LOCAL OPTION. In addition to the assessment
14 instruments adopted and administered by the agency [~~and~~
15 ~~administered by the State Board of Education~~], a school district
16 may adopt and administer criterion-referenced or norm-referenced
17 assessment instruments, or both, at any grade level. A
18 norm-referenced assessment instrument adopted under this section
19 must be economical, nationally recognized, and state-approved.

20 SECTION 34. Section 39.054, Education Code, is amended to
21 read as follows:

22 Sec. 39.054. USES OF PERFORMANCE REPORT. The information
23 required to be reported under Section 39.053 shall be:

24 (1) the subject of public hearings or meetings
25 required under Sections 11.252, 11.253, and 39.053;

26 (2) a primary consideration in district and campus
27 planning; and

(3) a primary consideration of:

(A) ~~[the State Board of Education in the evaluation of the performance of the commissioner];~~

~~[(B)]~~ the commissioner in the evaluation of the performance of the directors of the regional education service centers;

(B) ~~[(C)]~~ the board of trustees of a school district in the evaluation of the performance of the superintendent of the district; and

(C) ~~[(D)]~~ the superintendent in the evaluation of the performance of the district's campus principals.

SECTION 35. Section 39.071(b), Education Code, is amended to read as follows:

(b) Each year, the commissioner shall determine the accreditation status of each school district. In determining accreditation status, the commissioner:

(1) shall evaluate and consider the performance of the district under:

(A) the academic accountability system under Section 39.072; and

(B) the financial accountability rating system under Subchapter I; and

(2) may consider:

(A) the district's compliance with statutory requirements and requirements imposed by rule of the commissioner ~~[or State Board of Education]~~ under specific statutory authority that relate to:

1 (i) reporting data through the Public
2 Education Information Management System (PEIMS) or other reports
3 required by state or federal law or court order;

4 (ii) the high school graduation
5 requirements under Section 28.025; or

6 (iii) an item listed under Sections
7 7.056(e)(3)(C)-(I) that applies to the district;

8 (B) the effectiveness of the district's programs
9 for special populations; and

10 (C) the effectiveness of the district's career
11 and technology program.

12 SECTION 36. Sections 39.181(d) and (e), Education Code, are
13 amended to read as follows:

14 (d) Subsections (a) and (b) apply to any report required by
15 statute that the agency [~~or the State Board of Education~~] must
16 prepare and deliver to the governor, lieutenant governor, speaker
17 of the house of representatives, or legislature.

18 (e) Unless otherwise provided by law, any report required by
19 statute that the agency [~~or the State Board of Education~~] must
20 prepare and deliver to the governor, lieutenant governor, speaker
21 of the house of representatives, or legislature may be combined, at
22 the discretion of the commissioner, with a report required by this
23 subchapter.

24 SECTION 37. Section 39.182(a), Education Code, is amended
25 to read as follows:

26 (a) Not later than December 1 of each year, the agency shall
27 prepare and deliver to the governor, the lieutenant governor, the

1 speaker of the house of representatives, each member of the
2 legislature, the Legislative Budget Board, and the clerks of the
3 standing committees of the senate and house of representatives with
4 primary jurisdiction over the public school system a comprehensive
5 report covering the preceding school year and containing:

6 (1) an evaluation of the achievements of the state
7 educational program in relation to the statutory goals for the
8 public education system under Section 4.002;

9 (2) an evaluation of the status of education in the
10 state as reflected by the academic excellence indicators adopted
11 under Section 39.051;

12 (3) a summary compilation of overall student
13 performance on academic skills assessment instruments required by
14 Section 39.023 with the number and percentage of students exempted
15 from the administration of those instruments and the basis of the
16 exemptions, aggregated by grade level, subject area, campus, and
17 district, with appropriate interpretations and analysis, and
18 disaggregated by race, ethnicity, gender, and socioeconomic
19 status;

20 (4) a summary compilation of overall performance of
21 students placed in a disciplinary alternative education program
22 established under Section 37.008 on academic skills assessment
23 instruments required by Section 39.023 with the number of those
24 students exempted from the administration of those instruments and
25 the basis of the exemptions, aggregated by district, grade level,
26 and subject area, with appropriate interpretations and analysis,
27 and disaggregated by race, ethnicity, gender, and socioeconomic

1 status;

2 (5) a summary compilation of overall performance of
3 students at risk of dropping out of school, as defined by Section
4 29.081(d), on academic skills assessment instruments required by
5 Section 39.023 with the number of those students exempted from the
6 administration of those instruments and the basis of the
7 exemptions, aggregated by district, grade level, and subject area,
8 with appropriate interpretations and analysis, and disaggregated
9 by race, ethnicity, gender, and socioeconomic status;

10 (6) an evaluation of the correlation between student
11 grades and student performance on academic skills assessment
12 instruments required by Section 39.023;

13 (7) a statement of the dropout rate of students in
14 grade levels 7 through 12, expressed in the aggregate and by grade
15 level, and a statement of the completion rates of students for grade
16 levels 9 through 12;

17 (8) a statement of:

18 (A) the completion rate of students who enter
19 grade level 9 and graduate not more than four years later;

20 (B) the completion rate of students who enter
21 grade level 9 and graduate, including students who require more
22 than four years to graduate;

23 (C) the completion rate of students who enter
24 grade level 9 and not more than four years later receive a high
25 school equivalency certificate;

26 (D) the completion rate of students who enter
27 grade level 9 and receive a high school equivalency certificate,

1 including students who require more than four years to receive a
2 certificate; and

3 (E) the number and percentage of all students who
4 have not been accounted for under Paragraph (A), (B), (C), or (D);

5 (9) a statement of the projected cross-sectional and
6 longitudinal dropout rates for grade levels 9 through 12 for the
7 next five years, assuming no state action is taken to reduce the
8 dropout rate;

9 (10) a description of a systematic, measurable plan
10 for reducing the projected cross-sectional and longitudinal
11 dropout rates to five percent or less for the 1997-1998 school year;

12 (11) a summary of the information required by Section
13 29.083 regarding grade level retention of students and information
14 concerning:

15 (A) the number and percentage of students
16 retained; and

17 (B) the performance of retained students on
18 assessment instruments required under Section 39.023(a);

19 (12) information, aggregated by district type and
20 disaggregated by race, ethnicity, gender, and socioeconomic
21 status, on:

22 (A) the number of students placed in a
23 disciplinary alternative education program established under
24 Section 37.008;

25 (B) the average length of a student's placement
26 in a disciplinary alternative education program established under
27 Section 37.008;

1 (C) the academic performance of students on
2 assessment instruments required under Section 39.023(a) during the
3 year preceding and during the year following placement in a
4 disciplinary alternative education program; and

5 (D) the dropout rates of students who have been
6 placed in a disciplinary alternative education program established
7 under Section 37.008;

8 (13) a list of each school district or campus that does
9 not satisfy performance standards, with an explanation of the
10 actions taken by the commissioner to improve student performance in
11 the district or campus and an evaluation of the results of those
12 actions;

13 (14) an evaluation of the status of the curriculum
14 taught in public schools, with recommendations for legislative
15 changes necessary to improve or modify the curriculum required by
16 Section 28.002;

17 (15) a description of all funds received by and each
18 activity and expenditure of the agency;

19 (16) a summary and analysis of the instructional
20 expenditures ratios and instructional employees ratios of school
21 districts computed under Section 44.0071;

22 (17) a summary of the effect of deregulation,
23 including exemptions and waivers granted under Section 7.056 or
24 39.112;

25 (18) a statement of the total number and length of
26 reports that school districts and school district employees must
27 submit to the agency, identifying which reports are required by

1 federal statute or rule, state statute, or agency rule, and a
2 summary of the agency's efforts to reduce overall reporting
3 requirements;

4 (19) a list of each school district that is not in
5 compliance with state special education requirements, including:

6 (A) the period for which the district has not
7 been in compliance;

8 (B) the manner in which the agency considered the
9 district's failure to comply in determining the district's
10 accreditation status; and

11 (C) an explanation of the actions taken by the
12 commissioner to ensure compliance and an evaluation of the results
13 of those actions;

14 (20) a comparison of the performance of
15 open-enrollment charter schools and school districts on the
16 academic excellence indicators specified in Section 39.051(b) and
17 accountability measures adopted under Section 39.051(g), with a
18 separately aggregated comparison of the performance of
19 open-enrollment charter schools predominantly serving students at
20 risk of dropping out of school, as defined by Section 29.081(d),
21 with the performance of school districts;

22 (21) a summary of the information required by Section
23 38.0141 regarding student health and physical activity from each
24 school district;

25 (22) a summary compilation of overall student
26 performance under the assessment system developed to evaluate the
27 longitudinal academic progress as required by Section 39.027(e),

disaggregated by bilingual education or special language program instructional model, if any; and

(23) any additional information considered important by the commissioner [~~or the State Board of Education~~].

SECTION 38. Section 42.004, Education Code, is amended to read as follows:

Sec. 42.004. ADMINISTRATION OF THE PROGRAM. The commissioner, in accordance with the rules of the commissioner [~~State Board of Education~~], shall take such action and require such reports consistent with this chapter as may be necessary to implement and administer the Foundation School Program.

SECTION 39. Section 105.302(b), Education Code, is amended to read as follows:

(b) Each of the following shall appoint one member to serve on the advisory board:

(1) the commissioner of education [~~chairman of the State Board of Education~~];

(2) the commissioner of higher education;

(3) the president of the Texas Association of School Administrators;

(4) the president of the Texas Association for the Gifted and Talented;

(5) the governor;

(6) the lieutenant governor; and

(7) the speaker of the Texas House of Representatives.

SECTION 40. Article 45.054(a), Code of Criminal Procedure, is amended to read as follows:

1 (a) On a finding by a county, justice, or municipal court
2 that an individual has committed an offense under Section 25.094,
3 Education Code, the court has jurisdiction to enter an order that
4 includes one or more of the following provisions requiring that:

5 (1) the individual:

6 (A) attend school without unexcused absences;

7 (B) attend a preparatory class for the high
8 school equivalency examination administered under Section 7.035
9 [~~7.111~~], Education Code, if the court determines that the
10 individual is too old to do well in a formal classroom environment;
11 or

12 (C) if the individual is at least 16 years of age,
13 take the high school equivalency examination administered under
14 Section 7.035 [~~7.111~~], Education Code;

15 (2) the individual attend a special program that the
16 court determines to be in the best interest of the individual,
17 including:

18 (A) an alcohol and drug abuse program;

19 (B) a rehabilitation program;

20 (C) a counseling program, including
21 self-improvement counseling;

22 (D) a program that provides training in
23 self-esteem and leadership;

24 (E) a work and job skills training program;

25 (F) a program that provides training in
26 parenting, including parental responsibility;

27 (G) a program that provides training in manners;

(H) a program that provides training in violence avoidance;

(I) a program that provides sensitivity training; and

(J) a program that provides training in advocacy and mentoring;

(3) the individual and the individual's parent attend a class for students at risk of dropping out of school designed for both the individual and the individual's parent;

(4) the individual complete reasonable community service requirements; or

(5) for the total number of hours ordered by the court, the individual participate in a tutorial program covering the academic subjects in which the student is enrolled provided by the school the individual attends.

SECTION 41. Section 29.087(d), Education Code, is amended to read as follows:

(d) A student is eligible to participate in a program authorized by this section if:

(1) the student has been ordered by a court under Article 45.054, Code of Criminal Procedure, ~~[as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001,]~~ or by the Texas Youth Commission to:

(A) participate in a preparatory class for the high school equivalency examination; or

(B) take the high school equivalency examination administered under Section 7.035 ~~[7.111]~~; or

(2) the following conditions are satisfied:

(A) the student is at least 16 years of age at the beginning of the school year or semester;

(B) the student is a student at risk of dropping out of school, as defined by Section 29.081;

(C) the student and the student's parent or guardian agree in writing to the student's participation;

(D) at least two school years have elapsed since the student first enrolled in ninth grade and the student has accumulated less than one third of the credits required to graduate under the minimum graduation requirements of the district or school; and

(E) any other conditions specified by the commissioner.

SECTION 42. Effective May 1, 2010, Sections 7.102(b), (c), (e), and (f), Education Code, are repealed.

SECTION 43. (a) Effective May 1, 2010:

(1) all functions and activities performed by the State Board of Education immediately before that date, other than functions and activities assigned to the board by the constitution of this state, are transferred to the Texas Education Agency;

(2) a rule, form, policy, procedure, or decision of the State Board of Education, other than a rule, form, policy, procedure, or decision relating to a function or activity assigned to the board by the constitution of this state, continues in effect as a rule, form, policy, procedure, or decision of the Texas Education Agency and remains in effect until amended or replaced by

1 the commissioner of education;

2 (3) a rule of the State Board for Educator
3 Certification approved by the State Board of Education remains in
4 effect until amended or replaced as provided by law;

5 (4) a reference in law or an administrative rule to the
6 State Board of Education or to the State Board for Career and
7 Technology Education means the Texas Education Agency, other than a
8 reference:

9 (A) to the State Board of Education relating to a
10 function or activity assigned to the board by the constitution of
11 this state; or

12 (B) under Section 86.22 or 133.006(b), Education
13 Code, or another law similarly referring to a past action taken by
14 the State Board of Education;

15 (5) all money, contracts, leases, rights, property,
16 records, and bonds and other obligations of the State Board of
17 Education are transferred to the Texas Education Agency, except
18 that:

19 (A) money or a contract, lease, right, property,
20 record, or bond or other obligation relating to a function or
21 activity assigned to the board by the constitution of this state is
22 not transferred; and

23 (B) a contract under Section 12.112, Education
24 Code, is transferred to the commissioner of education;

25 (6) a court case, administrative proceeding, contract
26 negotiation, or other proceeding involving the State Board of
27 Education, other than a proceeding relating to a function or

1 activity assigned to the board by the constitution of this state, is
2 transferred without change in status to the Texas Education Agency,
3 and the Texas Education Agency assumes, without a change in status,
4 the position of the State Board of Education in a negotiation or
5 proceeding relating to an activity transferred by this Act to the
6 Texas Education Agency to which the State Board of Education is a
7 party;

8 (7) an employee of the State Board of Education, other
9 than an employee whose duties relate solely or primarily to a
10 function or activity assigned to the board by the constitution of
11 this state, becomes an employee of the Texas Education Agency; and

12 (8) any unexpended and unobligated balance of money
13 appropriated by the legislature for the State Board of Education,
14 other than money appropriated to enable the board to carry out a
15 function or activity assigned by the constitution of this state, is
16 transferred to the Texas Education Agency.

17 (b) In the period beginning on January 1, 2010, and ending
18 on April 30, 2010:

19 (1) the State Board of Education shall continue to
20 perform functions and activities under the Education Code or other
21 law as if the law had not been amended or repealed, as applicable,
22 and the former law is continued in effect for that purpose; and

23 (2) a person who is authorized or required by law to
24 take an action relating to the State Board of Education or a member
25 of the State Board of Education shall continue to take that action
26 under the law as if the law had not been amended or repealed, as
27 applicable, and the former law is continued in effect for that

1 purpose.

2 SECTION 44. Before May 1, 2010, the State Board of Education
3 may agree with the Texas Education Agency to transfer any property
4 of the State Board of Education to the Texas Education Agency to
5 implement the transfer required by Section 43 of this Act.

6 SECTION 45. Section 12.112, Education Code, as amended by
7 this Act, applies only to the required signatories of a charter for
8 an open-enrollment charter school in the case of a charter entered
9 into on or after May 1, 2010. The required signatories of a charter
10 for an open-enrollment charter school in the case of a charter
11 entered into before May 1, 2010, are governed by the law in effect
12 on the date the charter is entered into, and the former law is
13 continued in effect for that purpose.

14 SECTION 46. This Act does not affect the reference to the
15 state board of education under Section 143.112(1)(A), Local
16 Government Code, or a similar reference to the extent that the
17 reference is to the state board of education of another state.

18 SECTION 47. This Act takes effect January 1, 2010.