

BILL ANALYSIS

C.S.H.B. 1536
By: Dutton
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that Texas has a considerable number of chronically underperforming public school campuses. Concerns have been raised that there is not clear statutory authority enabling the commissioner of education to intervene directly in the management of a failing campus. Both Tennessee and Louisiana have successfully implemented statewide "turnaround districts." Using this success as an example, C.S.H.B. 1536 seeks to create a Texas version of such a district called the Opportunity School District that would have statewide jurisdiction to apply customized solutions to campuses that have been low-performing for at least two consecutive years.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTIONS 1 and 5 of this bill.

ANALYSIS

C.S.H.B. 1536 amends the Education Code to establish the Texas Opportunity School District as a school district under state law and an intermediate educational unit under federal law for the purpose of educating students attending a campus placed in the jurisdiction of the opportunity school district under statutory provisions governing public school system accountability. The bill requires the commissioner of education to select the superintendent of the opportunity school district, who must report to the commissioner under a written contract for services. The bill establishes that the opportunity school district does not have the authority to impose taxes but grants the district the authority to seek and expend federal funding and grant funding and to otherwise seek, obtain, and expend funding with the same authority as an independent school district.

C.S.H.B. 1536 authorizes the opportunity school district to provide for the supervision, management, and operation of each campus placed under the district's jurisdiction and receive, control, and expend the local, state, and federal funding attributable to that campus, with all the same power and authority as the prior system and with any other power or authority otherwise granted by law. The bill defines "prior system" as the independent school district from which a campus is transferred to the jurisdiction of the opportunity school district and authorizes only a campus of an independent school district with 24 or more elementary campuses to be so transferred.

C.S.H.B. 1536 entitles the opportunity school district to the same level of services provided to other school districts by regional education service centers and to participate in any state program available to school districts. The bill authorizes the opportunity school district to

employ such staff as the superintendent deems necessary.

C.S.H.B. 1536 provides for the applicability of certain laws, rules, and ordinances to the opportunity school district and grants the district and its employees and volunteers immunity from liability to the same extent that any other school district and district employees and volunteers are immune from liability.

C.S.H.B. 1536 establishes that an opportunity school district employee who qualifies for membership in the Teacher Retirement System of Texas is covered under the system to the same extent a qualified employee of any other school district is covered. The bill makes the opportunity school district responsible for making any contribution for each covered district employee that otherwise would be the legal responsibility of the prior system and makes the state responsible for making contributions to the same extent it would be legally responsible if the employee were that of another school district.

C.S.H.B. 1536 entitles the opportunity school district each school year to receive Foundation School Program (FSP) funding for the education of each student transferred to the district in an amount equal to the amount of funding per student in weighted average daily attendance to which the prior system would be entitled for that school year. The bill entitles the district to funds that are available to other school districts from the Texas Education Agency (TEA) or the commissioner in the form of grants or other discretionary funding and to a pro rata share of all revenue provided to the prior system from TEA or the commissioner in the form of grants or other discretionary funding. The bill entitles the opportunity school district to share in the available school fund apportionment and other privileges in the same manner as the prior system and requires the district to report its student attendance and receive funding in the same manner as any other district.

C.S.H.B. 1536 establishes that, for purposes of calculating the prior system's obligations with regard to the equalized wealth level and entitlements under the FSP, students transferred to the opportunity school district who would otherwise have attended the prior system are not included in calculating the average daily attendance of the prior system but are included for purposes of calculating the prior system's allotments with regard to state assistance with instructional facilities and existing debt payment. The bill requires the commissioner to adopt rules necessary to implement the bill's provisions concerning funding of students enrolled in the opportunity school district.

C.S.H.B. 1536 entitles the opportunity school district to use any school building and any other facility or property otherwise part of a campus placed in the district that was recognized as part of the facilities or property of the campus before the campus was placed in the district and entitles the district to access to any additional facilities that are typically available to the campus, its students, and faculty and staff before the campus was placed in the district. The bill prohibits the restriction of such use but makes the opportunity school district responsible for and obligated to provide for routine maintenance and repair necessary to ensure that the school building, facility, or property is maintained in as good an order as when the right of use was acquired by the district. The bill requires the commissioner or the commissioner's designee, if a dispute arises between the opportunity school district and the prior system regarding the maintenance and repair of facilities, to determine each entity's responsibilities concerning the maintenance and repair.

C.S.H.B. 1536 authorizes the opportunity school district to require the prior system to provide school support or student support services for a campus transferred from the prior system's jurisdiction and requires the district to reimburse the prior system in an amount equal to the actual cost of the services to the prior system. The bill requires the commissioner or the commissioner's designee, if a dispute arises between the opportunity school district and the prior system regarding the actual cost of services, to determine the cost to be reimbursed.

C.S.H.B. 1536 requires state and local funds received by the opportunity school district under the bill's provisions to be used for the operation and administration of campuses placed in the

district. The bill authorizes the district to grant a district charter to a campus that has been placed in the district and exempts such a grant from the limitation on how many campuses in a district may be granted a district charter. The bill makes a campus granted an opportunity school district charter eligible for funds received by the district under the bill's provisions and authorizes any administrative costs related to authorizing a district charter to be paid from funds appropriated to the opportunity school district, as approved by the district's superintendent.

C.S.H.B. 1536 authorizes the commissioner, on determining that a campus located in an independent school district with 24 or more elementary campuses for which an intervention is ordered is not fully implementing the campus intervention team's recommendations or targeted improvement plan or updated plan, to order the placement of the campus in the opportunity school district as an alternative to reconstitution of the campus.

C.S.H.B. 1536 removes the requirement that the commissioner order the reconstitution of a campus after the campus has been identified as unacceptable for two consecutive school years and instead requires the commissioner in such a circumstance to determine whether the district or campus has instituted meaningful change for the campus, including reconstituting campus staff or leadership and if so, authorizes the commissioner to reevaluate the campus following the conclusion of the subsequent school year. If not, the bill authorizes the district superintendent to operate the campus with the same powers and authority granted to the superintendent of the opportunity school district to operate a campus placed in the jurisdiction of the opportunity school district unless the commissioner orders the reconstitution, repurposing, or alternative management of the campus or placement of the campus in the opportunity school district.

C.S.H.B. 1536 requires the commissioner, in making a determination regarding the action to be taken, to consider recommendations from parents of students enrolled at the campus and members of the community who reside in the attendance zone of the campus. The bill removes the requirement that the commissioner order the repurposing, alternative management, or closure of a campus if the campus is considered to have an unacceptable performance rating for three consecutive school years after the campus is reconstituted and instead limits the commissioner to such actions or the placement of the campus in the opportunity school district if the campus is rated unacceptable for three consecutive school years after an action is taken to reform the campus. The bill repeals a provision authorizing the commissioner to waive the requirement to order the repurposing, alternative management, or closure of the campus if the commissioner determines that a campus is likely to be assigned an acceptable performance rating for the following school year.

C.S.H.B. 1536 authorizes the commissioner to order the placement of a campus located in an independent school district with 24 or more elementary campuses in the opportunity school district, unless the commissioner is presented with a valid petition for alternative action or the superintendent of the opportunity school district advises the commissioner that placing the campus in the district is not the best action to be taken at the campus. If the commissioner orders placement of a campus in the district, the bill authorizes the students assigned to attend the campus or the students who would have been eligible to attend the campus if the campus had remained in the prior system to choose to attend the campus under the jurisdiction of the opportunity school district or to exercise an option to attend another campus remaining under the jurisdiction of the prior system. The bill limits attendance at a campus after the campus is placed in the opportunity school district to students who were eligible for enrollment at a campus under the prior system or who would have been eligible to enroll at the campus if the campus had remained in the prior system.

C.S.H.B. 1536 establishes that a campus placed in the opportunity school district is not required to accept enrollment of a student if enrolling the student would result in exceeding the capacity of campus facilities and sets out an order of priority by which the district is required to enroll students. The bill authorizes a campus placed in the district to adopt a policy that provides for the exclusion or removal of a student enrolled at the campus who does not reside in the campus's assigned attendance zone and who engages in or has been subjected to disciplinary action for conduct that is grounds for placement in a disciplinary alternative education program or

expulsion.

C.S.H.B. 1536 requires a campus that the commissioner has decided to place in the opportunity school district to be transferred from the jurisdiction of the school district to the jurisdiction of the opportunity school district on a date determined by the commissioner after consulting with the superintendent of the opportunity school district and specifies that the school district from which the campus was transferred becomes the prior system on that date. The bill requires the transferred campus to be reorganized and reformed, as determined necessary by the superintendent of the opportunity school district, and operated by the opportunity school district. The bill grants the superintendent of the opportunity school district or the superintendent's designee sole discretion to decide which educators may be retained at a campus placed in the district and authorizes the prior system to reassign an educator not retained by the district to another position.

C.S.H.B. 1536 requires the prior system, for the purposes of any benefit or right requiring continuous service or based on years of service, to consider the period during which an employee works at the opportunity school district to be service time with the prior system if the employee returns to the prior system's employment. The bill requires the benefits and privileges of any person employed at a campus by the district who was not employed by the prior system at the time the campus was placed in the district to be determined in compliance with applicable law by the district at the time of the employment. The bill requires the district to retain jurisdiction over any campus placed in the district until the commissioner returns the campus to the prior system. The bill requires the commissioner and the opportunity school district superintendent to provide information on request concerning the new operations and performance of a campus to the prior system. The bill authorizes a campus operated by the district to change its name only on agreement of the prior system and the district.

C.S.H.B. 1536 authorizes the superintendent of the opportunity school district or the superintendent's designee to develop a transition plan for returning a campus placed in the district to the prior system at any time after the campus has achieved an acceptable or higher performance rating. The bill requires the superintendent or the superintendent's designee to develop a transition plan if the campus has been identified as acceptable or higher for three consecutive school years or the commissioner orders the superintendent to develop a transition plan. The bill requires the superintendent or the superintendent's designee to develop a transition plan for returning a campus placed in the district to the prior system during the eighth consecutive school year that the campus has operated under the jurisdiction of the district. The bill requires the superintendent or the superintendent's designee to consider the input of parents and other affected stakeholders in developing a transition plan and sets out the required elements of the transition plan.

C.S.H.B. 1536 authorizes the commissioner to order the return of a campus to the prior system in accordance with the transition plan on the recommendation of the opportunity school district superintendent. The bill requires the commissioner to order the return of a campus to the prior system not later than the campus's eighth consecutive school year under the jurisdiction of the opportunity school district, which may be done in accordance with the transition plan or in accordance with an improvement plan submitted by the prior system's board of trustees. The bill requires the commissioner and the opportunity school district superintendent to provide information on request concerning the operations and performance of a campus to the prior system. The bill authorizes the commissioner to adopt rules necessary to implement the bill's provisions regarding placement of a campus in the opportunity school district and return of the campus to the prior system.

C.S.H.B. 1536 requires TEA's comprehensive biennial report to contain a listing and description of the status of each campus under the jurisdiction of the opportunity school district and a summary of the reforms implemented and progress of the campus. The bill requires the commissioner's annual review of the performance of a district or campus subject to accreditation interventions and sanctions to form the basis of the reporting required for TEA's report. The bill's provisions apply beginning with the 2015–2016 school year.

C.S.H.B. 1536 repeals Sections 39.107(d) and (e-1), Education Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1536 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 11, Education Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. TEXAS OPPORTUNITY SCHOOL DISTRICT

Sec. 11.401. TEXAS OPPORTUNITY SCHOOL DISTRICT ESTABLISHED. (a) The Texas Opportunity School District is established as a school district under this code and an intermediate educational unit under 34 C.F.R. Section 222.50 for the purpose of educating students attending a campus placed in the jurisdiction of the opportunity school district under Chapter 39.

(b) In this subchapter, "prior system" means the independent school district from which a campus is transferred to the jurisdiction of the opportunity school district.

(c) The commissioner shall select the superintendent of the opportunity school district. The superintendent shall report to the commissioner under a written contract for services.

(d) The opportunity school district does not have authority to impose taxes but has authority to seek and expend federal funding and grant funding and to otherwise seek, obtain, and expend funding with the same authority as an independent school district.

(e) Subject to the requirements of this subchapter and Section 39.1071, the opportunity school district may provide for the supervision, management, and operation of each campus placed in the opportunity

HOUSE COMMITTEE SUBSTITUTE

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(b) In this subchapter, "prior system" means the independent school district from which a campus is transferred to the jurisdiction of the opportunity school district.

(b-1) Notwithstanding any other provision of law, only a campus of an independent school district with 24 or more elementary campuses may be transferred to the jurisdiction of the opportunity school district.

(c) The commissioner shall select the superintendent of the opportunity school district. The superintendent shall report to the commissioner under a written contract for services.

(d) The opportunity school district does not have authority to impose taxes but has authority to seek and expend federal funding and grant funding and to otherwise seek, obtain, and expend funding with the same authority as an independent school district.

(e) Subject to the requirements of this subchapter and Section 39.1071, the opportunity school district may provide for the supervision, management, and operation of each campus placed in the opportunity

school district's jurisdiction and receive, control, and expend the local, state, and federal funding attributable to that campus, with all the same power and authority as the prior system and with any other power or authority otherwise granted by law.

(f) The opportunity school district is entitled to the same level of services provided to other school districts by regional education service centers, and to participate in any state program available to school districts, including a purchasing program.

(g) The opportunity school district may employ such staff as the superintendent deems necessary.

Sec. 11.402. APPLICABILITY OF LAWS, RULES, AND ORDINANCES TO OPPORTUNITY SCHOOL DISTRICT. (a) Except as expressly provided by law, the opportunity school district is subject to federal and state laws and rules and municipal zoning ordinances governing school districts.

(b) Except as expressly provided by other law, the opportunity school district is subject to a provision of this title to the extent and in the manner that the provision applies to an open-enrollment charter school under Subchapter D, Chapter 12.

(c) The performance of a campus under the jurisdiction of the opportunity school district may not be used for purposes of determining the prior system's performance rating under Section 39.054.

(d) Any requirement of Chapter 551 or 552, Government Code, or other law concerning open meetings requirements or public information requirements applies to the opportunity school district and the superintendent and students of the opportunity school district to the same extent those requirements apply to any other school district and the board of trustees and students of the other school district.

(e) The opportunity school district is not a special-purpose school district described by Subchapter H.

Sec. 11.403. IMMUNITY.

Sec. 11.404. MEMBERSHIP IN TEACHER RETIREMENT SYSTEM OF TEXAS BY OPPORTUNITY SCHOOL DISTRICT EMPLOYEES.

school district's jurisdiction and receive, control, and expend the local, state, and federal funding attributable to that campus, with all the same power and authority as the prior system and with any other power or authority otherwise granted by law.

(f) The opportunity school district is entitled to the same level of services provided to other school districts by regional education service centers, and to participate in any state program available to school districts, including a purchasing program.

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(b) Except as expressly provided by other law, the opportunity school district is subject to a provision of this title to the extent and in the manner that the provision applies to an open-enrollment charter school under Subchapter D, Chapter 12.

(c) The commissioner shall consider the performance of a campus under the jurisdiction of the opportunity school district for purposes of determining the prior system's performance rating under Section 39.054.

(d) Any requirement of Chapter 551 or 552, Government Code, or other law concerning open meetings requirements or public information requirements applies to the opportunity school district and the superintendent and students of the opportunity school district to the same extent those requirements apply to any other school district and the board of trustees and students of the other school district.

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Sec. 11.405. FUNDING OF STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT.

Sec. 11.406. FACILITIES SUPPORT FOR STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT.

Sec. 11.407. OTHER SUPPORT FOR STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT.

Sec. 11.408. EXPENDITURES FOR SUPPORT OF STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT.

Sec. 11.409. OPPORTUNITY DISTRICT CHARTER.

SECTION 2. Section 39.106(f), Education Code, is amended to read as follows:

(f) Notwithstanding any other provision of this subchapter, if the commissioner determines that a campus for which an intervention is ordered under Subsection (a) is not fully implementing the campus intervention team's recommendations or targeted improvement plan or updated plan, the commissioner may order the reconstitution of the campus as provided by Section 39.107 or the placement of the campus in the opportunity school district established by Subchapter I, Chapter 11.

SECTION 3. The heading to Section 39.107, Education Code, is amended.

SECTION 4. Section 39.107, Education Code, is amended.

SECTION 5. Subchapter E, Chapter 39, Education Code, is amended by adding Sections 39.1071 and 39.1072 to read as follows:

Sec. 39.1071. PLACEMENT OF CAMPUS IN OPPORTUNITY SCHOOL DISTRICT.

(a) In this section, "prior system" has the meaning assigned by Section 11.401(b).

(b) As provided by Section 39.107, the commissioner may order the placement of a campus of an independent school district in the opportunity school district established under Subchapter I, Chapter 11, except that the commissioner may not place a campus in the opportunity school district if:

Sec. 11.405. FUNDING OF STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT.

Sec. 11.406. FACILITIES SUPPORT FOR STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT.

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SECTION 3. Same as introduced version.

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SECTION 5. Subchapter E, Chapter 39, Education Code, is amended by adding Sections 39.1071 and 39.1072 to read as follows:

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(a) In this section, "prior system" has the meaning assigned by Section 11.401(b).

(b) As provided by Section 39.107, the commissioner, ~~subject to Section 11.401(b-1),~~ may order the placement of a campus of an independent school district in the opportunity school district established under Subchapter I, Chapter 11, except that the commissioner may not place a campus in the opportunity school district if:

(1) the commissioner is presented with a valid petition for alternative action under Section 39.107(e-2); or

(2) the superintendent of the opportunity school district advises the commissioner that placing the campus in the opportunity school district is not the best action to be taken at the campus.

(c) If the commissioner orders placement of a campus in the opportunity school district, the students assigned to attend the campus or the students who would have been eligible to attend the campus if the campus had remained in the prior system may choose to attend the campus under the jurisdiction of the opportunity school district or may exercise an option, made available by the prior system, to attend another campus remaining under the jurisdiction of the prior system.

(d) Only students who were eligible for enrollment at a campus under the prior system or who would have been eligible to enroll at the campus if the campus had remained in the prior system may attend that campus after the campus is placed in the opportunity school district.

(e) A campus placed in the opportunity school district is not required to accept enrollment of a student if enrolling the student would result in exceeding the capacity of campus facilities. The opportunity school district shall enroll students in the following order of priority:

(1) those students who would be eligible to attend the campus if the campus had remained in the prior system;

(2) if openings for enrollment remain after satisfying Subdivision (1), those students who would be eligible to attend a different campus in the prior system from which the campus was transferred; and

(3) if openings for enrollment remain after satisfying Subdivisions (1) and (2), those students who would be eligible to attend any other campus or school district by lottery.

(f) A campus placed in the opportunity school district may adopt a policy that provides for the exclusion or removal of a student enrolled at the campus:

(1) who does not reside in the assigned attendance zone of the campus; and

(2) who engages in or has been subjected to disciplinary action for conduct described by Section 37.006 or 37.007.

(g) Effective on a date determined by the commissioner after consulting with the

(1) the commissioner is presented with a valid petition for alternative action under Section 39.107(e-2); or

(2) the superintendent of the opportunity school district advises the commissioner that placing the campus in the opportunity school district is not the best action to be taken at the campus.

(c) If the commissioner orders placement of a campus in the opportunity school district, the students assigned to attend the campus or the students who would have been eligible to attend the campus if the campus had remained in the prior system may choose to attend the campus under the jurisdiction of the opportunity school district or may exercise an option, made available by the prior system, to attend another campus remaining under the jurisdiction of the prior system.

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(1) who does not reside in the assigned attendance zone of the campus; and

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(g) Effective on a date determined by the commissioner after consulting with the

superintendent of the opportunity school district, a campus that the commissioner has decided to place in the opportunity school district shall be transferred from the jurisdiction of the school district to the jurisdiction of the opportunity school district. On that date, the school district from which the campus was transferred becomes the prior system.

(h) The campus shall be:

(1) reorganized and reformed, as determined necessary by the superintendent of the opportunity school district; and

(2) operated by the opportunity school district.

(i) The superintendent of the opportunity school district or the superintendent's designee has sole discretion to decide which educators may be retained at a campus placed in the opportunity school district. If the opportunity school district does not retain an educator, that educator may be assigned to another position by the prior system.

(j) For the purposes of any benefit or right requiring continuous service or based on years of service, the prior system shall consider the period during which an employee works at the opportunity school district to be service time with the prior system if the employee returns to the prior system's employment.

(k) The benefits and privileges of any person employed at a campus by the opportunity school district who was not employed by the prior system at the time the campus was placed in the opportunity school district shall be determined in compliance with applicable law by the opportunity school district at the time of the employment.

(l) The opportunity school district shall retain jurisdiction over any campus placed in the opportunity school district until the commissioner returns the campus to the prior system in accordance with Section 39.1072.

(m) On request, the commissioner and the superintendent of the opportunity school district shall provide information concerning the new operations and performance of a campus to the prior system.

(n) A campus operated by the opportunity school district may change its name only on agreement of the prior system and the opportunity school district.

(o) The commissioner may adopt rules

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(i) The superintendent of the opportunity school district or the superintendent's designee has sole discretion to decide which educators may be retained at a campus placed in the opportunity school district. If the opportunity school district does not retain an educator, that educator may be assigned to another position by the prior system.

(j) For the purposes of any benefit or right requiring continuous service or based on years of service, the prior system shall consider the period during which an employee works at the opportunity school district to be service time with the prior system if the employee returns to the prior system's employment.

(k) The benefits and privileges of any person employed at a campus by the opportunity school district who was not employed by the prior system at the time the campus was placed in the opportunity school district shall be determined in compliance with applicable law by the opportunity school district at the time of the employment.

(l) The opportunity school district shall retain jurisdiction over any campus placed in the opportunity school district until the commissioner returns the campus to the prior system in accordance with Section 39.1072.

(m) On request, the commissioner and the superintendent of the opportunity school district shall provide information concerning the new operations and performance of a campus to the prior system.

(n) A campus operated by the opportunity school district may change its name only on agreement of the prior system and the opportunity school district.

(o) The commissioner may adopt rules

necessary to implement this section.

Sec. 39.1072. RETURN OF CAMPUS TO PRIOR SYSTEM.

SECTION 6. Section 39.108, Education Code, is amended.

SECTION 7. Section 39.332(b), Education Code, is amended.

SECTION 8. Sections 39.107(d) and (e-1), Education Code, are repealed.

SECTION 9. This Act applies beginning with the 2015-2016 school year.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

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Sec. 39.1072. RETURN OF CAMPUS TO PRIOR SYSTEM.

SECTION 6. Same as introduced version.

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