

## **BILL ANALYSIS**

Senate Research Center

S.B. 1365  
By: Bettencourt  
Education  
6/8/2021  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2015, the 84th Legislature passed H.B. 1842 to establish a turnaround model for low-performing public schools while providing school districts flexibility to address issues leading to low performance. Specifically, H.B. 1842 created a five-year timeline, with increasing interventions for school districts with low-performing campuses. Years three and five are pivotal points in the system:

- Year three of a school receiving an F rating requires the district to implement a commissioner-approved campus turnaround plan, and enables the commissioner to implement alternative management, appoint a board of managers, or close the school if the school district fails to submit a campus turnaround plan that the commissioner determines will result in a C rating or better within two years.
- Year five of a school receiving an F rating requires the commissioner to install a board of managers to correct the campus problems or to close the campus.

Since implementation, the commissioner has been unable to take action regarding the failed academic and financial performance of several school districts as a result of lawsuits. In 2020, the Third Court of Appeals issued an opinion that, in effect, nullified many of the provisions within H.B. 1842.

As a result, S.B. 1365 has been filed to address the specific provisions within the court's ruling. This legislation clarifies statute to ensure the continued operations of the accountability system and the interventions process.

Specifically S.B. 1365 clarifies the following provisions:

- Addresses that a “not rated” status pauses, but does not reset, interventions;
- Conservators have authority over districts to effectuate interventions;
- Closure of board of managers occurs after five years of failed performance of a campus;
- Boards of managers supersede the authority of boards of trustees;
- Commissioner delegation and informal review authority and requirements;
- "Special accreditation investigations" are designated as "special investigations" since they address more than accreditation issues;
- Issues regarding accreditation;
- Investigation interventions are independent of the district/campus meeting the accountability interventions requirements;
- Details investigatory authority for when a district is suspected of fraud or violating statute;
- Prohibits spending public funds to challenge in court a final and unappealable decision; and
- Ensures interventions occur in districts with campuses that failed to achieve acceptable status in a 10-year period.

(Original Author's / Sponsor's Statement of Intent)

S.B. 1365 amends current law relating to public school organization, accountability, and fiscal management.

## **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2.08 (Section 39.0545, Education Code) and SECTION 2.14 (Section 39A.065, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is modified in SECTION 2.06 (Section 39.054, Education Code) and SECTION 2.09 (Section 39.151, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is rescinded in SECTION 2.24 (Section 39A.0545, Education Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

### ARTICLE 1. STATE AND LOCAL ORGANIZATION AND GOVERNANCE

SECTION 1.01. Amends Section 7.055, Education Code, by adding Subsection (d), as follows:

(d) Provides that the commissioner of education's (commissioner) power to delegate ministerial and executive functions under Subsection (b)(5) (relating to the authority of the commissioner to delegate ministerial and executive functions to certain persons) is a valid delegation of authority, notwithstanding any other law.

SECTION 1.02. Amends Section 11.151(b), Education Code, as follows:

(b) Creates exceptions as provided by Sections 39A.201 (General Powers and Duties of Board of Managers) and 39A.202 (Board of Managers of School District) to the exclusive power and duty of school district trustees as a body corporate to govern and oversee the management of the public schools of the district. Makes a nonsubstantive change.

SECTION 1.03. Amends Section 11.1511(a), Education Code, to make a conforming change.

### ARTICLE 2. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY

SECTION 2.01. Amends Chapter 5, Education Code, by adding Section 5.003, as follows:

Sec. 5.003. APPEAL. Authorizes an interlocutory or intermediate order, decision, report, or determination made or reached before the final order, decision, or determination, if an order, decision, or determination is described as final in Chapter 7 (State Organization), 11 (School Districts), 12 (Charters), 39 (Public School System Accountability), or 39A (Accountability Interventions and Sanctions), to be appealed only as specifically authorized by this code or a rule adopted under this code.

SECTION 2.02. Amends Sections 12.1141(b) and (d), Education Code, as follows:

(b) Prohibits the commissioner from denying expedited renewal of a charter for an open-enrollment charter school if certain criteria are met, including if no campus operating under the charter has been assigned an unacceptable performance rating, rather than the lowest performance rating, under Subchapter C (Accreditation), Chapter 39 (Public School System Accountability), for the three preceding school years or such a campus has been closed.

(d) Makes conforming changes to this subsection.

SECTION 2.03. Amends Section 29.202(a), Education Code, as follows:

(a) Deletes existing text providing that a student is eligible to receive a public education grant or to attend another public school in the district in which the student resides under Subchapter G (Public Education Grant Program) if the student is assigned to attend a

public school campus assigned an unacceptable performance rating that is made publicly available under Section 39.054 (Methods and Standards for Evaluating Performance) for the student achievement domain under Section 39.053(c)(1) (relating to requiring school districts and campuses to be evaluated based on certain indicators of student achievement) and the school progress domain under Section 39.053(c)(2) (relating to requiring school districts and campuses to be evaluated based on certain indicators in the school progress domain).

SECTION 2.04. Transfers Sections 39.057 and 39.058, Education Code, to Subchapter A, Chapter 39, Education Code, redesignates them as Sections 39.003 and 39.004, Education Code, and amends them, as follows:

Sec. 39.003. New heading: SPECIAL INVESTIGATIONS. (a) Authorizes the commissioner to authorize special investigations, rather than special accreditation investigations, to be conducted under certain circumstances.

(b) Prohibits the Texas Education Agency (TEA), if TEA's findings in an investigation under Subsection (a)(6) (relating to authorizing the commissioner to authorize special investigations to be conducted in response to certain allegations involving a conflict between members of the board of trustees or between the board and the district administration) indicate that the board of trustees has observed a lawfully adopted policy that does not otherwise violate a law or rule, from substituting its judgment for that of the board.

(c) and (d) Makes conforming changes to these subsections.

(e) Authorizes the commissioner, at any time before issuing a report with TEA's final findings, to defer taking an action under Subsection (d) (relating to authorizing the commissioner to take certain actions based on the results of a special investigation) until:

(1) a person who is a third party, selected by the commissioner, has reviewed programs or other subjects of an investigation under this section and submitted a report identifying problems and proposing solutions;

(2) a district completes a corrective action plan developed by the commissioner; or

(3) the completion of actions under both Subdivisions (1) and (2).

(f) Authorizes the commissioner, based on the results of an action taken under Subsection (e), to decline to take the deferred action under Subsection (d).

Deletes existing text authorizing the commissioner, regardless of whether the commissioner lowers the school district's accreditation status or a district's or campus's performance rating under Subsection (d), to take action under Section 39A.002 (Authorized Commissioner Actions) or 39A.051 (Actions Based on Campus Performance) if the commissioner determines that the action is necessary to improve any area of a district's or campus's performance, including the district's financial accounting practices.

Sec. 39.004. New heading: CONDUCT OF SPECIAL INVESTIGATIONS. (a) Makes conforming changes to this subsection.

(a-1) Provides that, during the pendency of a special investigation under this section, TEA is not required to disclose the identity of any witness.

(b) Deletes existing text requiring TEA, before issuing a report with its final findings, to provide a person or entity TEA finds has violated a law, rule, or

policy an opportunity for an informal review by the commissioner or a designated hearing examiner. Makes a conforming change.

(c) Provides that TEA, in presenting TEA's preliminary findings to a school district under Subsection (b) (relating to requiring TEA, after completing a special investigation, to present preliminary findings to any person or entity TEA finds has violated a law, rule, or policy):

(1) is required to provide to the district a written report of TEA's preliminary findings of the investigation;

(2) is required to provide to the district any evidence relied on by TEA in making the preliminary findings;

(3) is required to disclose to the district the identity of any witness whose statements TEA relied on in making the preliminary findings; and

(4) is prohibited from including recommended sanctions or interventions.

(d) Provides that a written report of preliminary findings under Subsection (c) and all associated materials produced by TEA in support of the report are excepted from public disclosure as audit working papers of TEA under Section 552.116 (Exception: Audit Working Papers), Government Code. Authorizes a school district to publicly release a report of preliminary findings only if the release is approved by an affirmative vote of the board of trustees of the district.

(e) Provides that, unless otherwise provided by law, all evidence collected by TEA in connection with a special investigation, including witness statements and videos of TEA interviews, are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, except that evidence described by this section is authorized to be disclosed to a person with a legitimate interest in the investigation or in connection with an administrative or other legal proceeding brought under Title 2 (Public Education).

(f) Authorizes the board of trustees of a school district, not later than 30 days after the date on which the board of trustees of the school district receives the written report of the preliminary findings under Subsection (c), to accept TEA's findings or respond in writing to TEA.

(g) Requires TEA to consider any response submitted by the board of trustees of the school district under Subsection (f) before providing the board of trustees of a school district a final report in writing that includes proposed sanctions or interventions.

(h) Requires the commissioner or the commissioner's designee, before the commissioner determines to order a sanction or intervention based on a final report, other than a sanction or intervention described by Section 39.005, to provide an informal review. Provides that an informal review provided under this section is not a contested case for purposes of Chapter 2001 (Administrative Procedure), Government Code.

(i) Authorizes the commissioner or the commissioner's designee, in conducting a special investigation under Section 39.003, to subpoena a current or former school district employee, agent, or official to compel the employee, agent, or official to attend a deposition or produce documents reasonably necessary for the investigation.

(j) Authorizes the commissioner, acting through the attorney general, if a person fails to comply with a subpoena issued under Subsection (i), to file suit to enforce the subpoena in a district court in this state. Requires the court, on a finding that

good cause exists for issuing the subpoena, to order the person to comply with the subpoena and authorizes the court to punish a person who fails to obey the court order.

(k) Prohibits a court from enjoining a special investigation conducted under this section prior to the conclusion of the special investigation.

(l) Requires a school district to exhaust the administrative remedies provided under Subchapter C before appealing the findings or final recommendations of a special investigation conducted under this section to a court.

SECTION 2.05. Amends Subchapter A, Chapter 39, Education Code, by adding Sections 39.005, 39.006, and 39.007, as follows:

Sec. 39.005. HEARING FOLLOWING INVESTIGATION. (a) Provides that this section applies to a school district that is the subject of a special investigation conducted under Section 39.003 that resulted in a final report in which TEA recommends the appointment of a board of managers, alternative management of a campus, or closure of the district or a district campus.

(b) Authorizes a board of trustees of a school district to which this section applies, except as provided by Subsection (c), not later than 15 days after the date on which the board of trustees of the school district receives the final report of a special investigation under Section 39.004(g), to request a hearing if the board of trustees disagrees with the final report or a sanction or intervention recommended by TEA in the report.

(c) Authorizes a school district and TEA to agree in writing to extend the time period for requesting a hearing under Subsection (b) by not more than an additional 30 days.

(d) Requires that a hearing under Subsection (b), if a board of trustees of a school district requests the hearing, be conducted by the State Office of Administrative Hearings unless the district and TEA agree in writing to the appointment of another qualified person to conduct the hearing.

(e) Provides that, except as otherwise provided by Subchapter A (General Provisions), a hearing conducted under this section is a contested case under Chapter 2001, Government Code.

(f) Requires that a hearing conducted under this section be held at the administrative offices of the school district that requested the hearing or at another location within the geographic boundaries of the district agreed to by the district and TEA, unless the district and TEA agree in writing to a different location.

(g) Authorizes the hearing examiner or the person conducting the hearing, to protect the privacy of a witness who is a child, to close the hearing to receive the testimony of the witness or to order that the testimony or a statement of the witness be presented using the procedures prescribed by Article 38.071 (Testimony of Child Who is Victim of Offense), Code of Criminal Procedure.

(h) Requires the hearing examiner or the person conducting the hearing, not later than 90 days after the date on which the school district requests a hearing under Subsection (b), to issue and submit to the commissioner findings of fact and conclusions of law. Prohibits the hearing examiner or the person conducting the hearing from issuing a recommendation for relief.

(i) Prohibits a hearing conducted under this section from being held on a Saturday, Sunday, or state or federal holiday, unless agreed to by the school district that requested the hearing and TEA.

Sec. 39.006. COMMISSIONER DETERMINATION. (a) Requires the commissioner, after a hearing is conducted under Section 39.005, to provide an opportunity for TEA and the school district to present oral argument to the commissioner regarding the disagreement that formed the basis of the hearing. Requires the commissioner to provide TEA and the district with equal time for oral argument.

(b) Requires the commissioner, after hearing any oral argument presented under Subsection (a), to issue a written decision to the school district that contains findings of fact, conclusions of law, and sanctions, interventions, or other actions authorized by law.

(c) Requires the commissioner, in determining the written decision under Subsection (b), to consider the record of the hearing conducted under Section 39.005, the findings of fact and conclusions of law issued by the hearing examiner or the person conducting the hearing under Section 39.005(h), and the oral arguments presented under Subsection (a).

(d) Authorizes the commissioner to accept, reject, or amend the conclusions of law issued by the hearing examiner or the person who conducted the hearing under Section 39.005 regarding the interpretation of a provision of this code.

(e) Prohibits the commissioner from rejecting or amending a finding of fact issued by the hearing examiner or the person who conducted the hearing under Section 39.005, unless the commissioner, after reviewing the record, determines that a finding of fact is not supported by substantial, admissible evidence.

(f) Requires the commissioner to provide in writing the legal basis and reason for any amendment or rejection of a finding of fact or conclusion of law made by the hearing examiner or the person who conducted the hearing under Section 39.005.

Sec. 39.007. JUDICIAL APPEAL. (a) Authorizes a school district, notwithstanding Chapter 2001, Government Code, to only appeal a decision made by the commissioner under Section 39.006 in accordance with this section.

(b) Authorizes a school district to appeal a decision made by the commissioner under Section 39.006 to a district court with jurisdiction in the county in which the school district's central administrative offices are located or to a district court in Travis County, if agreed to by the school district and the commissioner.

(c) Requires a school district to file an appeal under this section not later than 30 days after the date on which the district received the written decision of the commissioner under Section 39.006(b).

(d) Provides that the filing of an appeal under this section does not affect or stay the enforcement of the commissioner's written decision issued under Section 39.006(b).

(e) Requires a court hearing an appeal under this section to review the decision issued by the commissioner under Section 39.006(b) under the substantial evidence rule as provided by Subchapter G (Contested Cases: Judicial Review), Chapter 2001, Government Code, after examining the evidentiary record of the hearing conducted under Section 39.005, the findings of fact issued by the hearing examiner or the person that conducted the hearing under Section 39.005, and any amendment or rejection of a finding of fact made by the commissioner under Section 39.006.

(f) Prohibits a court hearing an appeal under this section from taking additional evidence.

(g) Authorizes a court hearing an appeal under this section to review any amendment to or rejection of a finding of fact made by the commissioner. Requires the court, if the court determines that the amendment or rejection was not supported by substantial evidence, to reject the commissioner's amended finding of fact and consider instead the original finding issued by the hearing examiner or the person who conducted the hearing under Section 39.005.

(h) Prohibits the court, notwithstanding Section 2001.174 (Review Under Substantial Evidence Rule or Undefined Scope of Review), Government Code, from reversing or remanding a decision issued by the commissioner under Section 39.006(b) based on a procedural error or irregularity made by the commissioner, a TEA investigator, or the hearing examiner or the person who conducted the hearing under Section 39.005, unless the court determines that the procedural error or irregularity is likely to have caused an erroneous decision by the commissioner.

SECTION 2.06. Amends Section 39.054, Education Code, by amending Subsections (a), (a-3), and (b-1) and adding Subsections (a-4) and (a-5), as follows:

(a) Creates an exception as provided by Subsection (a-4) to the requirement that the commissioner adopt rules to evaluate school district and campus performance and assign each district and campus an overall performance rating of A, B, C, D, or F. Deletes existing text providing that a reference in law to an acceptable rating or acceptable performance includes an overall or domain performance rating of A, B, C, or D or performance that is exemplary, recognized, or acceptable performance or performance that needs improvement. Makes a nonsubstantive change.

(a-3) Requires that, not later than August 15 of each year, certain information, rather than the performance ratings of each district and campus, be made publicly available as provided by rules adopted under Section 39.054.

(a-4) Authorizes the commissioner, notwithstanding any other law, to assign a school district or campus an overall performance rating of "Not Rated" if the commissioner determines that the assignment of a performance rating of A, B, C, D, or F would be inappropriate because:

(1) the district or campus is located in an area that is subject to a declaration of a state of disaster under Chapter 418 (Emergency Management), Government Code, and due to the disaster, performance indicators for the district or campus are difficult to measure or evaluate and would not accurately reflect quality of learning and achievement for the district or campus;

(2) the district or campus has experienced breaches or other failures in data integrity to the extent that accurate analysis of data regarding performance indicators is not possible;

(3) the number of students enrolled in the district or campus is insufficient to accurately evaluate the performance of the district or campus; or

(4) for other reasons outside the control of the district or campus, the performance indicators would not accurately reflect quality of learning and achievement for the district or campus.

(a-5) Provides that, notwithstanding any other law, an overall performance rating of "Not Rated" is not included in calculating consecutive school years of unacceptable performance ratings and is not considered a break in consecutive school years of unacceptable performance ratings for purposes of any provision of this code.

(b-1) Makes conforming changes to this subsection.

SECTION 2.07. Amends Subchapter C, Chapter 39, Education Code, by adding Section 39.0543, as follows:

Sec. 39.0543. PERFORMANCE RATING REQUIRING INTERVENTION OR OTHER ACTION. (a) Provides that a reference in law to an acceptable performance rating or acceptable performance includes an overall or domain performance rating of A, B, or C or performance that is exemplary, recognized, or acceptable. Provides that a reference in law to an unacceptable performance rating or unacceptable performance includes an overall or domain performance rating of F. Requires that, for the purposes of public reporting requirements, an overall or domain performance rating of D be referred to as performance that needs improvement.

(b) Provides that a reference in law to an acceptable performance rating or acceptable performance for a school district, open-enrollment charter school, district campus, or charter school campus includes an overall performance rating of D if, since previously receiving an overall performance rating of C or higher, the district, charter school, district campus, or charter school campus has not previously received more than one overall performance rating of D or has not received an overall performance rating of F.

(b-1) Provides that, for the purposes of this section, an overall performance rating issued in a previous school year for a school district, open-enrollment charter school, district campus, or charter school campus of met standard, academically acceptable, recognized, exemplary, A, B, or C is considered to be a performance rating of C or higher, and performance that needs improvement, academically unacceptable, or F is considered to be a rating of F.

(b-2) Prohibits a performance rating of D assigned to a school district, open-enrollment charter school, district campus, or charter school campus prior to the 2018-2019 school year from being considered for purposes of determining whether a reference in law to an acceptable performance rating or acceptable performance includes an overall performance rating of D under Subsection (b).

(b-3) Provides that Subsections (b-1) and (b-2) and this subsection expire September 1, 2027.

(c) Provides that a reference in law to an unacceptable performance rating or unacceptable performance includes a performance rating of D if the rating does not satisfy Subsection (b).

(d) Requires a school district, open-enrollment charter school, district campus, or charter school campus that has never received an overall performance rating, for purposes of Subsection (b), to be considered to have previously received an overall performance rating of C or higher.

SECTION 2.08. Amends Subchapter C, Chapter 39, Education Code, by adding Sections 39.0545 and 39.0546, as follows:

Sec. 39.0545. ALTERNATIVE METHODS AND STANDARDS FOR EVALUATING PERFORMANCE FOR 2020-2021 SCHOOL YEAR. (a) Provides that this section applies to a campus that meets the participation requirements for all students in all subject areas for the annual measurement of achievement under Section 1111, Every Student Succeeds Act (20 U.S.C. Section 6311(c)(4)(E)), and to which the most recent performance rating assigned, other than a "Not Rated" rating, is a D, F, or performance that needs improvement.

(b) Requires the commissioner, notwithstanding any other law, to adopt rules to develop and implement alternative methods and standards for evaluating the performance for the 2020-2021 school year of a campus to which this section applies. Requires that the rules adopted under this section evaluate a campus



under the domains of indicators of achievement listed in Sections 39.053(c)(1) and (2).

(c) Requires the commissioner to review a campus to which this section applies under the alternative methods and standards adopted under Subsection (b) on the request of the school district in which the campus is located made by the deadline established by commissioner rule.

(d) Provides that an acceptable performance rating assigned under the alternative methods and standards adopted by the commissioner under Subsection (b) is considered a break in consecutive school years of unacceptable performance ratings under this code.

(e) Requires the commissioner, if the commissioner determines that the campus would not be assigned an acceptable performance rating, to instead assign the campus a rating of "Not Rated."

(f) Provides that this section does not apply to an intervention ordered on the basis of consecutive school years of unacceptable performance ratings accrued before the effective date of this section.

(g) Provides that this section expires September 1, 2027.

Sec. 39.0546. COVID-19 RECOVERY ACCOUNTABILITY FOR 2021-2022 SCHOOL YEAR. (a) Requires the commissioner, notwithstanding any other law, to assign to a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under Section 39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher.

(b) Provides that regardless of the rating assigned under this section, if the commissioner would have otherwise assigned a campus an unacceptable performance rating, the campus is considered to be a campus assigned an unacceptable performance rating for purposes of determining a student's eligibility for a public education grant under Section 29.202 (Eligibility).

(c) Requires the commissioner, notwithstanding any other law, to take an action described by Section 39A.111(1) or (2) if a campus is not assigned an overall performance rating of C or higher for the 2021-2022 school year and has been assigned an unacceptable performance rating for five or more school years prior to the 2021-2022 school year.

(d) Provides that this section expires September 1, 2028.

SECTION 2.09. Amends Sections 39.151(a), (b), and (e), Education Code, as follows:

(a) Requires the commissioner by rule to provide a process for a school district or open-enrollment charter school to challenge a TEA decision made under Chapter 39 relating to an academic or financial accountability rating that affects the district or school, including a determination of consecutive school years of unacceptable performance ratings.

(b) and (e) Makes conforming changes to these subsections.

SECTION 2.10. Amends Section 39A.003, Education Code, by adding Subsection (d), as follows:

(d) Authorizes a conservator or management team to exercise the powers and duties defined by the commissioner under Subsection (a) (relating to requiring the commissioner to clearly define the powers and duties of a conservator or management team appointed to oversee the operations of a school district) or described by Subsection

(c) (relating to requiring a conservator or management team, if directed by the commissioner, to prepare a plan for the implementation of the appointment of a board of managers or the revocation of accreditation) regardless of whether the conservator or management team was appointed to oversee the operations of a school district in its entirety or the operations of a certain campus within the district.

SECTION 2.11. Amends Section 39A.004, Education Code, as follows:

Sec. 39A.004. APPOINTMENT OF BOARD OF MANAGERS. Authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under Section 39A.001(1) (relating to requiring the commissioner to take certain actions to the extent the commissioner determines necessary if a school district does not satisfy certain criteria), rather than 39A.001, and certain criteria are met, or under Section 39A.001(2) (relating to requiring the commissioner to take certain actions to the extent the commissioner determines necessary if the commissioner considers the action to be appropriate on the basis of a special investigation under Section 39.003). Makes nonsubstantive changes.

SECTION 2.12. Amends Sections 39A.006(a) and (b), Education Code, as follows:

(a) Provides that Section 39A.006 applies to a conservator or management team appointed under any provision of Title 2, regardless of the scope or any changes to the scope of the conservator's or team's oversight. Makes nonsubstantive changes.

(b) Authorizes the commissioner, if for two consecutive school years, including the current school year, a school district has had a conservator or management team assigned to the district or a district campus for any reason under this title, to appoint a board of managers to exercise the powers and duties of the board of trustees of the district.

SECTION 2.13. Amends Section 39A.061(b), Education Code, as follows:

(b) Authorizes the commissioner to authorize certain plans, including a local improvement plan, to supersede the provisions of and satisfy the requirements of developing, reviewing, and revising a campus improvement plan under Subchapter F (District-Level and Site-Based Decision-Making), Chapter 11 (School Districts). Makes nonsubstantive changes.

SECTION 2.14. Amends Subchapter B, Chapter 39A, Education Code, by adding Section 39A.065, as follows:

Sec. 39A.065. LOCAL IMPROVEMENT PLAN. (a) Requires a school district, open-enrollment charter school, district campus, or charter school campus that is assigned a rating of D that qualifies under Section 39.0543(b) to develop and implement a local improvement plan.

(b) Requires that a local improvement plan be presented to the board of trustees of the school district or governing board of the open-enrollment charter school.

(c) Requires the commissioner to adopt rules to establish requirements for a local improvement plan components and training. Prohibits the commissioner from requiring a school district or open-enrollment charter school to submit the local improvement plan to TEA.

SECTION 2.15. Amends Section 39A.102, Education Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes the commissioner, subject to Subsection (b-1), to appoint a monitor, conservator, management team, or board of managers to the school district to ensure and

oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan. Makes a nonsubstantive change.

(b-1) Requires the commissioner to appoint a conservator to a school district under Subsection (b) unless and until each campus in the district for which a campus turnaround plan has been ordered under Section 39A.101 (Order for Preparation of Campus Turnaround Plan) receives an acceptable performance rating for the school year or the commissioner determines a conservator is not necessary.

SECTION 2.16. Amends the heading to Section 39A.110, Education Code, to read as follows:

Sec. 39A.110. MODIFICATION OF CAMPUS TURNAROUND PLAN.

SECTION 2.17. Amends Section 39A.110, Education Code, by adding Subsection (c), as follows:

(c) Authorizes the commissioner to authorize modification of an approved campus turnaround plan if the commissioner determines that due to a change in circumstances occurring after the plan's approval under Section 39A.107 (Commissioner Approval of Campus Turnaround Plan), a modification of the plan is necessary to achieve the plan's objectives.

SECTION 2.18. Amends Section 39A.111, Education Code, as follows:

Sec. 39A.111. CONTINUED UNACCEPTABLE PERFORMANCE RATING. Requires the commissioner, if a campus is considered to have an unacceptable performance rating for five consecutive school years, rather than for three consecutive school years after the campus is ordered to submit a campus turnaround plan under Section 39A.101, subject to Section 39A.112 (Parent Petition for Action), to order:

- (1) appointment of a board of managers to govern the school district as provided by Section 39A.202; or
- (2) closure of the campus.

SECTION 2.19. Amends Subchapter C, Chapter 39A, Education Code, by adding Sections 39A.117 and 39A.118, as follows:

Sec. 39A.117. INTERVENTION FOR CERTAIN DISTRICTS OR CAMPUSES. (a) Provides that, for purposes of this section:

- (1) an acceptable performance rating includes a rating of met standard, academically acceptable, recognized, exemplary, A, B, or C, or a rating of D that meets the requirements of Section 39.0543(b);
- (2) an unacceptable performance rating includes a rating of performance that needs improvement, academically unacceptable, or F, or a rating of D that meets the requirements of Section 39.0543(c); and
- (3) a rating of "Not Rated" is not considered an acceptable or unacceptable performance rating and is prohibited from being considered a break in consecutive years of unacceptable performance.

(b) Requires the commissioner, as soon as practicable after the effective date of S.B. 1365, 87th Legislature, Regular Session, 2021, or similar legislation, to:

- (1) determine the number of school years of unacceptable performance ratings occurring after the 2012-2013 school year for each school district, open-enrollment charter school, district campus, or charter school campus by determining the number of unacceptable performance ratings assigned

to each district, charter school, district campus, or charter school campus since the most recent acceptable performance rating was assigned to the district, charter school, district campus, or charter school campus; and

(2) use the number of school years of unacceptable performance ratings as the base number of consecutive years of unacceptable performance for which the performance rating in the 2021-2022 school year will be added.

(c) Provides that exemptions from interventions authorized under certain sections apply to an intervention ordered under this section and requires the commissioner to make necessary modifications to an intervention ordered under this section in accordance with those provisions of law.

(d) Prohibits this section from being construed to provide a school district or open-enrollment charter school additional remedies or appellate or other review for previous interventions, sanctions, or performance ratings ordered or assigned or to prohibit the commissioner from taking any action or ordering any intervention or sanction otherwise authorized by law.

(e) Provides that, to the extent of a conflict with any other transition provision affecting this section, this transition provision prevails.

(f) Provides that this section expires September 1, 2027.

Sec. 39A.118. INTERVENTION IF ASSIGNED CERTAIN PERFORMANCE NEEDS IMPROVEMENT RATING. (a) Prohibits TEA, until another performance rating is issued, from implementing the intervention or sanctions listed under Subsection (b) for a school district, open-enrollment charter school, district campus, or charter school campus, if the performance rating initiating the action under Subsection (b) is based on the first or second overall performance rating of D, since previously receiving a rating of C or higher.

(a-1) Prohibits a performance rating of D assigned prior to the 2018-2019 school year from being considered for purposes of this section. Provides that this subsection expires September 1, 2027.

(b) Provides that certain interventions or sanctions are subject to a pause under Subsection (a).

(c) Provides that the performance rating identified under Subsection (a) is prohibited from being included in calculating consecutive school years of unacceptable performance ratings and is not considered a break in consecutive school years of unacceptable performance ratings.

(d) Requires that interventions or sanctions implemented prior to a pause under Subsection (a) continue during a school year for which interventions or sanctions listed under Subsection (b) are paused.

(e) Provides that this section does not apply to a commissioner action based on performance or reasons not listed as interventions or sanctions under Subsection (b).

(f) Requires a school district, open-enrollment charter school, district campus, or charter school campus that has never previously been assigned an overall performance rating, for purposes of Subsection (a), to be considered to have previously received an overall performance rating of C or higher.

SECTION 2.20. Amends Section 39A.201(a), Education Code, as follows:

(a) Authorizes a board of managers, notwithstanding Section 11.151(b) or 11.1511(a) (relating to providing that the board of trustees of an independent school district has certain powers and duties) or any other provision of this code, to exercise all of the powers and duties assigned to a board of trustees of a school district by law, rule, or regulation. Makes a nonsubstantive change.

SECTION 2.21. Amends Section 39A.202(a), Education Code, as follows:

(a) Provides that, notwithstanding Section 11.151(b) or 11.1511(a) or any other provision of this code, if the commissioner appoints a board of managers to govern a school district, the powers of the board of trustees of the district are suspended for the period of the appointment and the commissioner is required to appoint a district superintendent. Makes a nonsubstantive change.

SECTION 2.22. Amends Section 39A.301(a), Education Code, as follows:

(a) Requires a school district or open-enrollment charter school to appeal under Section 39A.301 if the district or charter school intends to challenge a decision by the commissioner under Chapter 39A (Accountability Interventions and Sanctions) to, among other things, appoint a board of managers to the district or charter school or appoint a conservator or management team to the district or charter school. Deletes existing text requiring a school district or open-enrollment charter school that intends to challenge a decision by the commissioner under this chapter to close the district or a district campus or the charter school or to pursue alternative management of a district campus or the charter school to appeal the decision under this section. Makes nonsubstantive changes.

SECTION 2.23. Transfers Section 39A.116, Education Code, to Subchapter Z, Chapter 39A, Education Code, redesignates it as Section 39A.906, Education Code, and amends it, as follows:

Sec. 39A.906. COMMISSIONER AUTHORITY. Provides that a decision by the commissioner under Chapter 39 or Chapter 39A, rather than under Subchapter C (Campus Turnaround Plan), is final and is prohibited from being appealed unless an applicable provision of Chapter 39 or this chapter provides otherwise.

SECTION 2.24. Repealer: Section 39A.0545 (Needs Improvement Rating), Education Code.

SECTION 2.25. (a) Provides that Sections 39.003 and 39.004, Education Code, as redesignated and amended by this Act, and Sections 39.005, 39.006, and 39.007, Education Code, as added by this Act, apply to a special investigation authorized, initiated, opened, or finalized on or after the effective date of this Act. Requires that a special investigation authorized or initiated by TEA under Section 39.057, Education Code, before the effective date of this Act that is open and not finalized on the effective date of this Act, be continued as if authorized by Section 39.003, Education Code, as redesignated and amended by this Act, and proceed subject to Section 39.004, Education Code, as redesignated and amended by this Act, and Sections 39.005, 39.006, and 39.007, Education Code, as added by this Act.

(b) Provides that Section 39A.006, Education Code, as amended by this Act, applies to a conservator or management team assigned to a school district before, on, or after the effective date of this Act.

SECTION 2.26. Requires TEA, if this Act takes effect later than August 15, 2021, to publish the consecutive school years of unacceptable performance ratings as required by Section 39.054(a-3), Education Code, as amended by this Act, for each school district and campus as soon as practicable after the effective date of this Act.

SECTION 2.27. Requires the commissioner, as soon as practicable after the effective date of this Act, to adopt rules to develop and implement alternative methods and standards for evaluating the performance of a campus for the 2020-2021 school year as required by Section 39.0545, Education Code, as added by this Act.

## ARTICLE 3. PUBLIC SCHOOL FISCAL MANAGEMENT

SECTION 3.01. Amends Section 44.052(c), Education Code, as follows:

(c) Provides that a trustee of a school district who votes to approve any expenditure of school funds in violation of a provision of this code, for a purpose for which those funds are prohibited from being spent, or in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget, rather than who votes to approve any expenditure of school funds in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget, commits an offense.

SECTION 3.02. Amends Section 45.105, Education Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Creates an exception as provided by Subsection (c-1) to the authorization of certain funds to be used for certain purposes necessary in the conduct of the public schools determined by the board of trustees.

(c-1) Prohibits the public school funds described by Subsection (c) (relating to the use of local school funds from district taxes, tuition fees of certain students, other local sources, and state funds) from being used to initiate or maintain any action or proceeding against the state or an agency or officer of the state arising out of a decision, order, or determination that is final and unappealable under a provision of this code, except that funds are authorized to be used for an action or proceeding that is specifically authorized by a provision of this code or a rule adopted under this code and that results in a final and unappealable decision, order, or determination.

SECTION 3.03. Amends Section 48.201, Education Code, as follows:

Sec. 48.201. PURPOSE. Authorizes an allotment under Subchapter E (Tier Two Entitlement) to be used for any legal purpose other than certain purposes, including a purpose prohibited by Section 45.105(c-1) or another provision of this code. Makes nonsubstantive changes.

SECTION 3.04. Repealer: Section 39A.203 (Board of Managers of Campus), Education Code.

SECTION 3.05. Makes application of Section 44.052(c), Education Code, as amended by this Act, prospective.

## ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Amends Section 7.028(a), Education Code, to make a conforming change.

SECTION 4.02. Amends Section 12.013(b), Education Code, to make conforming and nonsubstantive changes.

SECTION 4.03. Amends Section 12.056(b), Education Code, to make conforming and nonsubstantive changes.

SECTION 4.04. Reenacts Section 12.104(b), Education Code, as amended by Chapters 262 (H.B. 1597), 464 (S.B. 11), 467 (H.B. 4170), and 943 (H.B. 3), Acts of the 86th Legislature, Regular Session, 2019, and amends it, to make conforming and nonsubstantive changes.

SECTION 4.05. Amends Section 12.1162(a), Education Code, to make a conforming change.

SECTION 4.06. Amends Section 39.0302(a), Education Code, to make conforming changes.

SECTION 4.07. Amends Section 39.056(h), Education Code, to make conforming changes.

SECTION 4.08. Amends Section 39A.001, Education Code, as follows:

Sec. 39A.001. GROUNDS FOR COMMISSIONER ACTION. Makes conforming changes to this section.

SECTION 4.09. Amends Sections 39A.256(a) and (b), Education Code, to make conforming changes.

SECTION 4.10. Provides that, to the extent of any conflict, this article prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

#### ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Effective date: upon passage or September 1, 2021.