

BILL ANALYSIS

Senate Research Center
87R21910 TSS-D

C.S.S.B. 1365
By: Bettencourt
Education
4/23/2021
Committee Report (Substituted)

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 ten-year period.

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

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

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of education is modified in SECTION 2.03 (Section 39.054, 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 under 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 to govern and oversee the management of the public schools of the district. Makes a nonsubstantive change.

SECTION 1.03. Amends Section 11.151(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. FINAL AND UNAPPEALABLE. Authorizes an interlocutory or intermediate order, decision, or determination made or reached before the final order, decision, or determination, if an order, decision, or determination is described as final and unappealable in Title 2 (Public Education), to be appealed only if specifically authorized by this code or a rule adopted under this code.

SECTION 2.02. 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:

(1) to determine if an academic program offered by a school district is providing students the quality education to which students are entitled under Title 1 (General Provisions) and this title, including an investigation regarding:

(A) the proportion of students in each demographic group participating in the program;

(B) whether an excessive number of students are participating in a particular program or are being exempted from state requirements;
or

(C) whether all students have equitable access to the program, including advanced learning options;

(2) redesignates existing Subdivision (3) as Subdivision (2) and makes no further changes;

(3) regarding a district's financial accounting practices and fiscal management, rather than in response to established compliance reviews of the district's financial accounting practices;

(4) to determine whether a district is complying with state and federal requirements, rather than state and federal program requirements;

(5) and (6) makes no changes to these subdivisions;

(7) regarding educational programs provided under Chapter 29 (Educational Programs), rather than when excessive numbers of students in special education programs under Subchapter A (Special Education Program), Chapter 29, are assessed through assessment instruments developed or adopted under Section 39.023(b) (relating to the adoption of criterion-referenced alternative assessment instruments to be administered to each student in a special education program);

(8) makes no changes to this subdivision;

(9) redesignates existing Subdivision (11) as Subdivision (9) and makes no further changes;

(10) regarding alleged inaccurate data reported to certain entities, including to the Texas Education Agency (TEA), including a material misrepresentation made in the course of a special investigation under this section, rather than in response to a complaint submitted to TEA with respect to alleged inaccurate data that is reported to certain entities;

(11) when a school district for any reason fails to produce, at the request of TEA, evidence or an investigation report, including an investigation report relating to an educator who is under investigation by the State Board for Educator Certification (SBOE);

(12) regarding whether an improper use of public funds has occurred; or

(13) creates this subdivision from existing text and makes no further changes.

Makes nonsubstantive changes.

Deletes existing text authorizing the commissioner to authorize special investigations to be conducted when excessive numbers of absences of students eligible to be tested on state assessment instruments are determined, when excessive numbers of allowable exemptions from the required state assessment instruments are determined, or when a significant pattern of decreased academic performance has developed as a result of the promotion in the preceding two school years of students who did not perform satisfactorily as determined by the commissioner under Section 39.0241(a) (relating to the requirement that the commissioner determine the level of performance considered to be satisfactory on the academic assessment instruments) on assessment instruments administered under certain subsections.

Deletes existing text authorizing the commissioner to authorize special investigations to be conducted when excessive numbers of students eligible to enroll fail to complete an Algebra II course or any other advanced course as determined by the commissioner, when a disproportionate number of students of a particular demographic group is graduating with a particular endorsement under Section 28.025(c-1) (relating to the provision that a student may earn an endorsement on the student's transcript by successfully completing certain curriculum requirements), or when an excessive number of students is graduating with a particular endorsement under Section 28.025(c-1).

(b) Prohibits TEA from substituting its judgement for that of the board of trustees if TEA's findings in an investigation under Subsection (a)(6) (relating to the authority of the commissioner to authorize special investigations regarding certain alleged conflict between board members 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, rather than has observed a lawfully adopted policy.

(c) Makes a conforming change to this subsection.

(d) Authorizes the commissioner, based on the results of a special investigation, to:

(1) take any action under Chapter 39A (Accountability Interventions and Sanctions), regardless of any requirements applicable to the action that are provided by that chapter, rather than to take appropriate action under Chapter 39A; or

(2) and (3) makes no changes to these subdivisions.

Makes a conforming change.

(e) Authorizes the commissioner, at any time before issuing a report with TEA's final findings, to defer taking an action under Subsection (d) 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).

(g) Provides that Section 39A.301 applies to an action taken under Subsection (d)(1) in the same manner as that section applies to an action taken under Chapter 39A.

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) Authorizes TEA, if TEA determines that it is necessary to protect the welfare of the witness, to classify the identity of a witness as confidential and not subject to disclosure to the district or under Chapter 552 (Public Information), Government Code.

(b) Requires 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 the commissioner's designee, rather than by the commissioner or a designated hearing examiner. Makes a conforming change.

(c) Provides that an informal review under this section is not a contested case for purposes of Chapter 2001 (Administrative Procedure), Government Code.

SECTION 2.03. Amends Section 39.054, Education Code, by amending Subsections (a) and (b-1) and adding Subsections (a-4) and (a-5), as follows:

(a) Creates an exception under Subsection (a-4) and makes a nonsubstantive change.

(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 school are difficult to measure or evaluate and would not accurately reflect quality of learning and achievement for the district or campus; or

(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.

(a-5) Provides that, notwithstanding any other law, an overall performance rating of "Not Rated" is not included in calculating consecutive school years and is not considered a break in consecutive school years for purposes of Chapter 39A.

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

SECTION 2.04. 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 authorizing a conservator or management team to engage in certain actions) 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 2.05. Amends Sections 39A.006(a) and (b), Education Code, as follows:

(a) Provides that Section 39A.006 (Board of Managers for School District Managed by Conservator or Management Team) applies:

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) to a conservator or management team appointed under any provision of this title, regardless of the scope or any changes to the scope of the conservator's or team's oversight.

(b) Authorizes the commissioner to appoint a board of managers to exercise the powers and duties of the board of trustees of the district 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, rather than has had a conservator or management team assigned.

SECTION 2.06. 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 until the commissioner determines a conservator is not necessary.

SECTION 2.07. Amends the heading to Section 39A.110, Education Code, to read as follows:

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

SECTION 2.08. 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 2.09. 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 an unacceptable performance rating for three consecutive school years after the campus is ordered to submit a campus turnaround plan under Section 39A.101, to order, subject to Section 39A.112 (Parent Petition for Action), appointment of a board of managers to govern the school district as provided by Section 39A.202 or closure of the campus.

SECTION 2.10. Amends Subchapter C, Chapter 39A, Education Code, by adding Section 39A.117, as follows:

Sec. 39A.117. APPOINTMENT OF CONSERVATOR AND BOARD OF MANAGERS FOR CERTAIN DISTRICTS OR SCHOOLS. (a) Provides that this section applies to a school district or open-enrollment charter school for which a board of managers has not assumed control of the district or school and includes a campus that has not received an acceptable performance rating since the 2010-2011 school year, that has received more than five unacceptable performance ratings since the 2010-2011 school year, and that has not been closed by the commissioner.

(b) Requires the commissioner, notwithstanding any other law, to appoint:

(1) a conservator to oversee the operations of a school district or open-enrollment charter school described by Subsection (a); and

(2) a board of managers to exercise the powers and duties of the board of trustees or governing body of a district or school described by Subsection (a).

(c) Prohibits the board of trustees or governing body of a school district or open-enrollment charter school described by Subsection (a), on the effective date of the appointment made under Subsection (b)(1), from exercising the powers and duties of the board or body under Chapter 11 (School Districts) or 12 (Charters).

(d) Requires the conservator and board of managers, once appointed under Subsection (b), to be subject to the provisions of this chapter.

(e) Provides that this section expires September 1, 2024.

SECTION 2.11. Amends Section 39A.201(a), Education Code, as follows:

(a) Authorizes a board of managers, notwithstanding Section 11.151(b) or 11.1511(a) 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 2.12. 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 2.13. Amends Section 39A.301, Education Code, as follows:

Sec. 39A.301. REVIEW OF SANCTIONS BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Requires a school district or open-enrollment charter school to appeal under this section if the district or school intends to challenge a decision by the commissioner under Section 39.003 or this chapter to:

(1) and (2) creates these subdivisions from existing text and makes nonsubstantive changes; or

(3) appoint a board of managers to the district or school under Section 39A.202.

Deletes existing text requiring a school district or open-enrollment charter school that intends to challenge a certain decision by the commissioner under this chapter to appeal the decision under this section.

(b) Provides that a challenge under this section to a decision by the commissioner described by Subsection (a) is subject to review by the State Office of Administrative Hearings. Provides that, notwithstanding Chapter 2001, Government Code:

(1) creates this subdivision from existing text and makes nonsubstantive changes;

(2) redesignates existing Subsection (c)(1) as (b)(2) and makes a nonsubstantive change;

(3) the administrative law judge is required to uphold a decision by the commissioner described by Subsection (a) unless the judge finds the decision is arbitrary and capricious or clearly erroneous;

(4) in reviewing any discretionary decisions made by the commissioner, the administrative law judge is prohibited from substituting the judge's judgment for that of the commissioner; and

(5)-(7) makes nonsubstantive changes to these subdivisions.

Deletes existing text providing that a challenge to a decision under this section is under the substantial evidence rule as provided by Subchapter G (Contested Cases: Judicial Review), Chapter 2001, Government Code. Makes nonsubstantive changes.

SECTION 2.14. 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 (Public School System Accountability) or this chapter, rather than under Subchapter C (Campus Turnaround Plan), is final and is prohibited from being appealed, except as provided by Section 39A.301.

SECTION 2.15. (a) Provides that Sections 39.003 and 39.004, Education Code, as redesignated and amended by this Act, apply to a special investigation authorized or initiated before, on, or after the effective date of this Act.

(b) Provides that Section 39.054, Education Code, as amended by this Act, applies to an overall performance rating of "Not Rated" assigned before, on, or after the effective date of this Act.

(c) 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.

(d) Provides that Section 39A.111, Education Code, as amended by this Act, applies to a school campus that has been assigned an unacceptable performance rating before, on, or after the effective date of this Act.

(e) Provides that Section 39A.906, Education Code, as redesignated and amended by this Act, applies to a decision made by the commissioner before, on, or after the effective date of 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 under Subsection (c-1).

(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 12.1162(a), Education Code, to make a conforming change.

SECTION 4.03. Amends Section 39.0302(a), Education Code, to make conforming changes.

SECTION 4.04. Amends Section 39.056(h), Education Code, to make conforming changes.

SECTION 4.05. Amends Section 39A.001, Education Code, to make conforming changes.

SECTION 4.06. Amends Section 39A.256(a), Education Code, to make a conforming change.

ARTICLE 5. EFFECTIVE DATE

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